



Date: August 13, 2024

Honorable Mayor and Council Members:

Author and title: Lucas Kannall, Assistant Planner

Title: Application No. 2024-00000073/APL (10198 Thomas Dr Senate Bill 9 Appeal)

Jen Callaway, Town Manager

Recommended Action: That the Town Council adopt Resolution 2024-54 thereby taking the following actions:

- Determine the Community Development Director's determination exempt from the California Environmental Quality Act (CEQA) Guidelines per Section 15300.1 (Relation to Ministerial Projects).
- Uphold the decision of the Community Development Director and Planning Commission in denying the 10198 Thomas Drive Senate Bill 9 Two-Unit Development application (Planning Application 2023-00000154).
- Deny the appeal requesting reconsideration of the Senate Bill 9 height requirements and review the project using single-family residential height requirements, on the basis that Senate Bill 9 legislation allows for local agencies to impose objective zoning standards and by definition, the proposal has failed to satisfy these objective standards.

Project History: On November 1, 2023, the applicant applied to construct two Senate Bill 9 (SB9) units, an ADU and a JADU within a 5,949 square foot building on a Single-Family Residential, No Further Subdivision lot located at 10198 Thomas Drive in the Armstrong Tract Subdivision. The project was deemed complete for processing on November 28th, 2023 and routed to relevant departments and agencies for review. After Planning staff reviewed the proposal, an inconsistency letter was issued to the applicant on November 29, 2023, to identify aspects of the proposal that do not meet required objective development standards. Upon receipt of all relevant department and agency comments, a Project Review Letter was issued to the applicant on January 3, 2024, listing the revisions that would need to be made to receive approval. The applicant requested a meeting with the Town Planner and Community Development Director, which was held on February 16, 2024, and during which, no resolution was achieved. Due to the applicant being unwilling to revise the project so it complies with the Town's objective design standards for SB9 projects, a denial letter was issued for the project on February 20, 2024. On March 5, 2024 the applicant team filed an appeal of the Community Development Director denial letter appealing the following items:

- Appeal the 16-foot maximum height standard required for SB9 Two-Unit Developments.
- The project could be approved if reviewed as a single-family residence instead of SB9 units.
- Reconsideration of the project using the single-family residential development standards.

On May 21, 2024, the Planning Commission heard an appeal of the denial of the 10198 Thomas Drive SB9 Two-Unit Development. The Commission upheld the denial of the project and the appellant submitted an additional appeal to Town Council to try and overturn the Commission's decision. The appeal to Town Council requests an increase of the height standard for SB9 units from 16 feet to the single-family height standard of 35 feet or approval of a Variance to allow the additional height proposed for the project.

SB 9 Overview: On September 16, 2021, Governor Newsom signed SB9, which allows residential property owners to split a single-family lot into two lots, also referred to as an Urban Lot Split, and place up to two units on each new lot or on an existing lot, also referred to as a Two-Unit Project, creating the potential for up to four housing units on certain properties that are currently limited to single-family houses. In the instance of the project being appealed, the applicant has chosen to construct a Two-Unit Development as well as an ADU and JADU to achieve their maximum of four units. Under the law, cities and counties across California are required to ministerially approve development proposals that meet specified size and design standards. The purpose of these amendments are to allow the Town to implement the necessary objective subdivision and design standards in order to approve the required lot splits and developments without discretion or requiring public hearings. Despite allowing for objective development standards to be applied to SB9 projects, the legislation also requires the relaxation of any standard that would prohibit the construction of at least two units of a minimum of 800 square feet each. Using the allowance for objective design standards, the Town has created development standards for the subdivision of residential lots or the construction of SB9 units to comply with the law and allow for the densities required by this state legislation. The Town adopted an ordinance to allow ministerial approval of SB9 applications and objective design standards for Urban Lot Splits and Two-Unit Developments on December 14, 2021. The table below shows the difference between the development standards for SB9 units and single-family residential units and all requirements for SB9 units can be found in the Town's SB9 ordinance included as Attachment 8:

