

APPEAL APPLICATION

1. APPELLANT BODY/CASE INFORMATION

☐ Area Planning Commission ☐ City Planning Commission ☒ City Council ☐ Director of Planning

Final Date to Appeal: 04/13/2018

Type of Appeal:

☒ Appeal by Applicant/Owner

☐ Appeal by a person, other than the Applicant/Owner, claiming to be aggrieved

☐ Appeal from a determination made by the Department of Building and Safety

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- ☒
- Self
- ☐
- Other: _____

- Is the appeal being filed to support the original applicant's position? ☒ Yes ☐ No

Telephone: (213) 617-4284 E-mail: jpugh@sheppardmullin.com

4. JUSTIFICATION/REASON FOR APPEAL

Is the entire decision, or only parts of it being appealed? ☐ Entire ☒ Part

Are specific conditions of approval being appealed? ☒ Yes ☐ No

If Yes, list the condition number(s) here: See Appeal Attachment

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- The reason for the appeal
- How you are aggrieved by the decision
- Specifically the points at issue
- Why you believe the decision-maker erred or abused their discretion

5. APPLICANT'S AFFIDAVIT

I certify that the statements contained in this application are complete and true:

Appellant Signature: [Signature]

Date: 4/12/18

6. FILING REQUIREMENTS/ADDITIONAL INFORMATION

- Eight (8) sets of the following documents are required for each appeal filed (1 original and 7 duplicates):
 - Appeal Application (form CP-7769)
 - Justification/Reason for Appeal
 - Copies of Original Determination Letter
- A Filing Fee must be paid at the time of filing the appeal per LAMC Section 19.01 B.
 - Original applicants must provide a copy of the original application receipt(s) (required to calculate their 85% appeal filing fee).
- All appeals require noticing per the applicable LAMC section(s). Original Applicants must provide noticing per the LAMC, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of the receipt.
- Appellants filing an appeal from a determination made by the Department of Building and Safety per LAMC 12.26 K are considered Original Applicants and must provide noticing per LAMC 12.26 K.7, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of receipt.
- A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.
- Appeals of Density Bonus cases can only be filed by adjacent owners or tenants (must have documentation).
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (ZA, APC, CPC, etc.) makes a determination for a project that is not further appealable. [CA Public Resources Code ' 21151 (c)].

This Section for City Planning Staff Use Only		
Base Fee: <u>\$8905.88</u>	Reviewed & Accepted by (DSC Planner): <u>Danelynn Dominguez</u>	Date: <u>4/12/2018</u>
Receipt No: <u>0102876209</u>	Deemed Complete by (Project Planner):	Date:
<input checked="" type="checkbox"/> Determination authority notified		<input checked="" type="checkbox"/> Original receipt and BTC receipt (if original applicant)

Appeal Attachment
Project Site - 1248 South Figueroa Street
(1240-1260 South Figueroa Street; 601 West Pico Boulevard)
Case No. CPC-2016-2595-DA-CU-MCUP-CUX-SPR
Related Cases: CPC-2016-4219-GPA-ZC; CPC-2016-4220-SN

The Applicant is aggrieved by the decisions of the City Planning Commission. The quasi-judicial portions of Case No. CPC-2016-2595-DA-CU-MCUP-CUX-SPR have a facial appeal right. The aforementioned case contains entitlements subject to quasi-judicial approvals (i.e., the conditional uses and site plan review) and a development agreement, which is an entitlement subject to legislative approval by the City Council, regardless of actions taken by the City Planning Commission on this case.

Accordingly, the first part of this appeal focuses on the site plan review component of the case approved by the City Planning Commission in its March 29, 2018 Letter of Determination ("LOD"). As discussed below, the Applicant is aggrieved by, and appeals, certain Conditions of Approval ("COA") in the site plan review, including, but not limited to: COA E.1(a) that impermissibly requires the Applicant to redesign the building to eliminate the flat roofs; and COA E.1(b) that requires the Applicant to install a green wall system along any blank walls at the ground level, which is inconsistent with the City Planning Commission's own motion.

