

ORIGINAL



APPLICATIONS:

APPEAL APPLICATION

This application is to be used for any appeals authorized by the Los Angeles Municipal Code (LAMC) for discretionary actions administered by the Department of City Planning.

1. APPELLANT BODY/CASE INFORMATION

Appellant Body:

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

Regarding Case Number: ENV-2017-2681-CE

Project Address: 5717, 5717 1/2, 5719, 5719 1/2 Carlton Way, Los Angeles, 90028

Final Date to Appeal: NONE- CEQA Appeal

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

2. APPELLANT INFORMATION

Appellant's name (print): Ely Malkin

Company: _____

Mailing Address: 1702 S. Robertson Blvd. #955

City: Los Angeles

State: CA

Zip: 90035

Telephone: 310 528-9780

E-mail: emalkin@sbcglobal.net

- Is the appeal being filed on your behalf or on behalf of another party, organization or company?

☒ Self

☐ Other: _____

- Is the appeal being filed to support the original applicant's position?

☐ Yes

☒ No

3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): _____

Company: _____

Mailing Address: _____

City: _____

State: _____

Zip: _____

Telephone: _____

E-mail: _____

4. JUSTIFICATION/REASON FOR APPEAL

Is the entire decision, or only parts of it being appealed?

☐ Entire ☒ Part **CEQA**

Are specific conditions of approval being appealed?

☐ Yes ☒ No

If Yes, list the condition number(s) here: _____

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: _____

Date: _____

11-19-18

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: #89-	Reviewed & Accepted by (DSC Planner): Yaruna Perez	Date: 11/20/18
Receipt No: 0104970917	Deemed Complete by (Project Planner):	Date:
<input type="checkbox"/> Determination authority notified		<input type="checkbox"/> Original receipt and BTC receipt (if original applicant)

Los Angeles City Council
c/o Los Angeles City Clerk
Los Angeles City Hall
200 N. Spring Street,
Room 360
Los Angeles, CA 90012

CEQA APPEAL OF CASE No.: ENV-2017-2681-CE;
5719-5721 Carlton Way, Hollywood.

To PLUM Chair Harris-Dawson and Honorable Council members:

I am forced to file this appeal due to the failure of the City Planning Department to exercise its appropriate oversight responsibilities and require a CEQA review of the Project (defined below). Public Resources Code Section 21151(c) of the California Environmental Quality Act (CEQA) permits an aggrieved party to appeal the approval of a Categorical Exemption (CE) by a non-elected, decision-making body to that agency's elected, decision-making body. In this case, the City Planning Commission (a non-elected, decision-making body) on November 1, 2018 rejected my appeal of the Director of Planning's decision to approve a 39-unit, 78-foot-tall Transit Oriented Communities (TOC) multi-housing development proposed for 5717-1719 Carlton Way (the Project). As part of its approval, the Commission issued an August 14, 2018 determination letter (Letter) stating that the project is exempt from CEQA, and that there is "no substantial evidence that an exception to a categorical exemption pursuant to CEQA Guidelines, Section 15300.2 applies."

The Commission's determination is wrong. The courts have mandated that categorical exemptions be construed strictly, shall not be unreasonably expanded beyond their terms, and may not be used where there is substantial evidence that there are unusual circumstances (including future activities) resulting in (or which might reasonably result in) significant impacts which threaten the environment. *McQueen v. Mid-Peninsula Regional Open Space* (1988) 202 Cal.App.3d 1136. In the case of the Project, substantial issues have been noted into the record regarding failure by the Commission to address a number of serious concerns regarding significant impacts which threaten the environment—as such the use of a categorical exemption is improper.

I. Background and Objections

The project site is currently occupied by two iconic 1920's bungalows situated on a 50 x 175' lot. The Project calls for demolition of the bungalows to allow for construction of a 78' 3", five story, 27,771 SF, 39 unit apartment project on Carlton Way, a local road in Hollywood. The five stories of the Project would be situated atop a 2 story parking podium that is not set back from the sidewalk and appears to have an average of 18" setback on its sides.

Carlton Way, at the Project location, is a quiet street bounded to the east by Wilton Place and to the west by the Hollywood Freeway sound wall. Behind the Project there is an 11 ½' alley that functionally begins on its western extremity approximately 100' east of the 101 Freeway northbound exit and continues approximately 350' easterly to Wilton Place. The alley serves as the only vehicle egress for private trash haulers and for vehicles parked in garages/surface lots behind 4 multi-family dwellings along the north side of Carlton Way as well as for 5724 Hollywood Blvd., a 41 unit luxury apartment project that fronts on Hollywood Blvd.

In determining that there was “no substantial evidence” of an exception to a categorical exemption the Commission failed completely to consider the impact of the Project on three historical resources immediately adjacent to it on its west side, did not at all consider the potential cumulative impact of at least 4 actual/potential multi-family developments within a short proximity of the Project, paid no attention to the increased traffic load on the alley behind the Project (as well as its impact on the Hollywood Blvd./Wilton Place intersection), and failed to address potential safety concerns of elementary school children and other pedestrians walking along Wilton Place.

The major premise behind the establishment of the California Environmental Quality Act of 1970 was to require public agencies to give serious and proper consideration to activities which affect the quality of our environment, to find feasible alternatives in order to prevent damage to the environment, and to provide needed information to the public. Public Resources Code §21061. A strong presumption in favor of requiring preparation of an Environmental Impact Report is built into CEQA. This is reflected in what is known as the “fair argument” standard, under which an agency must prepare an EIR whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112,1123; *No Oil. Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68,75.