Development Standards Table

Standard	Single-Family	SB9
Setbacks	Front: 20 feet Sides: 10 feet Rear: 20 feet	Standard setbacks apply, but shall yield to the degree necessary to avoid physically precluding the construction of up to two units on the lot or either of the two units from being at least 800 square feet in floor area; but in no event may any structure be less than four feet from a side or rear property line.
Height	35 feet or 3 stories, whichever is less	16 feet on lots larger than 2,000 square feet, or 22 feet on lots 2,000 square feet or less.
Coverage	40% on lots over 10,000 square feet or 50% on lots under 10,000 square feet	On lots 1,200 square feet to 5,000 square feet: 70% On lots 5,001 square feet to 10,000 square feet: 50% On lots greater than 10,000 square feet: 40%
Parking	2 off street parking stalls either covered or uncovered	One off street parking stall per unit either covered or uncovered

Upon receipt of the project denial letter, the applicant notified the California Department of Housing and Community Development (HCD) to ensure that the Town had reviewed their project according the SB9

legislation. A meeting was set up with an HCD representative and Town Staff to discuss the Town's SB9 ordinance and discuss the proposed Thomas Drive SB9 Two-Unit Development. After talking with Town staff and asking clarifying questions about the project and appeal, HCD stated that they had no comments about the review or appeal for this project.

Location: The property is located at 10198 Thomas Drive (APN 018-520-029-000), also described as lot 57 of the Armstrong Tract Subdivision. It is located 0.1 mile north of Interstate 80 and bounded on all sides by mostly developed Single-Family Residential zoned lots.

Project Site Information: The project parcel is zoned Single-Family Residential, no further subdivision (RS-X) which would make it eligible for a SB9 Two-Unit Development. The parcel also meets the minimum state requirements of being a minimum size of 2,400 square feet, not being located within a sensitive area, not being classified as historic, not being part of a previous SB9 lot split and not impacting protected housing. Due to these factors, Town staff was able to determine that the lot would be qualified for up to four units, including two SB9 units, an ADU and a JADU.

