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Public Counters
Department of Building and Safety
All Interested Parties

CASE NO. ZA 2016- 4167-(ZAI)
ZONING ADMINISTRATOR'S
INTERPRETATION

Sections 12.24.E, 12.24W.43 and
12.24W.44 of the Los Angeles Municipal
Code – Second Dwelling Units

CITYWIDE

Purpose

The purpose of this Zoning Administrator Interpretation (ZAI) is to interpret the City's second dwelling unit (SDU) ordinances, LAMC §§ 12.24W.43 and W.44, and LAMC §12.24E as incorporated into those sections, in a manner that complies with in Government Code § 65852.2 as written and existing as of the date of this ZAI.

LAMC §§ 12.24E, 12.24W.43, and W.44 implement a conditional use permit (CUP) process for approving second units that include both discretionary and ministerial components. While these provisions are facially clear, their clarity is obscured by the mandate in Government Code §65852.2(a)(3) requiring cities with local second unit standards to administer those standards ministerially without discretionary review or a hearing. This ZAI analyzes each sub-section of LAMC §§ 12.24E, 12.24W.43 and W.44 to determine whether each sub-section is discretionary or ministerial, and severs and renders the discretionary provisions inapplicable and unenforceable.

Authority

LAMC § 12.21A2 provides the Zoning Administrator with authority to interpret zoning regulations when the meaning of the regulation is not clear. The section states in relevant part:

The Zoning Administrator shall also have authority to interpret zoning regulations when the meaning of the regulation is not clear, either in general or as it applies to a specific property or situation.

Conclusions

Effective on the date of this ZAI, a second dwelling unit will be permitted in the A, RA, RE, RS, R1, RMP or RW1 Zones, if it meets all of the following standards:

(1) the second dwelling unit substantially conforms with the fixed, quantifiable, and objective standards in any applicable specific plan;

(2) the second dwelling unit consists of a group of two or more rooms for living and sleeping purposes, one of which is a kitchen, and the second dwelling unit has a maximum floor area of 640 square feet;

(3) the second dwelling unit is located on a lot having an area at least 50 percent larger than the minimum area required for a lot in the zone in which it is located, and in no event is the lot area less than 7,500 square feet;

(4) the second dwelling unit meets the yard, lot coverage and height requirements applicable to the zone in which it is located;

(5) the primary dwelling unit and all other existing or proposed buildings meet the use, lot coverage, height, yard and other requirements applicable to the zone in which they are located.

(6) one covered or uncovered off-street automobile parking space shall be provided for the second dwelling unit, in addition to the off-street automobile parking spaces required by Section 12.21A4(a) for the principal dwelling; provided, however, that a Zoning Administrator may modify the dimensions of the parking facilities (as set forth in Section 12.21A(5)) by up to 20 percent, as may be necessary to facilitate vehicular movement on and to the subject property.

(7) passageways shall be required as stated in Section 12.21C2(b);

(8) the second dwelling unit is combined with or attached to a main building containing only one dwelling unit unless:

(a) the second dwelling unit results from the conversion of a legally established, detached accessory living quarters, servants' quarters, or guest house which had been issued a certificate of occupancy prior to July 1, 1983; or

(b) the detached dwelling unit will be constructed in full compliance with setback, lot coverage, height and other requirements applicable to the zone;

(9) the second dwelling unit shall not be located in a Hillside Area, as defined in Section 91.7003 of this Code, in an Equinekeeping District, along a Scenic Highway designated in the General Plan, or where the width of the adjacent street is below current standards as defined in Section 12.37H; and

(10) no building nonconforming as to use may be converted to a second dwelling unit.

Effective on the date of this ZAI, a second dwelling unit will be permitted on large lots in the RA, RS or R1 Zones if it meets all of the following standards:

- (1) the second dwelling unit substantially conforms with the fixed, quantifiable, and objective standards in any applicable specific plan;
- (2) the lot has a depth of 180 feet or more;
- (3) in the RA Zone, the lot has an area of 35,000 square feet or more; in the RS Zone the lot has an area of 15,000 square feet or more; and in the R1 Zone, the lot has an area of 10,000 square feet or more;
- (4) one dwelling unit is on the front of the lot and one dwelling unit is on the rear of the lot, and the distance between the front and rear dwelling is at least 20 feet;
- (5) the rear dwelling is located at least 50 feet from the rear lot line;
- (6) both dwellings are located so as to comply with all other area regulations of the zone in which the property is located;
- (7) the lot is not located in a “H” Hillside or Mountainous area or in a “K” Equinekeeping District; and
- (8) any necessary dedications or improvements have been provided.

Determination by Department of Building and Safety

Notwithstanding any language to the contrary, conformance with the above stated standards (2) through (10) for second dwelling units in the A, RA, RE, RS, R1, RMP or RW1 Zones, and standards (2) through (8) for second dwelling units on large lots in the RA, RS or R1 Zones, shall be determined by the Department of Building and Safety (Building and Safety).

