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May 15, 2019

Los Angeles City Council
c/o Office of the City Clerk
City Hall, Room 395
Los Angeles, California 90012

Attention: PLUM Committee

Dear Honorable Members:

APPEAL RESPONSE; Council file Nos. 18-0185-S1

On September 18, 2018, the Director of Planning determined that the project is Categorically Exempt from the environmental review pursuant to City of Los Angeles CEQA Guidelines Article III, Section 1, Class 3, Category 2 (apartments, duplexes, and similar structures designed for no more than six dwelling units in an urbanized area), and there is no substantial evidence demonstrating that an exception to a categorical exemption pursuant to CEQA Guidelines, Section 15300.2 applies and approved Case No. DIR-2018-2764-SPP for the demolition of two single-family dwellings, and the construction, use and maintenance of a three-story, 4,816 square-foot, four-unit residential building within Subarea A (Neighborhood Conservation) of the Vermont/Western Station Neighborhood Area Plan.

On October 3, 2018, the Department of City Planning received nine (9) appeals of the Director of Planning's decision to conditionally approve a Project Permit Compliance Review under Case No. DIR-2018-2764-SPP. The appeals pertained primarily on the adequacy of the categorical exemption (CE), the claim that the site contained a historic resource, analysis regarding potential carcinogenic contaminants from the adjacent dry cleaners to the project site and compliance with SNAP Development Standards.

The Department of City Planning responded to this assertion in an Appeal Report dated November 27, 2018 (Appeal Report). The Appeal Report and all associated documents were set to be presented to the Central Area Planning Commission (APC) at its meeting of November 27, 2018. On November 27, 2018, the APC following its consideration of the materials and oral testimony, denied the Appeal, sustained the actions of the Director of Planning in approving a Project Permit Compliance Review and determined that based on the whole of the administrative record, the project is exempt from CEQA pursuant to City of Los Angeles CEQA Guidelines Article III, Section 1, Class 3, Category 2 (apartments, duplexes, and similar structures designed for no more than six dwelling units in an urbanized area), and there is no substantial evidence demonstrating that an exception to a categorical exemption pursuant to CEQA Guidelines, Section 15300.2 applies.

On January 11, 2019, Los Feliz Improvement Association and the Concerned Citizens of Los Feliz filed CEQA appeals for Case No. ENV-2017-2765-CE. The appeal again mainly rely on the same arguments and information as presented in the Appellant's previous letters to the City. The City has already adequately provided detailed and full responses to each of the appeal points, supported by substantial evidence in the record, and the APC Appeal Report dated November 27, 2018.

Nonetheless, the following represents a summary and response to the CEQA appeal points identified in the appeal filed on January 11, 2019, and responded to by Planning Staff in the APC Appeal Report dated November 27, 2018.

CEQA Appeal Points

A Categorical Exemption is inappropriate because the project site is a historic resource

The appellants contend that the two (2) existing Craftsman single-family dwellings are considered historic and the Categorical Exemption was granted without proper analysis. The appellant suggests that the single-family dwellings embody the distinctive characteristics of style, type, period, or method of construction and retains enough of its historic character and appearance to be recognized as a historic resource. The two (2) single-family dwellings, built in 1911 and 1920, with square footages of 1,096 and 784 square feet, respectively.

According to California Court of Appeal, Fifth Appellate District - Valley Advocates v. County of Fresno (2008) 160 Cal. App. 4th 1039, 1072–1074, the court found that the fair argument standard did not apply to the question of whether the buildings were historic resources for purposes of CEQA and is inconsistent with the concept of a lead agency's discretion to determine that a property is a historical resource.

The project site is not identified as historic or listed on the National Register, California Register, City of Los Angeles Historic-Cultural Monuments, or Historic Preservation Overlay Zones (HPOZ). The subject site is not designated under any local, state, or federal program, was not identified in SurveyLA or any other survey, and is not a historical resource as defined by CEQA. The appellant has not provided any substantial evidence such as field surveys and research conducted by a qualified professional cultural resource consultant to determine whether the single-family dwellings are indeed historic.

The appellants provided a letter from Charles J. Fisher dated June 4, 2015, claiming the existing homes are historic, however Charles J. Fisher does not meet the Secretary of the Interior's Professional Qualification Standards for Historic Preservation (48 CFR 44716) that a person must meet when completing historic resources surveys and impacts assessments. Furthermore, the letter does not substantiate or demonstrate why and/or how the subject building would be considered historic, nor does the letter provide substantial evidence that the property is a historic resource as defined per Public Resources Code Section 21084.1 and/or CEQA Guidelines 15064.5.

The appellants provided images of the interior of the home claiming that the interior retains enough of its historic character to be recognized as a contributor. While the City's Cultural Heritage Commission may consider interiors of a building to review its eligibility to be nominated as a Historic-Cultural Monument (HCM), CEQA does not require interiors to be analyzed for CEQA purposes. It should also be noted that the HCM nomination is a local process and that CEQA has different standards in determining historical resources. Therefore, the standards in evaluating a building for its historical value per state law under CEQA and an HCM nomination per the City's local cultural heritage ordinance are not comparable.

