

**118 1ST STREET
LOW-BARRIER
NAVIGATION
CENTER**

Appeal (#2024-8380) of Planning
Commission Denial of Appeal (#2024-
7954) of Zoning Administrator Approval of
Administrative Review Permit #2023-6297



118 1ST STREET - LOW-BARRIER NAVIGATION CENTER – RECURSO DE FUERZA

- Joint project between County of Monterey and County of Santa Cruz.
- County of Monterey received an Encampment Resolution Funding (ERF) grant of \$7,986.354 from the California Department of Housing and Community Development (HCD) to provide funding for the Recurso de Fuerza Village program.
- The program includes development of 34 individual, non-congregate, low barrier, service rich shelter beds and provision of housing navigation and supportive services to people living along the Pajaro River for a two-year period.

118 1ST STREET - LOW-BARRIER NAVIGATION CENTER – TIMELINE

Timeline:

- October 24, 2023 – Initial submittal (ARP #PP2023-6297)
- November 29, 2023 – Guidance Letter sent to applicant
- November 2023 – June 2024 – Building and Planning Staff meetings with applicant team
- July 11, 2024 – Second submittal
- July 26, 2024 – Second submittal response letter sent to applicant
- August 23, 2024 – Third submittal
- September 20, 2024 – Permit #PP2023-6297 approved
- October 2, 2024 – Appeal #2024-7954 received
- December 3, 2024 – Appeal #2024-7954 denied
- December 16, 2024 – Appeal #2024-8380 received



LOW-BARRIER NAVIGATION CENTER – DEFINITION

A “low-barrier navigation center” is defined as a housing-first, low-barrier, service-enriched shelter focused on moving people into permanent housing that provides temporary living facilities while case managers connect individuals experiencing homelessness to income, public benefits, health services, shelter, and housing.

“Low barrier” means best practices to reduce barriers to entry, and may include:

- The presence of partners
- Pets
- Storage of possessions
- Privacy

AB 101 (2019)

AB 101 (commencing with Gov. Code § 65660) pertains to low-barrier navigation center regulations and does the following:

- Provides statutory changes necessary to enact the housing and homelessness-related provisions of the Budget Act of 2019, including streamlining the approval of low-barrier navigation centers.
- Provides a “by-right” process and expedited review for low-barrier navigation centers in certain types of zones.
- Prohibits local governments from requiring a conditional use permit or other discretionary approval of low-barrier navigation centers in mixed-use zones if certain operational standards are met.

**118 1ST STREET
LOW-BARRIER
NAVIGATION
CENTER –
AB 101**

ENTITLEMENT REVIEW PROCESS – ADMINISTRATIVE REVIEW PERMIT

As a “by right” use, the only entitlement required for the LBNC is an Administrative Review Permit.

Per WMC Section 14-12.300, the purpose of an Administrative Review Permit is to assure, prior to establishment of an otherwise principally permitted (i.e., “by right”) use that the provisions of the WMC and other appropriate State and local regulations are met.

There are no provisions of the WMC related to LBNCs, so the only regulations applicable to the project are those in Gov. Code Section 65662.

GOVERNMENT CODE § 65662 - LOW BARRIER NAVIGATION CENTERS (LBNC)

Per Gov. Code § 65662, a LBNC development is a use by right in areas zoned for mixed-use and nonresidential zones permitting multifamily uses if it meets the requirements of this section and a local jurisdiction shall permit a LBNC development if it meets the following requirements:

- a) It offers services to connect people to permanent housing through a services plan that identifies services staffing.
- b) It is linked to a coordinated entry system, so that staff in the interim facility or staff who co-locate in the facility may conduct assessments and provide services to connect people to permanent housing.
- c) It complies with Chapter 6.5 (commencing with Section 8255) of Division 8 of the Welfare and Institutions Code.
- d) It has a system for entering information regarding client stays, client demographics, client income, and exit destination through the local Homeless Management Information System (HMIS).

GOVERNMENT CODE § 65662 - LOW BARRIER NAVIGATION CENTERS (LBNC)

- a) It offers services to connect people to permanent housing through a services plan that identifies services staffing.