No findings, sign-off, or other determinations shall be required by a Zoning Administrator or Department of City Planning (Planning Department) to allow a second dwelling unit, other than a sign-off or determination by the Planning Department for conformance with standard (1) in each of the above groups regarding whether a second dwelling unit substantially conforms with the fixed, quantifiable, and objective standards in any applicable specific plan.

Administrative Appeals

Any determination by Building and Safety or Planning regarding application of the above criteria shall be subject to any appeal or further review under the LAMC, City Charter, or any other appeal or basis for review as may be applicable.

Any such appeal or further review shall be handled in a ministerial and administrative manner and shall be limited in scope to only considering the proposal's compliance with the above stated ministerial standards.

Background

Government Code § 65852.2 as initially enacted enabled cities to provide for second dwelling units and authorizes cities to impose standards on second units and to administer such standards through a CUP process. As a result, the City adopted its second unit ordinances in 1985. Consistent with then-existing state law, the ordinances implemented a CUP process for approving second units. LAMC §§ 12.24E, 12.24W.43, and W.44. In addition to the standard discretionary CUP findings (e.g., project compatibility with surrounding neighborhood), the ordinance includes objective standards. For example, second units are limited to 640 square feet (LAMC § 12.24W43(a)(1)).

In 2002, the California Legislature enacted AB 1866, amending Government Code § 65852.2 to mandate that cities with local second unit standards administer them on a ministerial basis. Government Code § 65852.2(a)(3) states in relevant part:

(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. Nothing in this paragraph may be construed to require a local government to adopt or amend an ordinance for the creation of second units... (Government Code § 65852.2(a)(3)).

The State Department of Housing and Community Development, Division of Housing Policy Development, issued a Memorandum to Planning Directors and Interested Parties dated August 6, 2003 (State Housing Department Memorandum) providing guidelines for implementation of AB 1866. The State Housing Department Memorandum provides authority for local government with existing SDU ordinances to continue to implement the ordinance's ministerial development standards, and consider any provisions in conflict with second-unit law such as a conditional use permit as null and void.

[I]f a locality has an ordinance with development standards in accordance with the intent of second-unit law and subsection (a) and requires a conditional use permit, the locality should consider a second-unit application ministerially according to the adopted development standards and any provisions of the local ordinance which are in conflict with second-unit law, such as a conditional use permit, should be considered null and void (State Housing Department Memorandum at pages 4-5).

The State Housing Department Memorandum defines ministerial review as follows:

What is Ministerial Review?

Chapter 1062 requires development applications for second-units to be "...considered ministerially without discretionary review or a hearing..." In order for an application to be considered ministerially, the process must apply predictable, objective, fixed, quantifiable and clear standards. These standards must be administratively applied to the application and not subject to discretionary decision-making by a legislative body (For clarification see the attached definition of ministerial under California Environmental Quality Act (CEQA) Guidelines, Section 15369.). The definition is generally accepted and was prepared pursuant to Public Resources Code.

* * *

CEQA Guidelines: Section 15369 Ministerial

"Ministerial" describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out. Common examples of ministerial permits include automobile registrations, dog licenses, and marriage licenses. A building permit is ministerial if the ordinance requiring the permit limits the public official to determining whether the zoning allows the structure to be built in the requested location, the structure would meet the strength requirements in the Uniform Building Code, and the applicant has paid his fee (State Housing Department Memorandum at pages 5 and 12-13).

For cities without second unit standards or those with standards that cannot be administered ministerially, AB 1866 permits the use of state law default standards for second units. The state law standards are generally more permissive than the objective standards in the City's second unit ordinance. For example, state law allows second units up to 1,200 square feet (Government Code § 65852.2(b)(1)(F)).

In 2003, the City of Los Angeles Departments of City Planning and Building and Safety jointly issued an interdepartmental correspondence concerning AB 1866's impact on LAMC § 12.24W.43. The correspondence purported to identify the objective standards in LAMC § 12.24W.43 that must be met for approving SDUs in the City.

In 2010, the Zoning Administrator of the Department of City Planning issued a memorandum (ZA Memo 120) superseding the 2003 interdepartmental correspondence and providing that a second unit is permitted if it meets specified state law default standards.

On February 25, 2016, the Los Angeles Superior Court invalidated the City's policy and

practice for second units under ZA Memo 120. (February 25, 2016 Decision on Writ of Mandate in *Los Angeles Neighbors In Action v. City of Los Angeles*, Los Angeles Superior Court Case BS150559.) The court ruled ZA Memo 120 to be invalid because it did not analyze whether the more-restrictive objective standards of the City's second unit ordinance could be severed from its discretionary components and applied ministerially (Decision on Writ of Mandate at page 14). The Court's April 4, 2016, Judgment enjoins the City from issuing any further building permits for second dwelling units under invalid ZA 120.