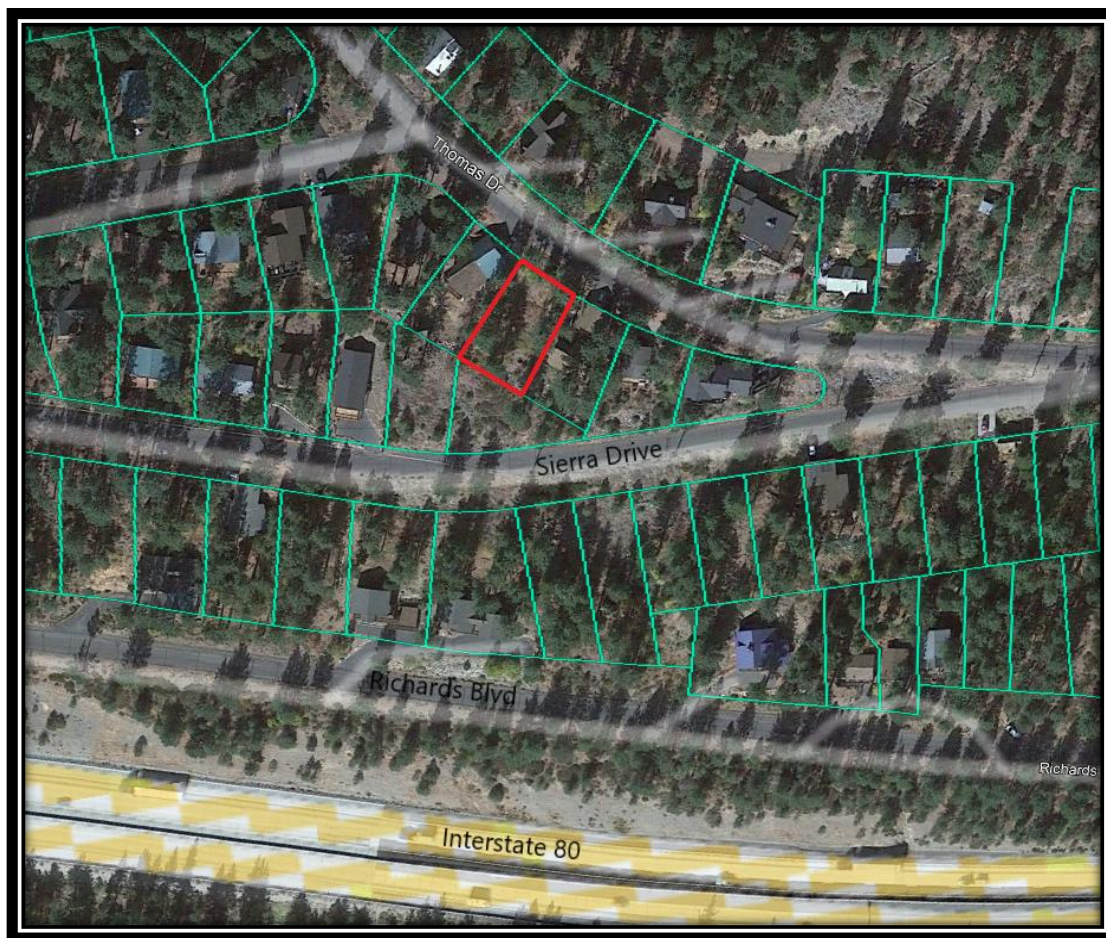


Figure 1: Project Location



Figure 2: Neighboring Residences

Project Description: The application proposed the construction of four units within a single 5,949 square foot building, which included a 798 square foot SB9 unit, a 796 square foot SB9 unit, a 958 square foot accessory dwelling unit, a 495 square foot junior accessory dwelling unit, a 1,092 square foot four car garage, 1,093 square feet of common area, 448 square feet of storage area, a 278 square foot mechanical room, a 113 square foot entry way and 1,487 square feet of decks and porches. The project proposes to utilize setback reductions that would be eligible for SB9 units, reducing setbacks to four feet, but which would not be eligible for attached ADUs, JADUs, or appurtenances to the building such as decks, porches, garages and stairs. Elevations and a site plan of the proposed structure can be found in Figures 3-6 below. The proposal was found inconsistent with the development standards required by the Town for the following reasons as detailed in the November 29, 2023 Inconsistency Letter (Attachment 6):

Standard	Proposed	Code Section	Consistency
Retaining walls may not exceed six feet in height	Nine-foot-tall retaining wall supporting driveway bridge	18.30.070.C.3	Inconsistent
Unit Sizes: SB9: 800 square feet ADU: 1,000 square feet JADU: 500 square feet	Although each individual unit meets the maximum size requirements, the project also includes 1,093 square feet of common area, 448 square feet of storage areas, 278 square feet of mechanical room and a 113 square foot entry way. The proposal is 1,932 square feet over the maximum allowable size.	18.95.040.G.6.b (SB9) 18.58.025.D.3.a.1 (ADU) 18.58.025.O.4 (JADU)	Inconsistent. Each individual unit is the correct size, but the additional space needs to be attributed to the units pushing them over the allowed size.
ADUs 16 feet or taller must meet the setbacks of their underlying zoning district.	The structure is over 16 feet in height and the ADU is proposed at 7 feet and ½ inch from the side property line.	18.58.025.D.3.A.2	Inconsistent. Due to the structure being over 16 feet in height, it cannot encroach into side setbacks.

Decks may encroach six feet into rear setbacks, but must remain 14 feet from rear property lines.	Decks proposed 10 feet from property line.	18.30.120.E, Table 3-2	Inconsistent
Lot coverage is required to be 50% of the lot or less. The total for this parcel is 3,702 square feet.	Coverage proposed at 3,763 square feet or 50.8%.	18.08.030	Inconsistent
The project proposes to use a narrow lot setback reduction to reduce side setbacks from 10 feet to 8 feet. This requires all structures to be 15 feet from neighboring structures and the façade of the building encroaching into the side yard setback may not contain more than 5% of its surface area as windows and doors.	The western side of the proposed building is within 13 feet of a neighboring structure and no calculations for percentage of openings on the western façade of the building were provided.	18.30.120.F.7.b	Inconsistent
SB9 units may not exceed a single story or 16 feet in height.	The proposed structure is three stories and is 45 ½ feet in height.	18.95.040.G.7	Inconsistent

