

AMANDA M. SEWARD, ESQ.

August 24, 2018

City Council Members
City of Los Angeles
City Hall
200 N. Spring Street, Room 340
Los Angeles, CA 90012

Re: 925 & 927 West Marco Place (Lots 22-24) ENV-2015-3505-CE/**Appeal to be Heard at August 24, 2018 City Council Meeting**

Dear Council Members:

I am writing on behalf of the Appellants Sue Kaplan, Shepard Stern and Mary Jack (the “**Appellants**”) in connection with the above-referenced appeal to address a few of the points raised by the applicant’s attorney in his August 3, 2018 letter to the members of the City Council’s Planning & Land Use Management Committee. The question presented is whether the Project is exempt from the California Environmental Quality Act (“**CEQA**”) pursuant to CEQA Guidelines. The threshold for requiring environment review is low and the Appellants have met this standard, requiring the appeal to be upheld.

1. The CEQA Standards – Standard of Review: The “Fair Argument” Test

The law is clear. When there is substantial evidence supporting a “fair argument that the project will significantly impact the environment, an agency abuses its discretion in failing to require an EIR.” (*Architectural Heritage v. Monterey County* (2004) 19 Cal. Rptr3d 469, 479.) In the CEQA context, “substantial evidence is enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” (*Id.*)

The court in *Architectural Heritage* went on to say that “if such evidence is found, it cannot be overcome by substantial evidence to the contrary.” (*Id.*) The court pointed out that “the ‘fair argument’ test is very different from the usual measure of judicial deference given to agency decisions” and establishes “a low threshold for initial preparation of an EIR.” (*Id.* at 480.) As the court in *League for Protection of Oakland’s Architectural and Historic Resources* determined, “Stated another way, the question is one of law...and ‘[u]nder this standard deference to the agency’s determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.” (*League for Protection of Oakland’s Architectural Historic Resources v. City of Oakland, supra*, 52 Cal. App.4th at 905.)

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2. Significant Impact

a.) Impact on the Contributor and the Historic District

All sides agree that one of the three buildings comprising the Project is a 100-year old Japanese influenced Craftsman Bungalow that is a contributor to the Millwood Walk Streets Historic District (the “**Historic District**” or **Millwood Walk Streets**”). All sides agree that the Secretary of the Interior’s Standards for Rehabilitation (the “**Secretary of the Interior’s Standards**”) apply in determining whether the Project will likely have an adverse impact on a historic resource. All sides agree that if there is a fair argument that the contributor would no longer be a contributor to the Historic District, further environmental review would be required. All sides agree that if there is a substantial argument that the two new houses comprising the Project might not be compatible with other homes comprising the Historic District, then further environmental review would be required.

Certainly, a fair argument has been presented that supports a conclusion that the Project “materially alters in an adverse manner” those physical characteristics that account for the inclusion of the Bungalow as a contributor to the Historic District and therefore materially affects the Historic District. Further, a fair argument has been presented that supports a conclusion that the two new residential developments are not compatible with the existing environment of the Historic District.

The Applicants’ attorney says that one of the reports submitted by one of Appellants’ experts that finds that the Project “does not appear to meet the Secretary of the Interior’s Standards” should be ignored because he is not qualified under the Secretary of the Interior’s Professional Qualifications Standards to provide these opinions. One is not required to be an expert under the Secretary of the Interior’s Professional Qualifications Standards to interpret the Secretary of the Interior’s Standards. The federal professional qualification standards are advisory and not mandatory and the rules provide that even when the standards are regulatory and otherwise mandatory, exceptional experience may be substituted for an academic degree or training. Here, the federal standards are not mandatory, but again, if they were, the agency could determine that that the exceptional experience of an expert might substitute for an academic degree or training, to the extent the expert lacked the expertise under the federal standards.