The Court addressed application of LAMC 12.24.W.43 at page 15 of its Opinion, stating in part "these standards cannot be enforced without some discretionary City action. The City Council or the ZA may properly evaluate LAMC section 12.24.W.43 and attempt to sever ministerial provisions from discretionary provisions, or the City Council may amend section 12.24.W.43, or the City Council may simply repeal LAMC sections 12.24.W.43 and allow the state default standards to apply. The court will not limit the City's discretion" (Decision on Writ of Mandate at page 15).

This ZAI, in accord with the authority provided by to the Zoning Administrator under LAMC § 12.21A2, and in accord with the Court's Decision on Writ of Mandate, provides a severability analysis to sever the ministerial provisions from discretionary provisions in the City's second unit ordinance for the purpose of interpreting LAMC §§ 12.24W.43 and W.44, and LAMC §12.24E as incorporated into those sections, in a manner that complies with existing state law in Government Code § 65852.2.

Analysis

LAMC 12.24

E. Findings for Approval. (Amended by Ord. No. 182,095, Eff. 5/7/12.) A decision-maker shall not grant a conditional use or other approval specified in Subsections U., V., W., or X. of this Section without finding:

1. that the project will enhance the built environment in the surrounding neighborhood or will perform a function or provide a service that is essential or beneficial to the community, city, or region;

Whether a project "will enhance the environment or perform a function or provide a service essential or beneficial to the community, city, or region" involves exercise of discretion and personal, subjective judgment by a decision maker in reaching a decision, within the meaning of Government Code § 65852.2. The determination of whether a proposed project is "essential or beneficial to the community, city, or region" necessarily involves substantial discretion and lacks fixed or objective standards.

This language shall be severed and not enforced as it requires a discretionary determination and personal judgment by a decision maker as to the wisdom or manner of carrying out the project, and is therefore not considered a ministerial action under Government Code § 65852.2.

2. that the project's location, size, height, operations and other significant features will be compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood, or the public health, welfare, and safety; and

The State Housing Department Memorandum explains that architectural review is permissible only in a ministerial fashion that provides clear, fixed and objective standards.

As explicitly stated in the provisions of 65852.2(a), a locality may require second-units to comply with development standards such as height, setback and architectural review. At the same time, architectural review should be handled in a ministerial fashion without discretionary public hearings or review. Architectural review in a ministerial fashion includes architectural standards and design guidelines with clear, fixed and objective standards. These standards should provide a predictable concept of appropriate second-unit development. For example, the compatibility of the materials with the existing structure, exterior color, subordinate bulk or compatible exterior surface texture are architectural standards that can be applied in a ministerial manner, especially with the aid of design review guidelines. Architectural review standards should not impede the creation of second-units and should not detrimentally affect the feasibility or affordability of second-units (State Housing Department Memorandum at pages 5-6).

The review required by this section does not provide clear, fixed and objective standards as required by Government Code § 65852.2. Analysis of a project's location, size, and height, without reference to objective standards such as materials, color, subordinate bulk, or surface texture, involves the exercise of discretion and personal and subjective judgment by a decision maker under Government Code § 65852.2. Additionally, analysis of "other significant features" without stating what should be considered as "significant", and of "public health, welfare, and safety" without reference to objective standards, further expands the exercise of discretion and personal, subjective judgment by a decision maker under this section.

This language shall be severed and not enforced as it requires a discretionary determination and personal judgment by a decision maker as to the wisdom or manner of carrying out the project, and is therefore not considered a ministerial action under Government Code § 65852.2.

3. that the project substantially conforms with the purpose, intent and provisions of the General Plan, the applicable community plan, and any applicable specific plan.

The General Plan and community plans are policy documents which speak generally of facilitating SDUs and protecting single-family character. Analysis of a project's compatibility with the General Plan and the applicable community plans thus involves the exercise of discretion and personal, subjective judgment by a decision maker. For

example, Housing Element policy 2.4.1 states, “Promote preservation of neighborhood character in balance with facilitating new development”. The Framework Element has similar policies that focus on character and scale. For example, policy 3.5.2 states, “Require that new development in single-family neighborhoods maintains its predominant and distinguishing characteristics such as property setbacks and building scale.” These standards are not clear, fixed and objective standards as required by Government Code § 65852.2. For example, whether a project “[p]romote[s] preservation of neighborhood character in balance with facilitating new development” or “maintains [the] predominant and distinguishing characteristics” of a neighborhood involve no objective and fixed standards. Analysis of a project’s conformity with these standards thus involves the exercise of discretion and personal subjective judgment by a decision maker under Government Code § 65852.2, and are thus not enforceable under Government Code § 65852.2.

In comparison, specific plans may contain fixed objective development standards that can be applied ministerially to individual SDU projects, as well as discretionary procedures including design review procedures that cannot be applied on a ministerial basis under Government Code § 65852.2. Only the fixed, quantifiable, and objective standards in specific plans, if applicable, involving little or no personal judgment by a public official as to the wisdom or manner of carrying out the project, shall continue to remain enforceable regarding SDUs. Other provision in specific plans that involve the exercise of discretion and personal subjective judgment by a decision maker under Government Code § 65852.2 are not enforceable under Government Code § 65852.2.