Supportive Evidence: Per the ERF grant, the project is required to comply with Lead Me Home Monterey and San Benito County Continuum of Care “Operational Standards for Emergency Shelters” and the County of Monterey Homeless Services “Good Neighbor Protocol.” Services staffing will be provided by several agencies, including CSUMB Community Health Engagement (CHE), HomeFirst, and Community Action Board (CAB), as outlined in the ERF grant application.

GOVERNMENT CODE § 65662 - LOW BARRIER NAVIGATION CENTERS (LBNC)

- b) It is linked to a coordinated entry system, so that staff in the interim facility or staff who co-locate in the facility may conduct assessments and provide services to connect people to permanent housing.

Supportive Evidence: CAB, as the operator and service provider for the LBNC, will participate in the local Coordinated Entry System as required by the Lead Me Home Monterey and San Benito County Continuum of Care “Operational Standards for Emergency Shelters.”

GOVERNMENT CODE § 65662 - LOW BARRIER NAVIGATION CENTERS (LBNC)

c) It complies with Chapter 6.5 (commencing with Section 8255) of Division 8 of the Welfare and Institutions Code (WIC).

Supportive Evidence: Housing First requirements apply to all programs receiving ERF grants. The project was awarded \$7,986,354 in ERF grant funding, so the LBNC will comply with Chapter 6.5 of Division 8 of the WIC. In addition, Housing First requirements are required by the Lead Me Home Monterey and San Benito County Continuum of Care “Operational Standards for Emergency Shelters.”

GOVERNMENT CODE § 65662 - LOW BARRIER NAVIGATION CENTERS (LBNC)

WIC § 8255(d)(1) - "Housing First" means the evidence-based model that uses housing as a tool, rather than a reward, for recovery and that centers on providing or connecting homeless people to permanent housing as quickly as possible. Housing First providers offer services as needed and requested on a voluntary basis and that do not make housing contingent on participation in services.

GOVERNMENT CODE § 65662 - LOW BARRIER NAVIGATION CENTERS (LBNC)

d) It has a system for entering information regarding client stays, client demographics, client income, and exit destination through the local Homeless Management Information System (HMIS).

Supportive Evidence: CAB, as the operator and service provider for the LBNC, will enter participant data into the Homeless Management Information System (HMIS) managed by the Coalition of Homeless Services Providers (CHSP). Programs must follow CHSP's HMIS policies and procedures.

**118 1ST STREET
LOW-BARRIER
NAVIGATION
CENTER –
ARP APPROVAL
&
DETERMINATION
LETTER**

Project Approval

- Based on compliance with the four criteria identified in Government Code Section 65662, Administrative Review Permit application #PP2023-6297 was approved on Friday, September 20, 2024.

Determination Letter

- The determination letter included feedback from all City departments, including Planning, Building, Public Works, Fire, and Police.
- City Staff requested additional or clarifying information to be submitted with the building permit submittal related to:
 - Fencing, landscaping, & ingress/egress striping
 - Fire requirements (fire sprinklers, fire extinguishers, etc.)
 - Occupancy, allowable openings, ingress/egress, & accessibility
 - Utility locations, electric service, pet waste, alignment with upcoming Caltrans improvements at 1st Street/CA-129
 - On-site surveillance system

APPEAL – PP2024-7954

On October 2, 2024, City staff received an appeal application (PP2024-7954) from Catalina Torres requesting that the Planning Commission overrule and rescind the Zoning Administrator's approval of ARP #PP2023-6297. The appellant contended that the approval was “defective and improper” based on fifteen reasons identified in the letter.

APPEAL PROCESS

1. City Staff withheld information from City Council.
2. Staff made false statements to City Council.
3. Staff improperly accepted the application.
4. Staff did not consider existing uses and conditions in approving the application.
5. Staff improperly conducted informational meetings for adjacent residents.
6. Staff improperly withheld documents related to a PRA request.
7. Staff made false statements related to the completeness of the application.
8. Staff failed to require a Special Use Permit for the Church as a prerequisite for the project.

A P P E A L P R O C E S S

9. Staff did not respond to the legal analysis from the neighborhood attorney.
10. Staff improperly approved the application without considering the project as an emergency shelter under the applicable WMC section.
11. Staff did not identify or request qualifications for the entity responsible for managing the LBNC.
12. Staff improperly submitted a building permit submission to Caltrans prior to approving the ARP application.
13. Staff failed to evaluate the animal policy of the LBNC.
14. Staff failed to require a Good Neighbor Policy.
15. Staff failed to consider off-site issues at 150 Second Street.