In addition, the appellants declared that the Los Feliz Improvement Association (LFIA) History Committee completed a Historic Property Survey of the community in the 1990's, which was expanded in 2011, that identified the subject property as a contributor. However, this survey has not been approved by the State Register or National Register of Historic Places, or by the City of Los Angeles Office of Historic Resources (OHR). Moreover, the survey does not contain all the vital information and evaluation necessary for a Historical Resource Assessment (HRA) Report as required by the Secretary of the Interior's Standards and Guidelines for historic preservation.

Furthermore, the project opponent has the burden of producing substantial evidence showing a reasonable possibility of adverse environmental impact sufficient to remove the project from the categorically exempt class. (See Davidon Homes v. City of San Jose [(1997)] 54 Cal.App.4th [106,] 115 [62 Cal. Rptr. 2d 612]; see also Guidelines, § 15300.2, subd. (c).)" (Magan v. County of Kings (2002) 105 Cal.App.4th 468, 476 [129 Cal. Rptr. 2d 344].)..."

As such, the fair argument standard does not govern determinations whether the "discretionary" historical resources exception applies to a categorical exemption. Therefore, the lead agency determined that the two (2) single-family dwellings were not a historical resource and the proposed project would not have a substantial adverse impact. No mitigations are needed for the proposed project and pursuant to State CEQA Guidelines, Article 19, Class 15301 (demolition and removal of up to six dwelling units in urbanized areas) and the City of Los Angeles CEQA Guidelines Article III, Section 1, Class 3, Category 2, (Apartments, duplexes, and similar structures designed for no more than six dwelling units in an urbanized area), the proposed project is categorically exempt.

LAMC Section 11.5.7 C.2 requires that the proposed project perform environmental review and incorporate mitigation measures.

The appellants contend that Staff did not make the environmental finding necessary for a Project Permit Compliance per LAMC Section 11.5.7 C.2 which states:

> *(b) That the project incorporates mitigation measures, monitoring measures when necessary, or alternatives identified in the environmental review which would mitigate the negative environmental effects of the project, to the extent physically feasible.*

Staff reviewed the entire record and ensured that there is no evidence that the Exceptions to a Categorical Exemption apply. There will be no cumulative impact associated with successive projects of the same type in the same place, the project will not have a significant effect on the environment due to unusual circumstances, the project will not result in damage to scenic resources, the site is not labeled as a hazardous waste site, and the site is not a designated historical resource.

Furthermore, the appellants claim the site is historic and is a contributor to a district. As discussed in Staff's previous response, the project site is not identified as historic or listed on the National Register, California Register, City of Los Angeles Historic-Cultural Monuments, or Historic Preservation Overlay Zones (HPOZ). The subject site is not designated under any local, state, or federal program, was not identified in SurveyLA or any other survey, and is not a historical resource as defined by CEQA.

No analysis has been conducted regarding mitigation of potential carcinogenic contaminants from the adjacent dry cleaners to the project site or former gas station adjacent to the project site. A geological study of the area is required.

The appellants contend that hazardous waste contaminants were found on the commercial property adjacent to the project site in 2013, and therefore, requires a Phase I Environmental Site Assessment (ESA) to be conducted. According to the Department of City Planning's Environmental Assessment Form item H, a Phase I ESA is required if, "the project proposed on land that is or was developed with a dry cleaning, automobile repair, gasoline station, or industrial/manufacturing use, or other similar type of use that may have resulted in site contamination." The lot has been developed with two (2) single-family dwellings, which were built in 1911 and 1920, respectively. Therefore, the site was not developed with any use that may have resulted in site contamination. Moreover, according to Envirostor, the State of California's database of Hazardous Waste Sites, neither the subject site, nor any site in the vicinity, is identified as a hazardous waste site. Therefore, a Phase I ESA was not requried.

In regards to a Phase I ESA and Phase II ESA needed due to the former gas station located at 4510 Franklin Avenue; 1969 Hillhurst Avenue, the Los Angeles Department of Building and Safety (LADBS) issued a demolition permit on August 3, 2004 under Permit No. 04019-10000-01024 and 04019-10000-01025, with permits to remove underground tanks of the former gas station under Permit No. 04030-10000-01576. Moreover, there are standards behind environmental due diligence where a Phase I ESA or Phase II ESA are conducted prior to a Commercial Real Estate transaction for a property. This process would make it difficult for a commercial building to be developed if the site was found to be contaminated and unusable. Furthermore, as previously stated, the project site was not developed with any use that may have resulted in site contamination. Therefore, a Phase I ESA was not required.

Lastly, geology/soils reports are not required prior to planning approval as the property is located outside of a City of Los Angeles Hillside Area and does not require any grading or construction of an engineered retaining structure to remove potential geologic hazards.

Conclusion

The appeal and referenced comment letters address specific concerns and focus on the adequacy of the categorical exemption. Upon careful consideration of the Appellant's points, no new substantial evidence was presented that City has erred in its actions relative to the categorical exemption. Therefore, the CEQA appeal should be denied and the actions of the Central Area Planning Commission should be sustained.

Sincerely,

VINCENT P. BERTONI, AICP
Director of Planning

Jason Hernández
City Planning Associate

VPB:CTL:JH

c: Emma Howard, Senior, Council District 4