The language “that the project substantially conforms with the purpose, intent and provisions of the General Plan, the applicable community plan” shall be severed and not enforced as it requires a discretionary determination and personal judgment by a decision maker as to the wisdom or manner of carrying out the project, and is therefore not considered a ministerial action under Government Code § 65852.2.

The remaining language in this subsection shall be amended and enforced as follows because it includes fixed standards and objective measurements involving little or no personal judgment by a decision maker as to the wisdom or manner of carrying out the project, and is therefore considered a ministerial action under Government Code § 65852.2. Amended language: “the second dwelling unit substantially conforms with the fixed, quantifiable, and objective standards in any applicable specific plan”.

43. Second dwelling unit in the A, RA, RE, RS, R1, RMP or RW1 Zones, provided that:

(a) In addition to the findings otherwise required by this section, a Zoning Administrator shall also make the following findings:

(1) that the second dwelling unit consists of a group of two or more rooms for living and sleeping purposes, one of which is a kitchen, and the second dwelling unit has a maximum floor area of 640 square feet;

The standards in this section are defined and fixed consistent with ministerial review in Government Code § 65852.2. The number of rooms habitable for living and sleeping purposes and whether a room is a kitchen under the LAMC, and whether a proposed second unit exceeds 640 square feet, are fixed, quantifiable, and clear standards involving little or no personal judgment by a public official as to the wisdom or manner of carrying out the project.

This language shall remain and be enforced as it includes fixed standards and objective measurements involving little or no personal judgment by a decision maker as to the wisdom or manner of carrying out the project, and is therefore considered a ministerial action under Government Code § 65852.2.

(2) that the second dwelling unit is located on a lot having an area at least 50 percent larger than the minimum area required for a lot in the zone in which it is located, and in no event is the lot area less than 7,500 square feet;

The standards in this section are defined and fixed standards consistent with ministerial review in Government Code § 65852.2. The size of a lot and the minimum area required for a lot in the zone in which it is located are stated in the Los Angeles Zoning Code, and are thus are fixed, quantifiable, and clear standards involving little or no personal judgment by a public official as to the wisdom or manner of carrying out the project.

This language shall remain and be enforced as it includes fixed standards and objective measurements involving little or no personal judgment by a decision maker as to the wisdom or manner of carrying out the project, and is therefore considered a ministerial action under Government Code § 65852.2.

(3) that the second dwelling unit meets the yard, lot coverage and height requirements applicable to the zone in which it is located; and

The standards in this section are defined and fixed standards consistent with ministerial review in Government Code § 65852.2. The yard, lot coverage, and height requirements applicable to the zone in which a lot is located are stated in the Los Angeles Zoning Code, and are thus fixed, quantifiable, and clear standards involving little or no personal judgment by a public official as to the wisdom or manner of carrying out the project.

This language shall remain and be enforced as it includes fixed standards and objective measurements involving little or no personal judgment by a decision maker as to the wisdom or manner of carrying out the project, and is therefore considered a ministerial action under Government Code § 65852.2.

(4) that the primary dwelling unit and all other existing or proposed buildings meet the use, lot coverage, height, yard and other requirements applicable to the zone in which they are located.

The standards in this section are defined and fixed standards consistent with ministerial review in Government Code § 65852.2. Allowed uses, and restrictions upon lot coverage,

height, yard and other requirements for zones in which a lot is are located, are stated in the Los Angeles Zoning Code, and are thus fixed, quantifiable, and clear standards involving little or no personal judgment by a public official as to the wisdom or manner of carrying out the project.

This language shall remain and be enforced as it includes fixed standards and objective measurements involving little or no personal judgment by a decision maker as to the wisdom or manner of carrying out the project, and is therefore considered a ministerial action under Government Code § 65852.2.

(b) In determining whether to permit a second dwelling unit, a Zoning Administrator shall consider, but not be limited to, factors such as the impact of the second unit on traffic volume of existing streets and highways and the increased burden on water and sewer services.

The State Housing Department Memorandum explains that local government may designate areas appropriate for second-units based on criteria such as the impact of second-units on traffic flow.

A local government may designate areas appropriate for second-units based on criteria such as the adequacy of water and sewer services and the impact of second-units on traffic flow. At the same time, a locality must adopt an ordinance with the intent of facilitating the development of second-units in appropriate residential zones without arbitrary, excessive, or burdensome provisions and requirements (State Housing Department Memorandum at page 4).

The review required by this section does not provide clear, fixed and objective standards as required by Government Code § 65852.2. Analysis of the impact of a single second unit “on traffic volume of existing streets and highways and the increased burden on water and sewer services” involves the exercise of discretion and personal judgment by a public official as to the wisdom or manner of carrying out the project.