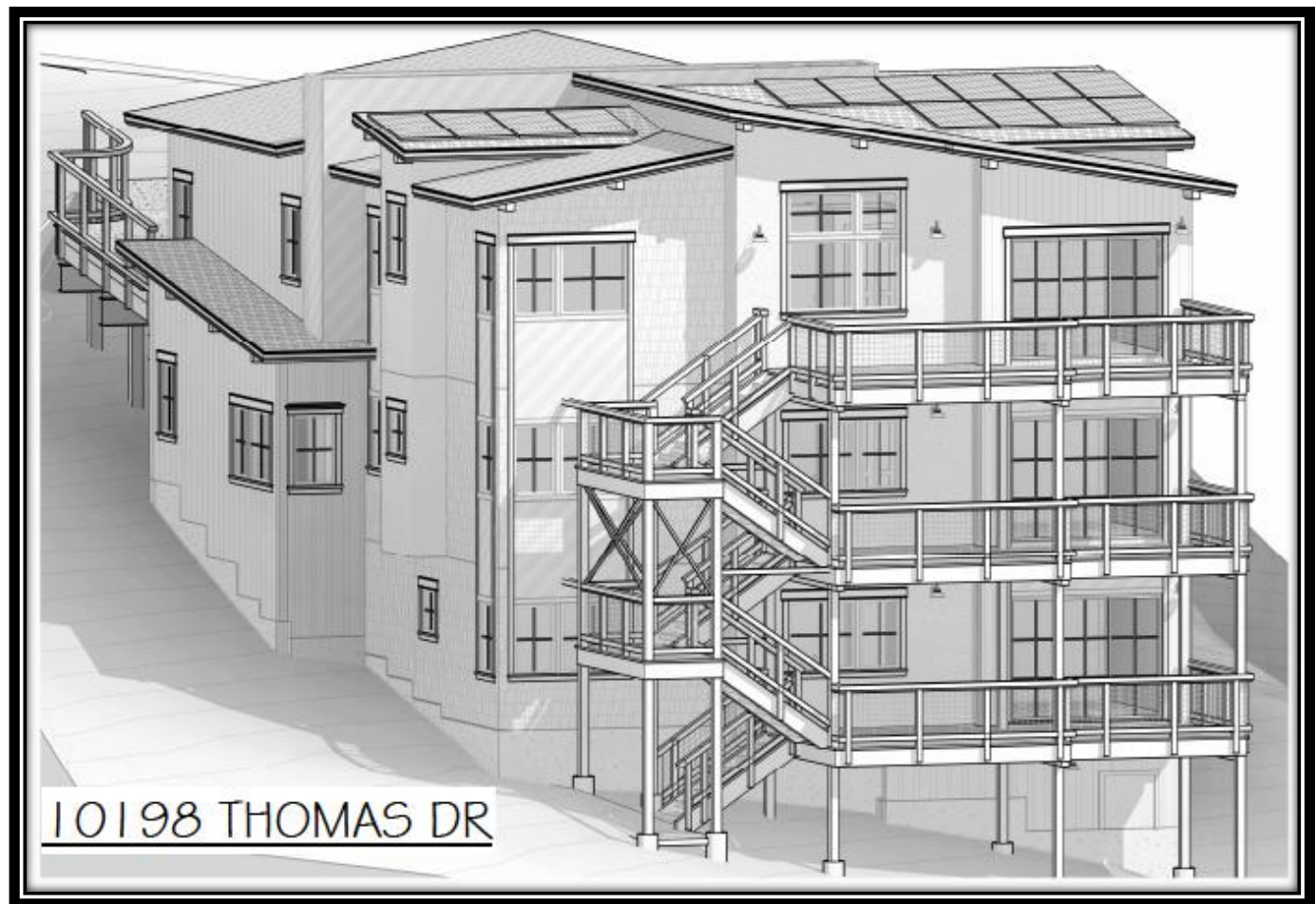


Figure 3: Rear Elevation Proposed Units

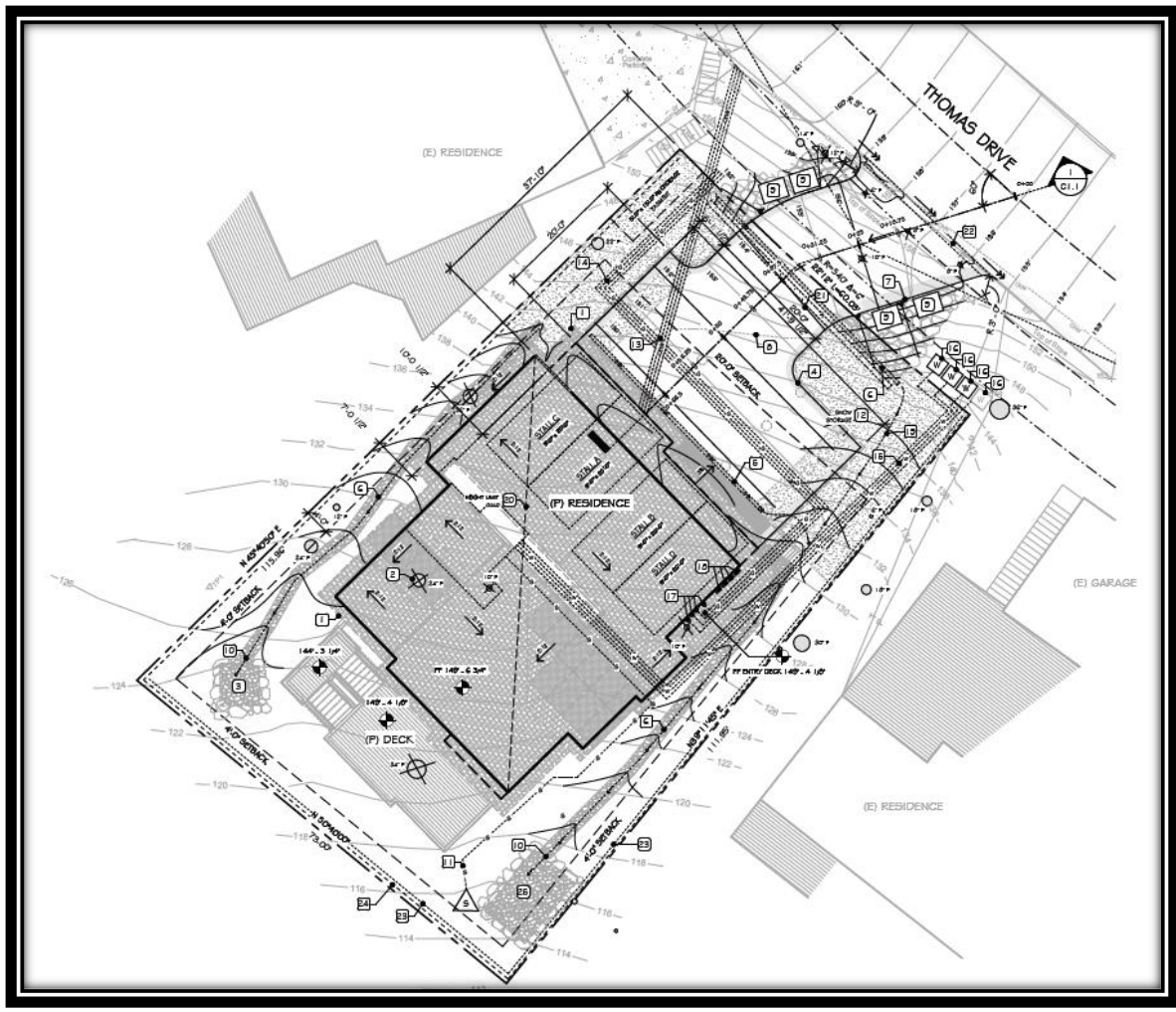


Figure 6: Site Plan

Appeal Details: On March 5, 2024 the applicant team filed a timely appeal to the Community Development Director denial letter issued for their project on February 20, 2024. The Planning Commission heard this appeal on May 21, 2024 and upheld the denial of the project based on the proposal not meeting objective development standards. The appellant then submitted another appeal to Town Council on June 3, 2024. The original appeal letter identified three items that the applicant felt were incorrectly applied to their projects, which are addressed below, and the new appeal application reiterated their desire to increase the allowed height of their project.