Moreover, two of the reports submitted by the Appellants were authored by people with direct experience in evaluating whether projects in historic districts in Los Angeles comply with the Secretary of the Interior’s Standards, as this is the work they perform as members of historic district boards in Los Angeles. They both agreed that the proposed Project did not comply with the Secretary of the Interior’s Standards.

Among other issues, they found that Project clearly does not comply with Standard 9 and with Standard 10. Standard 9 provides, “New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will

be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.”

This requirement addresses three issues, one is removal of character-defining features. It also requires that the old and new be differentiated so that a false sense of history is not created with a design that mimics the original. At the same time, the addition needs to be compatible with the original. As stated in *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings*, “[T]here must be a balance between differentiation and compatibility to maintain the historic character and the identify of the building being enlarged. New additions and related new construction that are either identical to the historic building or in extreme contrast to it are not compatible.” (*The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings*, page 26.)

This Standard also means that any addition to a historic structure should be “subordinate” to the historic structure and “should not compete in size, scale or design” with the historic structure. (See Anne E. Grimmer and Kay D. Weeks, *Preservation Briefs: New Exterior Additions to Historic Buildings: Preservation Concerns*, National Park Service, U.S. Department of the Interior.) Preservation principles for individual historic resources and contributors to historic district recommend that in constructing a new addition, the addition should result in the “least possible loss of historic materials so that character-defining features are not obscured, damaged or destroyed.” (See Recommendations for Rehabilitations set for in *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings*, pgs. 2 and 156.) The addition should be “subordinate and secondary to the historic building and compatible in massing, scale, materials, relationship of solids to voids, and color. (*Id.* at pg. 156.) Constructing a new addition that is “as large or larger than the historic building, which visually overwhelms it” should be avoided as it results in the diminution or loss of historic character. (*Id.*) The submission by the historian engaged by the Appellants stated that the proposed addition is “too large to be considered subordinate to the historic house” and that its sheer size calls attention to itself and detracts from the overall look” of the contributor.

Here, the Applicants propose to demolish almost 50% of the original historic structure and add an addition that is almost twice the size of the original structure, and would comprise 71% of the total completed structure. As Appellants pointed out in their appeal and as pointed out by submissions in support of the appeal and in public testimony, the addition simply dominates the entire structure.

The proposed addition does not comply with the Standard 10 of the Secretary of the Interior's Standards which provides, “New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.”

The proposed addition only preserves 20 feet of the house and the reconfiguration of the historic interior is not a reversible change as called for in Standard 10 of the Secretary of the Interior's Standards. Fifty percent of the home will be destroyed. Many character defining features will be destroyed. Little would be left if the new construction were removed.

Finally, the Los Angeles Municipal Code defines a contributor to a historic district as one, that is a building structure identified in the Historic Resources Survey as contributing to the historic significance, "including a building that has been altered, where the nature and extent of the Alterations are determined reversible by the Historic Resources Survey." Here, there is evidence that the proposed alterations will not be reversible and therefore under the definition of a contributor under the Los Angeles Municipal Code it will no longer be a contributor.

b.) Impact on the Historic District of the Proposed Two New Structures

There has been little discussion about the impact of the two new structures on the Historic District under CEQA guidelines. In this case, the Planning Department has approved three new two-story structures, two almost identical in appearance on a quaint low-density street in a historic district, where most of the homes are one story, and have individual and unique character. The two new homes are basically identical in design and in this sense incorporate tract housing to the walk streets. One replaces a one-story residence "situated at the rear of the lot with lush overgreen landscaping occupying a majority of the property." (See Historic Resources Assessment Report, page 41.) Where there were two residences on three lots, the Project includes three new residences. The two new structures are contemporary in style, flamboyant and are incompatible with the Historic District's characteristic scale of single story residences. There are 17 one story structures and 9 two-story structures on the 900 block of Marco Place. This Project will add three new two-story structures to the mix. If approved, this area of the Historic District will include 12 two-story homes and the percentage of one-story homes diminishes from 65% to 55%.