Moreover, the Applicant establishes for this appeal, and the record, that the Fig+Pico Conference Center Hotels Project ("Project") includes a series of entitlements that were: (1) requested by the Applicant via a Master Land Use Application; and (2) initiated by the City Council via motion and related official action. This structure of applicant-requested plus city-initiated actions is relevant to administrative procedure and appellate rights. Similarly, the combination of legislative approvals and quasi-judicial approvals at issue here provides appeal rights and noticing mechanisms in several sections of the Los Angeles Municipal Code ("LAMC"), the Los Angeles Charter ("Charter"), and the Administrative Code. The Applicant incorporates by reference herein such applicable provisions for the benefit of the appeal scope. In addition, to ensure that the Applicant is afforded the City Council's jurisdiction over all of the Project's entitlements, approvals, and agreements, the Applicant hereby exercises all of its appeal rights under any applicable provisions of the LAMC, Charter, and Administrative Code for Case Nos. CPC-2016-2595-DA-CU-MCUP-CUX-SPR, CPC-2016-4219-GPA-ZC, and CPC-2016-4220-SN.

The Applicant reserves the right to provide additional information supporting this appeal prior to the final acts of the City Council or its Committees. The Applicant also reserves the right to withdraw this appeal, in the interest obtaining approvals in a timely manner, if so desired.

The basis of this appeal includes, but is not limited to, the following:

- I. Site Plan Review
 - A. Entitlement Condition COA E.1(a) Roof Design

This COA requires the Applicant to redesign the building to eliminate flat roofs. That is a draconian measure considering that the Project includes pool decks, outdoor lounges, food and beverage venues, and amenities on the building roofs. The COA states that “[p]roject plans shall be revised to eliminate the flat roof design and replace it with a varied or sculptural roof design, in order to meet the following Downtown Design Guide standard, to the satisfaction of the Director of Planning. The COA then references the language below (which is an excerpt from page 39 of the Downtown Design Guide (“DDG”) regarding tower form): “A building’s top should be delineated with a change of detail and meeting the sky with a thinner form, or tapered overhang. Towers should have tapered sculptural crowns and make an appropriate contribution to the quality and character of the Downtown skyline. Flat roofs are not recommended.” Notice that the quoted language is clearly a guideline using the words “should” and “recommended” as indicators. It is not a standard as claimed in the LOD. The COA is an abuse of discretion for several reasons.

First, the COA impermissibly tries to impose a voluntary DDG tower form “guideline” as a mandatory “standard.” Section 1.B, Conformance with the Design Guide, clearly states that guidelines are not mandatory, do not apply to all projects, and are flexible in implementation. So, the COA fails on that point alone. Second, the Project already substantially conforms with the tower form guidelines listed on page 39 of the DDG. For example, without limitation, (a) the project towers have an articulation of human-scaled base at the street level (Item 7) with integrated retail and pedestrian realms; (b) the project has more than one tower, and they are complimentary to each other and employ the same design approach (Item 8); and (c) curtain walls extend to the ground floor to accentuate the tower presence (Item 5) in the tower along Figueroa Street. Third, the tower form guidelines contain Image C to illustrate how relatively flat tower tops in fact do conform with the DDG. That images shows a building top similar to the design of the Project. The towers (like Image C) retain a box form towards the sky and have pavilion-like tops in some areas, while other areas of the roof line present varied height nodes and contain activated outdoor uses with a variety of architectural elements. Therefore, the COA is inapplicable must be removed.

B. Entitlement Condition COA E.1(b) – Blank Walls

This COA states in part that “[a] wall system with trellises and a decorative metal green screen shall be constructed along any blank walls at the ground level.” The COA far exceeds the City Planning Commission’s intent, deliberation, and motion regarding this issue. The intent was to require trellises and green screens on proposed green walls – not any blank walls – if the project plans included green walls. The project plans do not include green walls. The Applicant previously removed the green walls based on City comments during urban design review. Thus, this COA does not apply in any case. The COA overreached and is unacceptable because it materially expanded beyond the City Planning Commission’s intent and is inconsistent with the project plans approved as Exhibit A.