Additionally, analysis under this section is not limited to matters therein specifically identified. The section instead states that the decision maker “shall consider, but not be limited to, factors”, without limiting or specifically identifying those other factors. The section thus further expands the exercise of discretion and personal judgment by a public official as to the wisdom or manner of carrying out the project.

This language shall be severed and not enforced as it requires a discretionary determination and personal judgment by a decision maker as to the wisdom or manner of carrying out the project, and is therefore not considered a ministerial action under Government Code § 65852.2.

(c) At least one covered or uncovered off-street automobile parking space shall be provided for the second dwelling unit, in addition to the off-street automobile parking spaces required by Section 12.21A4(a) for the principal dwelling; provided, however, that a Zoning Administrator may modify the dimensions of the parking

facilities (as set forth in Section 12.21A(5)) by up to 20 percent, as may be necessary to facilitate vehicular movement on and to the subject property.

The State Housing Department Memorandum states that state law limits parking requirements to one parking space per unit or bedroom.

Also, localities should ensure parking requirements are consistent with standards set forth in subsection (e). This subsection limits parking requirements to one parking space per unit or bedroom, unless a locality makes specific findings (State Housing Department Memorandum at page 4).

The review required by this section allows for more than one parking space without providing criteria for determining the circumstances under which more than one parking space can be provided. The section, to the extent it may require more than one space without providing criteria to make that determination, involves the exercise of discretion and personal judgment by a public official.

The number of off-street parking spaces required by Section 12.21A4(a) and parking facility dimensions in Section 12.21A(5) are stated in the Los Angeles Zoning Code, and are thus fixed, quantifiable, and clear standards involving little or no personal judgment by a public official as to the wisdom or manner of carrying out the project.

The language allowing the decision maker to modify the dimensions of parking facilities limits such modification “up to 20 percent” and “as may be necessary to facilitate vehicular movement on and to the subject property”. These limitations are clear, fixed and objective standards as required by Government Code § 65852.2 because the modification is limited by 20 percent maximum and can only be made as “necessary” to facilitate vehicular movement. The determination involves consideration of the width and length of vehicles customarily used at the property and amount of room necessary for such vehicles to pull into and out of the required parking spot, and thus does not involve the exercise of discretion and personal judgment by a public official as to the wisdom or manner of carrying out the project.

This section shall therefore interpreted to mean that one covered or uncovered off-street automobile parking space shall be provided for the second dwelling unit, as follows: “One covered or uncovered off-street automobile parking space shall be provided for the second dwelling unit, in addition to the off-street automobile parking spaces required by Section 12.21A4(a) for the principal dwelling; provided, however, that a Zoning Administrator may modify the dimensions of the parking facilities (as set forth in Section 12.21A(5)) by up to 20 percent, as may be necessary to facilitate vehicular movement on and to the subject property.”

(d) A Zoning Administrator may reduce the width of required passageways [see Section 12.21C2(b)] to no less than five feet, unless the Fire Department determines that the reduction would result in a safety hazard.

The review required by this section allows for the reduction of required passageways without any standards as to when a reduction may be allowed. Rather, the section states the circumstances when a reduction would not be allowed. The decision as to whether to reduce the width of a required passageway thus involves the exercise of discretion and personal judgment by a decision maker.

The language allowing a decision maker to reduce the width of required passageways shall be severed and not enforced as it requires a discretionary determination and personal judgment by a decision maker as to the wisdom or manner of carrying out the project, and is therefore not considered a ministerial action under Government Code § 65852.2. Passageways shall be as required in LAMC § 12.21C2(b).

(e) A Zoning Administrator shall require that a second dwelling unit be combined with or be attached to a main building containing only one dwelling unit unless:

(1) The second dwelling unit results from the conversion of a legally established, detached accessory living quarters, servants' quarters, or guest house which had been issued a certificate of occupancy prior to July 1, 1983; or

(2) The Zoning Administrator determines that a detached dwelling unit will be constructed in full compliance with setback, lot coverage, height and other requirements applicable to the zone, without adverse impacts on the character of the surrounding neighborhood.

The standard requiring a second unit to be combined with or be attached to a main building containing only one dwelling unit involves fixed, quantifiable, and clear standards involving little or no personal judgment by a public official as to the wisdom or manner of carrying out the project.

Standard (1) requires a determination as to whether the second unit results from the conversion of a legally established, detached accessory living quarters, servants' quarters, or guest house which had been issued a certificate of occupancy prior to July 1, 1983. Whether or not such a unit had been issued a certificate of occupancy prior to July 1, 1983 is a fixed, quantifiable, and clear standard involving little or no personal judgment by a public official as to the wisdom or manner of carrying out the project.

The requirements in Standard (2) concerning setback, lot coverage, height and other requirements applicable to the zone in which it is located are stated in the Los Angeles Zoning Code, and are thus are fixed, quantifiable, and clear standards involving little or no personal judgment by a public official as to the wisdom or manner of carrying out the project.

