



Berkeley Neighborhoods Council
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**Dedicated to improving the quality of life for all by creating
a unified neighborhood voice for promoting livability and resolving problems**

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February 20, 2017

To: Mayor Arreguin and Berkeley City Council Members

Re: 1310 Haskell St. Public hearing and the Housing Accountability Act Misuse

Last year, Berkeley City Council was ambushed by a law that had not been used, nor had seen the light of day for years in this city. On October 7, 2016, this law was used in an attempt to force the council to rescind a decision it had made in the interest of the Haskell St. neighborhood. The real travesty was that in being so used, this law was deployed in contravention to its original purpose and motivation.

The law in question is the Housing Accountability Act (HAA). It was passed some 20 years ago to help insure that cities like Berkeley would not use unregulated zoning arguments to block the construction of affordable housing. At the time the HAA was passed, the issue of affordable was not a critical one, nor was there a housing crisis as it is today. Today, the city of Berkeley is seeking to find increasing means of providing affordable housing, especially for low and very low income families. But in the case in point, the developer of 1310 Haskell St. tries to use the HAA to ensure that market rate housing (today affordable only by high income families) will be built on the parcel in question.

The Housing Accounting Act is about providing affordable housing, not market rate housing. The development at 1310 Haskell St. has not provided any mixed housing, only market rate housing. Therefore, The HAA does not apply. Section 65589.5.d begins by stating this. It goes on in greater detail that is not included here.

(d) A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code, for very low, low-, or moderate-income households, or an emergency shelter, or condition approval in a manner that renders the project infeasible for development for the use of very low, low-, or moderate-income households, or an emergency shelter, including through the use of design review standards, unless it makes written findings, based upon substantial evidence in the record, as to one of the following:

We believe the City Attorney miss read the HAA and agreed with the BARF. Until the developer or owner of the project specifies that affordable mix is part of the project and what that mix is, the HAA does not apply.

The issue this raises is, how can Berkeley protect itself, in this time of exigency, against the use of the HAA contrary to the interests of its own neighborhoods? The fact that this has become a pressing issue for the city is implicitly recognized by City Attorney Zach Cowan in his own report on the HAA of Jan. 24, 2017

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1310 Haskell St. it a nice, single family home, recently vacant owing to the decease of the proprietor, has been purchased for the purpose of demolition and subsequent construction of three two-story, three bedroom units, all market rate. When the city council originally denied the permit for this project on July 12, 2016, it based its decision on the demonstration of significant detriment to the neighborhood by some 80 neighborhood residents. It was in response to this outpouring of resident sentiment that the council took the action that it did. In response, the Bay Area Renter's (sic) Federation sued under the HAA in the interest of the developer. They ignored the affordable housing mix in Gov Code 65589.5 (HAA) and hoped no one would recognize it as a factor in the outcome of the suit – and they were right.

Under the terms of the HAA, council can deny (if no affordable housing is specified in the project) a use permit for a project that “complies with applicable, objective general plan and zoning standards.” A “local agency” (city of Berkeley, in this case) can deny the project only if its decision is based on “significant, quantifiable, direct and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they exist on the date the application is complete. “

Since the developer had complied with those standards, fulfilling basic zoning regulations for that area, and council showed no quantifiable or objective health or safety dangers, its denial of the Use Permit was in violation of the HAA as interpreted by BARF. Thus, this was a case where a law designed to foster a city's ability to build affordable housing for the benefit of neighborhoods was used in an attempt to preserve a developer's right to build high income housing (aka market rate) to the detriment of the community.

It is perhaps appropriate to point out that safety and health conditions would be well-nigh impossible to foresee to the objective and quantifiable degree required by the HAA. It is therefore placing impossible conditions upon a city for the regulation of its permitting process. In addition, the issues of health and safety as defined in the act are overly broad. This would indicate that the HAA is itself unconstitutional.

What this implies is that, in the present moment when low and very low income affordable housing is needed to stem the tide of displacement of low and very low income families by inordinate rent increases (legitimate or not), the city needs to be protected from this use of the HAA by developers.

And this a point implicit in city attorney Cowan's analysis and commentary on the Act. He suggests that one approach to addressing the potential impacts of this law might be to:

Amend the General Plan and Zoning Ordinance to adopt numerical density and/or building intensity standards that can be applied on a parcel-by-parcel basis in an easy and predictable manner. These would constitute reliable and understandable “objective general plan and zoning standards” that would establish known maximum densities. This could be done across the board or for specified districts.

In other words, modifications should be made to basic zoning standards and regulations that would protect the neighborhoods of the city from inordinate deployment of the HAA by developers – in contravention of the original motivation of that law.

Pursuant to this purpose, we the undersigned have made a proposal to council, sent on Feb. 3, 2017 that we think would be salutary with respect to the problem this city faces between the need for affordable housing and the HAA. The title of the proposal was “How to Defend Berkeley from Gentrification.” Without rehearsing the terms of our proposal contained therein, we make two urgent requests of the city council.

First, reformulate the basic zoning regulations of the city as a whole to require greater affordable housing in any new development project, as per our Feb. 2 proposal. These new conditions would take great strides toward setting the HAA once again on a trajectory of benefit to the neighborhoods rather than to the developers.

Second, temporarily postpone consideration of cases and appeals, such as 1310 Haskell St, in order to provide time to formulate new zoning regulations that better meet the needs of Berkeley's neighborhoods.

The council has seen fit to schedule the 1310 Haskell St. project as a public hearing. To the extent this implies that the council is not bound by prior decisions, it can set the case in temporary abeyance while attending to more beneficial zoning regulations.

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We urge the council to do both these things and again deny the project as it is now designed.

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