1. Appeal the 16-foot maximum height standard required for SB9 Two-Unit Developments.

Staff Response: The 16-foot height requirement for SB9 units was adopted by Town Council as part of the Town's ordinance for regulating SB9 Urban Lot Splits and Two-Unit Developments. SB9 legislation allows local jurisdictions to adopt objective zoning standards, objective design standards, and objective subdivision standards, unless they would have the effect of physically precluding the construction of up to two units or physically precluded either of the two units from being at least 800 square feet in floor area. The height requirement could not be modified through an appeal and would require another vote by Town Council to amend the Town's SB9 ordinance. As proposed, the appellant's proposed residence is 45 1/2 feet tall which exceeds the SB9 height standard.

2. The project as proposed would be approved if applied for as a single-family residence.

Staff Response: This statement is incorrect. A single-family residence would be reviewed under different development standards than this project. If the proposed structure were proposed as a single-family residence, it would not meet required setbacks, height, site coverage or retaining wall heights.

3. Reconsideration of the project using the single-family residential development standards.

Staff Response: This project would not be eligible to be reviewed under the single-family residential development standards as it is not a single-family residence but rather a Two-Unit Project. As allowed by SB9 legislation, the Town has adopted SB9 specific development standards to allow for up to four residential units on a single parcel. There are several notable differences between the State's SB9 development standards and the Town's development standards for single-family residences including substantially reduced side and rear yard setbacks and lot standards under SB 9. Any change to the existing ordinance would have to be made through an ordinance amendment approved by the Town Council.

In their application, the appellant writes "We are writing to appeal the height restriction imposed on our SB9 Two-Unit development project at 10198 Thomas Drive. We believe the restriction contradicts the principle that SB9 units should not face more stringent regulations than standard single-family homes within the Town of Truckee." They further state "We are seeking an adjustment to the existing SB9 height limit (16ft) to the standard 35ft limit." The appellant appears to be requesting that the project be rereviewed under the standards for a single-family residence and is asserting that SB9 requires a local jurisdiction's development standards to be less stringent than that for a single-family residence. SB9 allows for the imposition of different development standards for SB9 units as long as they are objective and do not preclude the construction of the allowed 800 square foot units. Further, reviewing the project under single-family residential standards cannot be permitted since SB9 units have specific Town standards as allowed by State law. Additionally, the appellant is requesting a variance to SB9 height requirements through their appeal, which cannot be addressed in this manner. Chapter 18.140 of the Development Code regulates the appeal process, which allows an applicant to appeal decisions of the Community Development Director, Zoning Administrator or Planning Commission. Development standards cannot be amended through an appeal process, and approval of a Development Code Amendment would be required to be approved by the Planning Commission and Town Council.

Due to SB9 projects being reviewed ministerially, as required by State law, a variance would also not be available to authorize additional height for this project, as variances are inherently discretionary. SB9 allows for local jurisdictions to adopt objective zoning standards, objective design standards, and objective subdivision standards, unless they would have the effect of physically precluding the construction of up to two units or physically precluding either of the two units from being at least 800 square feet in floor area. If an applicant can demonstrate that the regulations do not allow for the two units at 800 square feet each, the jurisdiction is required to take action to provide relief to the development standards to the point necessary to allow their construction. This process would take the place of a variance, which would allow the relaxation of development standards while keeping the process ministerial. For this specific project the applicant stated that the plans were being revised, but no additional iterations of the plans have been submitted to show what modifications could be made, on the part of the applicant, to allow the construction of the units. When asked if the applicant would prefer to provide a redesigned project for review, they were unwilling to submit additional iterations of the project that conformed with the design requirements for SB9 units. Since the appellant

would not redesign their project and there was no evidence that they needed relief from the height standards to accommodate their SB9 units on site, the project was denied.