The requirement in Standard (2) that a detached second unit be constructed "without adverse impacts on the character of the surrounding neighborhood" does not provide clear, fixed and objective standards as required by Government Code § 65852.2. As stated above, the State Housing Department Memorandum explains that architectural

review is permissible only in a ministerial fashion that provides clear, fixed and objective standards such as “compatibility of the materials with the existing structure, exterior color, subordinate bulk or compatible exterior surface texture are architectural standards that can be applied in a ministerial manner, especially with the aid of design review guidelines” (State Housing Department Memorandum at pages 5-6). Analysis of a project’s “impacts on the character of the surrounding neighborhood” does not reference objective standards such as compatibility of the materials, color, subordinate bulk or surface texture, and thus involves the exercise of discretion and personal, subjective judgment by a decision maker under Government Code § 65852.2.

The language “without adverse impacts on the character of the surrounding neighborhood” shall be severed and not enforced as it requires a discretionary determination and personal judgment by a decision maker as to the wisdom or manner of carrying out the project, and is therefore not considered a ministerial action under Government Code § 65852.2.

The remaining language in this subsection shall remain and be enforced as it includes fixed standards and objective measurements involving little or no personal judgment by a decision maker as to the wisdom or manner of carrying out the project, and is therefore considered a ministerial action under Government Code § 65852.2.

(f) The architectural style of the second dwelling unit shall be compatible with that of the primary dwelling unit, and when viewed from the street frontage it shall appear that there is only one dwelling unit on the lot. Not more than one entrance to the dwellings shall be visible from the street frontage.

The requirement of architectural compatibility with the primary dwelling does not provide a clear, fixed and objective standard as required by Government Code § 65852.2. As stated above, the State Housing Department Memorandum explains that architectural review is permissible only in a ministerial fashion that provides clear, fixed and objective standards such as “compatibility of the materials with the existing structure, exterior color, subordinate bulk or compatible exterior surface texture are architectural standards that can be applied in a ministerial manner, especially with the aid of design review guidelines” (State Housing Department Memorandum at pages 5-6). Analysis of a project’s architectural compatibility with the primary dwelling does not reference objective standards such as compatibility of the materials, color, subordinate bulk or surface texture, and thus involves the exercise of discretion and personal, subjective judgment by a decision maker under Government Code § 65852.2.

The requirement that “when viewed from the street frontage it shall appear that there is only one dwelling unit on the lot” does not provide a clear, fixed and objective standard as required by Government Code § 65852.2. There are no stated objectives as to what qualifies as “one dwelling unit”. The standard thus requires a discretionary determination and personal judgment by a decision maker as to the wisdom or manner of carrying out the project.

The requirement that “[n]ot more than one entrance to the dwellings shall be visible from the street frontage” ” does not provide a clear, fixed and objective standard as required by Government Code § 65852.2. There are no stated objectives as to what qualifies as an entrance, whether the entirety or only a portion of that “entrance” must not be visible, nor whether “street frontage” means only the street frontage immediately in front of and adjacent to the subject lot, or the street frontage for the whole side of the street between streets intersecting the street on which the lot is located.

This language shall be severed and not enforced as it requires a discretionary determination and personal judgment by a decision maker as to the wisdom or manner of carrying out the project, and is therefore not considered a ministerial action under Government Code § 65852.2.

(g) (Amended by Ord. No. 173,492, Eff. 10/10/00.) A second dwelling unit shall not be located in a Hillside Area, as defined in Section 91.7003 of this Code, in an Equinekeeping District, along a Scenic Highway designated in the General Plan, or where the width of the adjacent street is below current standards as defined in Section 12.37H.

The standards in this section are defined and fixed standards consistent with ministerial review in Government Code § 65852.2. The location of a lot as in Hillside Area, a Equinekeeping District, or Scenic Highway and the width of adjacent streets are designated in the LAMC or General Plan, and are thus are fixed, quantifiable, and clear standards involving little or no personal judgment by a public official as to the wisdom or manner of carrying out the project.

This language shall remain and be enforced as it includes fixed standards and objective measurements involving little or no personal judgment by a decision maker as to the wisdom or manner of carrying out the project, and is therefore considered a ministerial action under Government Code § 65852.2.

(h) No building nonconforming as to use may be converted to a second dwelling unit.

The standards in this section are defined and fixed standards consistent with ministerial review in Government Code § 65852.2. The qualification of a building as a nonconforming use is determined by reference to uses permitted by the LAMC which are fixed, quantifiable, and clear standards involving little or no personal judgment by a public official as to the wisdom or manner of carrying out the project.

This language shall remain and be enforced as it includes fixed standards and objective measurements involving little or no personal judgment by a decision maker as to the wisdom or manner of carrying out the project, and is therefore considered a ministerial action under Government Code § 65852.2.

(i) A copy of each application for conditional use as a second dwelling unit shall be referred without unnecessary delay for review to the councilmember of the

district in which the property is located, and copies of any building permits issued for a second dwelling unit shall be sent to that councilmember.