APPEAL PROCESS

In order for the Zoning Administrator's approval of ARP #PP2023-6297 to be overturned, the Planning Commission would have been required to find that the action taken by the Zoning Administrator was taken erroneously and was inconsistent with the intent of the zoning district regulations that regulate the proposed action.

The "proposed action" is regulated by Gov. Code § 65662, so the Planning Commission was limited to consideration of whether the Zoning Administrator erred in the application of the four criteria related to approval of low-barrier navigation centers located in Gov. Code § 65662.

APPEAL PROCESS

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7. Staff made false statements related to the completeness of the application.
8. Staff failed to require a Special Use Permit for the Church as a prerequisite for the project.

APPEAL PROCESS – USE ANALYSIS

Gov. Code § 65662 does not identify any requirements related to existing uses on a project site or on adjacent properties. The only use-related requirement is that the site be zoned for mixed-use. The Downtown Core zoning district is a mixed-use zone in which multifamily residential uses are principally permitted, so the LBNC is allowed by right.

Existing uses on the three project parcels, nonconforming or permitted, cannot be considered as part of the project analysis or approval and are not a prerequisite for the project.

APPEAL PROCESS – NONCONFORMING USE ANALYSIS – CHURCH

WMC § 14-20.050 Nonconforming Uses

A nonconforming use may only be increased in size or intensity or modified in location or character through the granting of a special use permit after making findings that such expansion or modification will not adversely affect adjoining properties and those findings required by Section 14-10.607.

Westview Presbyterian Church is a **legal nonconforming use** that is not being increased in size or intensity or modified in location or character as part of the proposed project, so it may continue in perpetuity.

Nothing in the LBNC application triggers review of the legal nonconforming church use.

A P P E A L P R O C E S S

9. Staff did not respond to the legal analysis from the neighborhood attorney.
10. Staff improperly approved the application without considering the project as an emergency shelter under the applicable WMC section.
11. Staff did not identify or request qualifications for the entity responsible for managing the LBNC.
12. Staff improperly submitted a building permit submission to Caltrans prior to approving the ARP application.
13. Staff failed to evaluate the animal policy of the LBNC.
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15. Staff failed to consider off-site issues at 150 Second Street.

APPEAL PROCESS

Gov. Code § 65662(a)

It offers services to connect people to permanent housing through a services plan that identifies services staffing.

City has no authority to request or analyze the qualifications of the services provider(s).

APPEAL DISCUSSION SUMMARY

On December 3, 2024, after a discussion of the appeal, the Planning Commission found that the information presented in the appeal letter did not provide a basis for overturning or rescinding the Zoning Administrator's approval of Administrative Review Permit #PP2023-6297 because it does not demonstrate that the action was taken erroneously or that it was inconsistent with the intent of Gov. Code § 65662.

PLANNING COMMISSION RESOLUTION OF DENIAL

Planning Commission adopted Resolution No. 14-24 (PC) denying the appeal (#PP2024-7954) and upholding the Zoning Administrator approval of an Administrative Review Permit for a low-barrier navigation center (#PP2023-6297) located at 118 1st Street (APN: 017-172-32, 31, & 35) and found the project exempt from review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15268.

APPEAL – PP2024-8380

On December 16, 2024, City staff received an appeal application (PP2024-8380) from Catalina Torres requesting that the City Council overrule the Planning Commission's decision to deny Appeal #PP2024-7954 and rescind the Zoning Administrator's approval of ARP #PP2023-6297.

APPEAL – PP2024-8380

The appellant identified five reasons for the appeal as well as a list of 32 “procedural defects of the Commission and the Meeting, serving as further grounds for petitioning to overturn the Commission’s decision.” The reasons for appeal include:

1. The Entitlement Review Process
2. Government Code Section 65662
3. Letter from Attorney William R. Seligmann
4. Validity of the Commission Agenda Report
5. December 3, 2024 Planning Commission Meeting

1. THE ENTITLEMENT REVIEW PROCESS

- Land entitlement is the legal process by which a developer or landowner receives government approval for a development plan.
- This is separate from the building permit process, where a developer or landowner receives government approval to construct a specific project in compliance with the building code, state stormwater requirements, etc.
- An Administrative Review Permit is an entitlement.
- The Zoning Administrator's review and approval of an Administrative Review Permit application is an entitlement review process.