Overview of Appeal Process: In accordance with Development Code Chapter 18.140 (Appeals), any determination or action by a Town decision-maker can be appealed, and the Community Development Director's decisions are appealable to the Planning Commission. Decisions of the Planning Commission are appealable to the Town Council. The decision of the Council shall be final on all matters unless an appeal is filed with the Nevada County Superior Court within 30 days. At the hearing, the appeal body may consider any issue involving the matter being appealed, in addition to the specific grounds for appeal which are articulated in the appeal application and applicant cover letter (Attachments 3, 4 and 5). In accordance with Section 18.140.030.E (Filing and Processing of Appeals, Action), the appeal body may, by resolution, affirm, affirm in part, or reverse the action, the decision, or determination of the original review authority. The Town Council should consider whether staff has correctly interpreted the Town's Development Code, correctly applied the Development Code, and in general whether the Community Development Director's determination was consistent with the Development Code.

The appellant and other interested parties shall not present new evidence or testimony at the appeal hearing unless the party can demonstrate, to the satisfaction of the appeal body, that new information:

- (a) Was not previously available to the party; or
- (b) The party could not have participated in the review process because they could not have known about the review process.

If new or different evidence is presented on appeal, the Council, may, but shall not be required to, refer the matter to the original review authority for further consideration.

What information is provided during consideration of an appeal?

In addition to the appellant's submittal requesting the Commission overturn the CDD's decision, the Commission will receive a copy of the plan set and elevations from the initial application for the SB9 Two-Unit Development, the applicants appeal application, CDD's November 29, 2023 Inconsistency Letter, CDD's February 20, 2024 Denial Letter and a copy of the Town's adopted ordinance allowing for SB9 Two-Unit Developments.

The appeal process is called a *de novo* review (Latin for "from the new"). The Council will be reviewing the determination without consideration of the CDD's and Commission's previous actions—as if the project is being heard for the first time. Accordingly, the Council will need to determine if the development standards were appropriately applied to the project and will need to now serve as the review body of the requested SB9 Two-Unit Development.

Fiscal Impact: The cost of submitting this appeal is paid for by the appellant through a fixed-fee application. However, the cost of processing the appeal has surpassed the amount of the fixed fee, which includes preparation of the staff report, public noticing for the hearing and staff's attendance at the hearing. Because the fixed-fee application has not been adequate to cover the Town's expense to process the appeal, the remaining costs are borne by the Town's General Fund, through the Planning Division. If the appeal is granted, the appellant has the option of requesting a refund of the appeal fees.

Environmental Review: Staff has determined the appeal to be exempt pursuant to CEQA Guidelines Section 15300.1 (Relation to Ministerial Projects), which states that CEQA applies only to projects in which the Town has discretion in approving the proposal. This project would allow for the construction of residential infrastructure, which would be available ministerially without CEQA analysis and the project is ministerial by state law.

Summary: The requested appeal to remove the 16-foot height requirement for SB9 units, allow for a variance to height standards and rereview of the project under the requirements for a single-family residence cannot be accomplished through this hearing. No modifications to the underlying objective design standards can be made through review of an SB9 application, and as described above, a variance is not permissible for SB9 units due to the requirement that they be reviewed ministerially. Staff recommends that the Director's decision to deny the proposed SB9 Two-Unit development be found exempt from California Environmental Quality Act (CEQA) Guidelines per Section 15300.1 (Relation to Ministerial Projects) and that the appeal be denied based on Senate Bill 9 legislation allowing for local agencies to impose objective zoning standards and the project failing to meet those required standards.

<input type="checkbox"/> Enhanced Communication	<input type="checkbox"/> Climate and Greenhouse Gas Reduction	<input checked="" type="checkbox"/> Housing
<input type="checkbox"/> Infrastructure Investment	<input type="checkbox"/> Emergency and Wildfire Preparedness	<input type="checkbox"/> Core Service

Attachments:

1. Resolution 2024-54
2. Plan Set and Elevations
3. Planning Commission Appeal Application
4. Town Council Appeal Application
5. Applicant Cover Letter
6. Inconsistency Letter
7. Denial Letter
8. SB9 Ordinance