Conditional use permits for second units are not enforceable under Government Code § 65852.2. Consequently, there should be no applications for conditional use as a second dwelling unit and thus no applications to refer to any Council District.

Additionally, the section provides for “review” by the councilmember but does not state the criteria applicable to that review. The review thus involves exercise of discretion and personal, subjective judgment by a decision maker in reaching a decision, within the meaning of Government Code § 65852.2.

This language shall be severed and not enforced as it requires a discretionary determination and personal judgment by a decision maker as to the wisdom or manner of carrying out the project, and is therefore not considered a ministerial action under Government Code § 65852.2.

44. Second dwelling unit on large lots in the RA, RS or R1 Zones provided that, in addition to the findings otherwise required by this section, a Zoning Administrator shall also find that:

(a) The lot has a depth of 180 feet or more;

The standard in this section is defined and fixed consistent with ministerial review in Government Code § 65852.2. The depth of a lot and whether it exceeds 180 feet can be measured and is a fixed, quantifiable, and clear standard involving no personal judgment by a public official as to the wisdom or manner of carrying out the project.

This language shall remain and be enforced as it includes fixed standards and objective measurements involving little or no personal judgment by a decision maker as to the wisdom or manner of carrying out the project, and is therefore considered a ministerial action under Government Code § 65852.2.

(b) In the RA Zone, the lot has an area of 35,000 square feet or more; in the RS Zone the lot has an area of 15,000 square feet or more; and in the R1 Zone, the lot has an area of 10,000 square feet or more;

The standards in this section are defined and fixed consistent with ministerial review in Government Code § 65852.2. The zone in which a lot is located is stated in the Los Angeles Zoning Code. The size of a lot can be measured. These standards are fixed, quantifiable, and clear and involve no personal judgment by a public official as to the wisdom or manner of carrying out the project.

This language shall remain and be enforced as it includes fixed standards and objective measurements involving little or no personal judgment by a decision maker as to the wisdom or manner of carrying out the project, and is therefore considered a ministerial action under Government Code § 65852.2.

(c) One dwelling unit is on the front of the lot and one dwelling unit is on the rear of the lot, and the distance between the front and rear dwelling is at least 20 feet;

The standards in this section are defined and fixed consistent with ministerial review in Government Code § 65852.2. Whether a dwelling unit is located on the front or rear of a lot and the distance between dwellings are fixed, quantifiable, and clear and involved no personal judgment by a public official as to the wisdom or manner of carrying out the project.

This language shall remain and be enforced as it includes fixed standards and objective measurements involving little or no personal judgment by a decision maker as to the wisdom or manner of carrying out the project, and is therefore considered a ministerial action under Government Code § 65852.2.

(d) The rear dwelling is located at least 50 feet from the rear lot line;

The standards in this section are defined and fixed consistent with ministerial review in Government Code § 65852.2. The distance of a second dwelling from the rear lot line can be measured. Whether that measurement is at least 50 feet is fixed, quantifiable, and clear and involves no personal judgment by a public official as to the wisdom or manner of carrying out the project.

This language shall remain and be enforced as it includes fixed standards and objective measurements involving little or no personal judgment by a decision maker as to the wisdom or manner of carrying out the project, and is therefore considered a ministerial action under Government Code § 65852.2.

(e) Both dwellings are located so as to comply with all other area regulations of the zone in which the property is located;

The standards in this section are defined and fixed standards consistent with ministerial review in Government Code § 65852.2. The zone in which a lot is located is fixed and certain. The area regulations for each zone are stated in the Los Angeles Zoning Code. Whether the dwellings comply with these applicable standards thus involved fixed, quantifiable, and clear standards involving little or no personal judgment by a public official as to the wisdom or manner of carrying out the project.

This language shall remain and be enforced as it includes fixed standards and objective measurements involving little or no personal judgment by a decision maker as to the wisdom or manner of carrying out the project, and is therefore considered a ministerial action under Government Code § 65852.2.

(f) The lot is not located in a “H” Hillside or Mountainous area or in a “K” Equinekeeping District;

The standards in this section are defined and fixed standards consistent with ministerial review in Government Code § 65852.2. The location of a lot is fixed and certain. Hillside

Area, Mountainous, and Equinekeeping Districts are designated in the LAMC or General Plan. The location of a lot as within one of these designated areas is thus a fixed, quantifiable, and clear standard involving little or no personal judgment by a public official as to the wisdom or manner of carrying out the project.

This language shall remain and be enforced as it includes fixed standards and objective measurements involving little or no personal judgment by a decision maker as to the wisdom or manner of carrying out the project, and is therefore considered a ministerial action under Government Code § 65852.2.