1. THE ENTITLEMENT REVIEW PROCESS

- The entitlement process begins when the application is submitted and ends when it is approved.
- Actions that occur before or after that time period are not part of the entitlement review process.
- The review process is limited to reviewing the application for compliance with the applicable municipal code section(s) and/or state statutes.

1. THE ENTITLEMENT REVIEW PROCESS

Many of the issues raised in the first appeal were not related to, and could not be considered under, the entitlement review process, including:

- Interactions between City Staff and City Council at public meetings
- Informational public meetings put on by the City Manager's office
- Public Records Act requests
- Communications between City staff and other regional agencies such as Caltrans

2. GOVERNMENT CODE SECTION 65662

“However, it is essential to point out that there is no text or authority in Section 65662 that preempts local zoning authority over any existing conditional use on the Church parcels.”

“Therefore, it is very clear that while the City may not require an LBNC to obtain a conditional use permit, the City has full authority of its local zoning code to regulate any existing conditional uses on the Church parcels.”

3. LETTER FROM ATTORNEY WILLIAM R. SELIGMANN

Appellant Contention:

“...the Commissioners did not have an equitable time frame to evaluate Seligmann’s analysis relative to the other letter attachments included by Staff in the Commission Agenda Report.”

APPEAL – PP2024-8380

Letter from Attorney William R. Seligmann

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I hope that this information is helpful to your consideration of this project; and if you have any questions, please feel free to contact me at your convenience.

Sincerely,

William R. Seligmann

William R. Seligmann

4. VALIDITY OF THE COMMISSION AGENDA REPORT

“Based upon the previous sections, the Commission Agenda Report needs to be assessed. In it, Staff evaded response to the Appeal and blatantly misinterpreted what Government Code Section 65662 preempts locally. In addition, Staff withheld a critical information resource from the Commission and evaded responding to that resource. All of these factors degraded what is supposed to be a fair and equitable information resource. That degradation resulted in a prejudicial context improperly adverse to the Appellant’s position. As such, the Commission Agenda report was a procedural defect that significantly tainted the validity of the Commission’s decision.”

5. DECEMBER 3, 2024 PLANNING COMMISSION MEETING

“Leading up to and during the Commission Meeting, certain events took place. In addition, a number of statements and presentations were made by Staff, Commissioners, Appellant, Applicant, and members of the public. Certain statements were significant insofar as they provided information as to the zoning procedure integrity as well as the validity of the Commission’s decision. The following section is a presentation of the procedural defects of the Commission and the Meeting, serving as further grounds for petitioning to overturn the Commission’s decision.”

HCD LETTER OF SUPPORT AND TECHNICAL ASSISTANCE

- On Tuesday, November 19, 2024, City staff received a letter of support and technical assistance from the California Department of Housing and Community Development (HCD) related to the appeal (#PP2024-7954) of ARP #PP2023-6297.
- HCD is the state agency charged with administering, interpreting, and enforcing state housing law in California.
- Letter includes an overview of applicable state housing laws and states that the City acted appropriately in approving the Project ministerially.
- Letter concludes by reminding the City that HCD may notify the Office of the Attorney General if HCD finds that any local government has taken an action in violation of state housing law, including but not limited to By-Right Low Barrier Navigation Center law.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

Approval of the Administrative Review Permit is statutorily exempt as a ministerial use from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15268.

RECOMMENDED ACTION

Staff recommends that the City Council deny the appeal (#PP2024-8380) of the Planning Commission's denial of the appeal (#PP2024-7954) and upholding the Zoning Administrator's approval of an Administrative Review Permit for a low-barrier navigation center (#PP2023-6297) located at 118 1st Street, 5 Cherry Court, and 120 1st Street (APN: 017-172-32, 31, & 35) and upholding approval by the Zoning Administrator of an Administrative Review Permit and finding the project exempt from review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15268.