II. Development Agreement

The Applicant appreciates that the City Planning Commission recommended that the City Council approve the Development Agreement. The Development Agreement is a legislative act subject to review by the City Council regardless of City Planning Commission actions or an Applicant appeal. Nonetheless, the Development Agreement is listed as a component of Case No. CPC-2016-2595-DA-CU-MCUP-CUX-SPR, which contains quasi-judicial and legislative approvals, and is partially appealable. Before the March 8, 2018 City Planning Commission hearing, the Applicant provided the Department of City Planning with a list of proposed community benefits to include in the Development Agreement. The Development Agreement, and particularly the community benefits section of it, is a negotiated agreement between the City and the Applicant. The community benefits package in the draft Development Agreement prepared by the Department of City Planning (and terms of the Development Agreement generally) provided to the Applicant with limited ability to negotiate. In addition, the Development Agreement attached to the LOD contains uncharacteristic reporting requirements and unfavorable provisions that affect vesting and entitlement life span. These items, and others, aggrieve the Applicant. The Development Agreement must be heard by the City Council as the legislative body in due course of the administrative process. The Applicant intends to request modifications accordingly. Also, in an abundance of caution, the Development Agreement is listed in this appeal to preserve the legislative forum, if necessary.

III. Related Cases

A. Sign District

The sign district is related Case No. CPC-2016-4220-SN. The Applicant appreciates that the City Planning Commission did not recommend denial of the Sign District ordinance. Instead, the City Planning Commission, approved in part and denied in part, and recommended that the City Council approve the Sign District with modifications. The modifications were extensive and rendered the draft Sign District in the LOD unacceptable. The Sign District is a legislative act subject to review by the City Council regardless of City Planning Commission actions or an Applicant appeal. On June 17, 2016, the Planning and Land Use Management Committee of the City Council introduced a motion for all of the city-initiated actions that started the process. On July 1, 2016, the City Council took official action to initiate certain legislative approvals and ordinances associated with the project, including the Sign District pursuant to its legislative powers. Any future acts by the City or its departments were subsequent to, and merely implement, the City Council's act of initiation.

The City Planning Commission actions on the Sign District are flawed and arbitrary, for several reasons, including but not limited to, the following. One, the City Planning Commission impermissibly modified the Sign District boundary inconsistent with LAMC and zoning requirements. Two, it imposed operational constraints (such as unreasonable hours of operation) that are inconsistent with adjacent sign regulations in the Los Angeles Sports and Entertainment District ("LASED") and the objectives of the General Plan to create and active, 24-hour downtown environment, with a full range of around-the-clock activities. Three, it required occupancy for virtually the entire project (i.e., 500,000 square feet of development) before the Applicant can operate its supergraphic and digital signage, which ignores the sequential

development of the three hotels and the Applicant's vested rights per the Development Agreement. Four, it reduced the total signage amount, required large percentage of free signage for third parties, and imposed take down requirements, all of which are inconsistent with the Project's financial feasibility analysis approved by the City Chief Legislative Analyst Office. Fifth, it prohibits modern animation technology for digital displays (which is permitted on several adjacent buildings) that would result in an immediately-outdated look and feel to the Project's sign technology as the City tries to modernize, attract business to the Los Angeles Convention Center, and welcome the 2028 Olympics. Sixth, the LOD states that the City Planning Decision is final, even though the LOD also recommends the matter up to the City Council for approval. Thus, the LOD position on this issue is internally inconsistent and incorrect. These items, and others, aggrieve the Applicant. The Sign District must be heard by the City Council as the legislative body in due course of the administrative process. The Applicant intends to request modifications accordingly. Also, in an abundance of caution, the Sign District is listed in this appeal to preserve the legislative forum, if necessary.

B. General Plan Amendment and Zone Change

The General Plan Amendment and Zone Change is related Case No. CPC-2016-4219-GPA-ZC. These are legislative acts subject to review by the City Council regardless of City Planning Commission actions or an Applicant appeal. The Applicant appreciates that the City Planning Commission recommended that the City Council approve the General Plan Amendment and Zone Change. However, the City Planning Commission embedded the same roof redesign and inapplicable green wall COAs from the Site Plan Review case as Qualified Conditions A(1)(a) and A(1)(b)) in this case. It follows that the Applicant is similarly aggrieved. These COAs should be eliminated in totality across all cases. In addition, the LOD attempted to expand the scope of applicable conditions by reference to Staff's Technical Modification letter dated March 7, 2018, even though it is unclear whether such modifications are included in the LOD, or are in addition to it. That creates unacceptable uncertainty for the Applicant's condition compliance efforts. The LOD also states that the City Planning Decision is final, which is incorrect because the General Plan Amendment and Zone Change are legislative acts subject to review and action by the City Council; and the LOD also recommends this matter up to City Council for approval. The Applicant intends to request modifications accordingly. Also, in an abundance of caution, the General Plan Amendment and Zone Change are listed in this appeal to preserve the legislative forum, if necessary.