Here, the Planning Department has ignored the evidence submitted by the Appellants regarding the mass, scale and character of the existing properties that make up this portion of the Historic District and the cumulative impact of three contemporary two story buildings all in one row. The relationship of one building to another or to the block can be determined by the FAR, comparing the floor area of a range of buildings. The FAR average for this block is .39 (excluding garages). There are 26 homes on the block and eight are above the average FAR. But these eight are spread apart along both sides of the block and so the historic character of the neighborhood is maintained. The average FAR of the three new structures is .66. The contributor is currently a 1,256 square foot home on a 7,200 square foot lot. The two new proposed homes would total roughly 4,440 square feet on the 7,600 square foot lot – roughly 3.5 times as much square foot on the same plot of land as the contributor.

In addition, the two new buildings have roof top decks and roof access structures (RAS) that are not in character with this section of the Historic District and add significantly to the mass and scale of the proposed homes. The three buildings comprising the Project will mean that five of the largest homes in this portion of the District will be lined up, two existing "bookends" and the three new proposed between the two. Five homes in a continuous line create a significant change in the Historic District's characteristics.

Eighteen of the structures on the 900 block of Marco Place were built before 1926. The two new structures are ultra contemporary. 24 of the existing structures on the block have peaked roofs. The two new structures are flat roofed. The proposed Project adversely alters the streetscape of the immediate neighborhood.

Certainly, the Appellants have established a fair argument that the Project will significantly impact the environment, even if other conclusions may be reached. Therefore, under CEQA principles an EIR should be required.

3. Response to the Applicant's Expert Reports

The Applicants' attorney insists that three independent reports by historic experts found that the Appellants' claims were found to be unsubstantiated. This is not true. Rather, the reports bought and paid for by the Applicant skirted the relevant issues, relied on conclusory statements and submitted no facts in support of their opinion that the Project is in compliance with the Secretary of the Interior's Standards.

It is agreed by all that the Project should be evaluated against the Secretary of the Interior's Standards. It is agreed that number 9 and 10 of the Secretary of the Interior's Standards are two standards in question in this case. But the people responsible for enforcing the land use rules in the City have simply not carefully examined this discussion in the reports submitted by the Applicants.

In the first report, the PCR Services, Inc.'s Historic Resource Assessment for the subject properties, the Secretary of the Interior's Standards were not even applied to the addition to the contributor because at that time no addition was contemplated. A supplementary PCR/ESA CEQA Impact Analysis was done for 925 Marco Place and concluded that the contributor would remain a contributor because its "single story massing would be retained" and the Project conformed to the Secretary of the Interior's Standards. There is no response to the Appellants' observation that the addition will dominate the entire structure as the mass of the building would double, a second story would be added to a character-defining horizontal style of the original home.

In discussing Standard 10, the PCR/ESA report concludes "if the new addition would be removed in the future, the essential form and integrity of the historic District would be unimpaired." The question should be in deciding whether the addition to the contributor would be removed in the future does the essential form and integrity of the "contributor" remain unimpaired. Here, only the front façade would be retained. More than half of the contributor would be demolished so they could not say the essential form and integrity of

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the contributor would be unimpaired. Certainly, the proposed alterations would not be reversible and therefore under the definition of a contributor under the Los Angeles Municipal Code the Bungalow would no longer be a contributor.

The third historical report submitted by the Applicants, that submitted recently by Sappos Environmental Inc. concluded that the building "will continue to contribute to the Milwood Venice Walk Streets Historic District following completion of the project." But not one fact is offered on which this conclusory statement is based.

Venice is a unique coastal resource. Allowing the proposed demolition of the contributing Bungalow and construction of the two new proposed homes in the historic district would incrementally change the character of the neighborhood, making it more likely that other new, tall bulky homes that are out of character with the current neighborhood would be approved and built. We hope that the City Council will review this appeal carefully and require additional environmental review.

Thank you for your consideration. If you have any questions, do not hesitate to let me know.

Best Regards,



Amanda Seward