

To: Mayor and Ross Town Council
From: Elise Semonian, Senior Planner
Re: Town Council review of Annual Report on the Status of the Ross General Plan and Housing Element (for calendar year 2011) and discussion regarding proposed zoning code changes to implement Programs H3K and H4E of the Housing Element
Date: February 1, 2012

I. Description

Town Council review of the following:

- A. Annual Report on the Status of the Ross General Plan and Housing Element (for calendar year 2011);
- B. Discussion regarding proposed zoning code section for Density Bonus Law, to implement Housing Element Program H3.K; and
- C. Discussion regarding proposed zoning code chapter for Reasonable Accommodation, to implement Housing Element Programs H4.E

III. Discussion

A. Annual Report

State law requires the Town to annually present a status report on the General Plan to the Town Council, Governor's Office of Planning and Research (OPR) and an update on the implementation of the Housing Element to the State Department of Housing and Community Development (HCD).

The attached report provides an update on the Town's progress in implementing the programs in the General Plan and Housing Element for calendar year 2011. The Town has completed or has made good progress on a number of the programs. No new housing units were built in 2011. One guesthouse was approved at 101 Winding Way and one second unit was approved at 33 Spring Road.

B. Density Bonus Ordinance

State law also requires the Town to adopt an ordinance that specifies how the Town will implement the state density bonus law, Government Code Section 65915 (attached). The Town housing element specifies that, "The Town will adopt a density bonus ordinance in compliance with Government Code Section 65915." (Housing Element Program H3.K) The Town is required to comply with the provisions of the state density bonus law even the Town does not adopt its own ordinance.

Basically, the density bonus law allows a developer to build a higher number of units that the zoning permits in exchange for including affordable housing. The developer may also ask the council to waive certain development requirements, such as the height limit or floor area ratio.

Some jurisdictions adopt density bonus ordinances that provide further incentives or bonuses, or provide limits to the incentives or bonuses. Since Town projects are primarily single-family residential development, the ordinance will infrequently apply to projects. For that reason, staff suggests that the town only reference the state law and provide a procedure for the Town Council to consider the requests.

The State periodically changes the density bonus law. As drafted, when the state law is amended, the Town will not need to update the zoning code.

C. Reasonable Accommodation Chapter

Fair housing laws require the Town to provide flexibility or even waive certain requirements when it is necessary to eliminate barriers to housing opportunities for people with disabilities. The Ross Housing Element contains policies and programs to implement fair housing laws and to provide housing for all need groups. The housing element specifies that the Town will adopt a reasonable accommodation ordinance:

H4.E Adopt a Reasonable Accommodation Ordinance. Adopt an ordinance to provide individuals with disabilities reasonable accommodation to ensure equal access to housing in accordance with fair housing laws. The ordinance will establish a procedure for making requests for reasonable accommodation in land use, zoning and building regulations, policies and procedures. The procedure will be a ministerial process, subject to approval by the Planning Director applying defined criteria.

Currently, if a resident needs an exception to development regulations for a disability (for example, to install a ramp to their front door within a front setback), they would apply for a variance. The findings for a variance do not take into account the disability of the owner.

This chapter would create a new process where planning staff could approve an exception to Town zoning regulations without a public hearing when staff determines that an individual has a disability and needs the exception based on the disability. The decision may be appealed to the Town Council. If the request is associated with a larger project subject to Council review, the Town Council would consider the request.

II. Recommendation

Staff recommends that the Council accept the annual report and direct staff to submit the report to the State and provide direction to staff regarding the proposed modifications to the zoning code, which will be scheduled for introduction at the March 2012, Town Council meeting.

Draft Density Bonus Section

18.40.200 Implementation of State Density Bonus Law When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the town pursuant to California Government Code Section 65915 et seq., the town shall provide the applicant incentives or concessions for the production of housing units and child care facilities as prescribed in Government Code Section 65915 et seq.

(a) Requests for specific incentives or concessions under Government Code Section 65915 et seq. shall be filed with the planning department on forms prepared by the town planner. The town council shall consider the request concurrently with the underlying development application.

(b) The town council shall grant the concession or incentive requested by the applicant unless the town makes written findings, based upon substantial evidence, as required by 65915(d)(1). The town council shall include conditions necessary to meet the purpose and intent of the density bonus law.

Draft Reasonable Accommodation Chapter

CHAPTER 18.54

REQUESTS FOR REASONABLE ACCOMMODATION UNDER THE FAIR HOUSING ACTS

18.54.010 Purpose and Intent. The purpose of this chapter is to provide persons with disabilities seeking equal access to housing under the the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–3619) and the California Fair Employment and Housing Act (California Government Code, Title 2, Division 3, Part 2.8) (together the “Acts”) a formal procedure to request reasonable accommodation in the application of zoning laws and other land use regulations, policies and procedures, and to establish relevant criteria to be used when considering such requests.

18.54.020 Applicability. In order to make specific housing available to an individual with a disability, any person may request a modification or exception to the rules, standards and practices for the siting, development and use of housing or housing related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to housing of their choice.

A person with a disability is a person who has a physical or mental impairment that limits or substantially limits one or more major life activities, anyone who is regarded as having such impairment, or anyone who has a record of such impairment. This Chapter applies only to those persons who are defined as disabled under the Acts.

18.54.030 Review and approval procedures.

(a) Application. A request for reasonable accommodation shall be filed with the town planner on forms prescribed by the town planner, along with any plans or

additional information required and the fee as established by a resolution of the town council.

(b) Review and Approval Authority. The town planner shall review and approve, conditionally approve, or deny an reasonable accommodation application in writing within 30 days of accepting the application as complete if no approval is sought other than the request for reasonable accommodation. If the project for which the request for reasonable accommodation is associated with a larger project that requires other discretionary approval under this Title (including but not limited to a conditional use permit, design review, variance, general plan amendment or zone change), the application shall be submitted and acted upon by the town council at the same time as the related applications.

(d) Criteria for Approval. A reasonable accommodation application shall be approved if it will be consistent with the Acts and the following factors:

- (1) The housing, which is the subject of the request, will be used by an individual disabled under the Acts.
- (2) The requested reasonable accommodation is necessary to make specific housing available to an individual with a disability under the Acts.
- (3) The requested accommodation would not impose an undue financial or administrative burden on the Town.
- (4) The requested accommodation would not require a fundamental alteration in the nature of the Town's land use and zoning program.
- (5) The requested reasonable accommodation would not adversely impact surrounding properties or uses.
- (6) There are no reasonable alternatives that would provide an equivalent level of benefit without requiring a modification or exception to the Town's applicable rules, standards and practices.
- (7) The accommodation would not alter the significance of a historic structure.

(e) Terms and Conditions. In granting a request for reasonable accommodation, the town may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation would comply with the criteria in Subsection (d) above. Any approval or conditional approval of an application under this chapter may be conditioned to provide for its rescission or automatic expiration under appropriate circumstances.

18.54.040 Appeal. Any decision by the town planner to grant or deny a request for reasonable accommodation under this chapter may be appealed to the town council pursuant to chapter 18.60.