(g) The height and bulk of the dwelling units are reasonably compatible with that of the surrounding development;

As stated above, the State Housing Department Memorandum explains that architectural review is permissible only in a ministerial fashion that provides clear, fixed and objective standards. “For example, the compatibility of the materials with the existing structure, exterior color, subordinate bulk or compatible exterior surface texture are architectural standards that can be applied in a ministerial manner, especially with the aid of design review guidelines” (State Housing Department Memorandum at pages 5-6).

However, here, the standard does not refer to “the existing structure” but rather to “surrounding development” and requires “reasonabl[e] compatibl[ity]”. There is no definition or limitation of “surrounding development”. And “reasonabl[e] compatibl[ity]” may differ depending upon the decision maker. Consequently, this section involves the exercise of discretion and personal, subjective judgment by a decision maker under Government Code § 65852.2.

This language shall be severed and not enforced as it requires a discretionary determination and personal judgment by a decision maker as to the wisdom or manner of carrying out the project, and is therefore not considered a ministerial action under Government Code § 65852.2.

(h) The second dwelling unit will not cause a significant adverse impact on traffic, sewer capacity or other public facilities or services; and

The State Housing Department Memorandum explains that local government may designate areas appropriate for second-units based on criteria such as the impact of second-units on traffic flow.

A local government may designate areas appropriate for second-units based on criteria such as the adequacy of water and sewer services and the impact of second-units on traffic flow. At the same time, a locality must adopt an ordinance in residential zones without arbitrary, excessive, or burdensome provisions and requirements (State Housing Department Memorandum at page 3).

The review required by this section does not provide clear, fixed and objective standards as required by Government Code § 65852.2. Analysis of the impact of a *single* second

unit on traffic, sewer capacity and other public facilities involves the exercise of discretion and personal judgment by a public official as to the wisdom or manner of carrying out the project.

This language shall be severed and not enforced as it requires a discretionary determination and personal judgment by a decision maker as to the wisdom or manner of carrying out the project, and is therefore not considered a ministerial action under Government Code § 65852.2.

(i) Any necessary dedications or improvements have been provided.

The standards in this section are defined and fixed standards consistent with ministerial review in Government Code § 65852.2. The necessary dedications and improvements for each street are stated in Section 12.37H and additional provisions identified in that Code Section which are fixed, quantifiable, and clear standards involving little or no personal judgment by a public official as to the wisdom or manner of carrying out the project.

This language shall remain and be enforced as it includes fixed standards and objective measurements involving little or no personal judgment by a decision maker as to the wisdom or manner of carrying out the project, and is therefore considered a ministerial action under Government Code § 65852.2.

Appeal

LAMC §12.21A2 provides for an appeal by anyone aggrieved by this Zoning Administrator's Interpretation. The section states in relevant part:

Anyone aggrieved by the Zoning Administrator's determination may file an appeal within 15 days from the issuance of the written decision.

The City Planning Commission shall hear appeals on Zoning Administrator Interpretations where there is no site specific issue. (LAMC §12.21A2).

Limitation, Termination, and Severability

This ZAI is intended to interpret LAMC §§ 12.24W.43 and W.44, and LAMC §12.24E as incorporated into those sections, in the context and consistent with the intent and purpose of Government Code § 65852.2 as written and existing as of the date of this ZAI, and prior to the amendment of Government Code § 65852.2 by State of California Assembly Bill 2299 (AB 2299) effective January 1, 2017. The analysis in the ZAI is limited to the context, intent, and purpose of existing state law in Government Code § 65852.2 as written and existing as of the date of this ZAI and does not and shall not apply in any other context.

This ZAI shall terminate and no longer be applicable:

- (1) after December 31, 2016, after which time AB 2299 shall govern; or
- (2) if otherwise rescinded or amended by the Zoning Administrator; or
- (3) if the City Council otherwise enacts valid SDU legislation to amend or replace LAMC §§ 12.24W.43 and W.44, or LAMC §12.24E as incorporated into those sections.

State of California Assembly Bill 2299

State of California Assembly Bill 2299 amends Government Code 65852.2 effective January 1, 2017. Government Code 65852.2(a)(4), as amended, states as follows:

“(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency subsequent to the effective date of the act adding this paragraph shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. In the event that a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void upon the effective date of the act adding this paragraph and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section” (AB 2299 at Sec. 1.5, amending Government Code 65852.2(a)(4)).

The City’s existing ordinances governing creation of accessory dwelling units contained in LAMC §§12.24W43 and 44, and LAMC §12.24E as incorporated into those sections, include discretionary and other provisions as part of the approval process in violation of Government Code 65852.2(a)(4) as amended. Consequently, unless the City Council amends its existing accessory dwelling unit ordinances to comply with Government Code §65852.2, LAMC §§12.24W43 and 44, and LAMC §12.24E as incorporated into those sections, “shall be null and void” upon the January 1, 2017 effective date of AB 2299, and the City shall thereafter apply the standards established in Government Code §65852.2(a)(1)(D), as amended, for the approval of accessory dwelling units.

(signed copy in case file)

LINN K. WYATT

Chief Zoning Administrator

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