Under CEQA and CEQA Guidelines, if a project may cause a significant effect on the environment, the lead agency must prepare an EIR. Pub. Res. Code §§ 21100,21151. A project “may” have a significant effect on the environment if there is a “reasonable probability” that it will result in a significant impact. *No Oil. Inc. v. City of Los Angeles*, supra, 13 Cal.3d at 83 n. 16. If any aspect of the project may result in a significant impact on the environment, an EIR must be prepared even if the overall effect of the project is beneficial. CEQA Guidelines § 15063(b)(1). This standard sets a “low threshold” for requiring preparation of an EIR. *Citizen Action To Serve All Students v. Thornlev* (1990) 222 Cal App.3d 748,754. If substantial evidence supports a “fair argument” that a project may have a significant environmental effect, the lead agency must prepare an EIR even if it is also presented with other substantial evidence indicating that the project will have no significant effect. *No Oil. Inc. v. City of Los Angeles*, supra; *Brentwood Association for no Drilling. Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491. The CEQA Guidelines § 15384(a) define “substantial evidence” as “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. ..”

California Code of Regulations Section 15300.2 addresses the standards for categorical exemptions from CEQA provisions

(a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located -- a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

(b) Cumulative Impact. **All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.** (emphasis added)

(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

...

...

(f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

15332. In-Fill Development Projects.

Class 32 consists of projects characterized as in-fill development meeting the conditions described in this section.

(a) **The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.** (emphasis added)

(b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.

(c) The project site has no value as habitat for endangered, rare or threatened species.

(d) **Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.** (emphasis added)

(e) The site can be adequately served by all required utilities and public services.

Under the plain language of the regulations the project cannot possibly qualify for a CEQA exemption.

1. Under Guidelines 15332(a) the Project does not qualify for categorical exemption since it is inconsistent with the Hollywood Redevelopment Plan, pursuant to which the developer would be entitled to construct 19 units, subject to an additional 35% bonus for low income housing. The Project, if approved, would consist of 23 base units along with a 70% bonus for low income housing

2. Under Guidelines 15332(d) The Project does not qualify for categorical exemption since it would result in significant effects relating to traffic. The LADOT traffic study assessment cited in the Letter indicates that the proposed project "...is expected to generate a net increase of 259 daily trips..." (See, Letter p. 19, 2d paragraph). The alley**, through which vehicular ingress/egress to the project is proposed, already serves as the only ingress and egress for the 41 unit building at 5718 Sunset Blvd and also handles vehicles entering/exiting 5 other multi-family residential projects that abut the alley (1661 Wilton Pl., 5705, 5721, 5727, and 5731 Carlton Way), along with the garbage trucks that collect bins from all the bins in the alley. The added burden on the traffic flowing along Wilton Place (including traffic seeking to turn south from Hollywood Blvd.) would be dramatic.

The L.A. CEQA Thresholds guide Page L.2-2 indicates that that "A proposed project would normally have a significant street segment capacity impact (emphasis added) if project traffic causes an increase in the V/C ratio on the street segment operating condition after the addition of project traffic equal to or greater than the following:

V/C ratio increase >0.080 if final LOS* is C V/C ratio increase >0.040 if final LOS* is D V/C ratio increase >0.020 if final LOS* is E or F

Given the single lane capacity of the alley, the fact that a substantial number of other vehicles are already utilizing it as their sole ingress/egress, and the difficulty of smoothly exiting onto Wilton Place, it is unimaginable that the volume/capacity ratio that the project imposes on the alley would not rise to ratios well in excess of the 2-8% ranges that qualify as significant. It is also beyond any standard of readability to summarily assume that the impact would not be significant.

The L.A. CEQA Thresholds guide Page L.1-3 indicates that that "A proposed project would normally have a significant impact on intersection capacity (emphasis added) if the project traffic causes an increase in the V/C ratio on the intersection operating condition after the addition of project traffic of one of the following:

V/C ratio increase >0.040 if final LOS* is C V/C ratio increase >0.020 if final LOS* is D V/C ratio increase >0.010 if final LOS* is E or F"

The vehicle capacity ratios, and attendant Loss of Service levels, represent relatively small fractions (1-4%). With the back up caused by vehicles emerging from the alley and turning left on to Wilton Place a scant 175' short of Hollywood Blvd., (as well as vehicles turning south onto Wilton Place) it raises a serious concern that the intersection capacity will be impacted...yet there was absolutely no analysis of this likelihood in the letter of determination.

In addition to the substantial concerns regarding traffic loan on the alley and the spill over effect on the smooth operation of the Hollywood/Wilton intersection, there are serious pedestrian safety concerns. Visibility to/from the alley is impacted by the presence of a two story apartment building immediately to the south of the alley and by vehicles that may be parked in the service station lot bordering on the north of the alley entrance. Alley ingress/egress is only 175' away from Grant Elementary School, and numerous small children (some accompanied and some not accompanied by adults) utilize the sidewalk on both sides of the alley to access the school. The cursory traffic analysis cited in the Letter never addressed the unique concerns posed by dramatically increased load on the alley.

3. The Project will cause a substantial adverse change in historical resources. The definition of "historical resources" is contained in Section 15064.5 of the CEQA Guidelines. which provides that structures may qualify historically significant even if they are not actually listed in a historic register...its is sufficient that they are eligible to be so listed.. Each of the three structures immediately to the west of the proposed project ((5727, 5731 and 5741 Carlton Way) has received a NHRP 3CS status from the Park Service, meaning that each "appears eligible for the California Registry as an individual property through survey evaluation." The Commission staff's cursory conclusion (in opposing my initial appeal) that there is no significant impact because these structures are not being demolished is reflective of the lack of substance in their whole approach to this project's CEQA Appeal

exemption. Clearly, the proposed approximately 80' high complex, including its 2 story parking podium that extends all the way to the sidewalk (along with roughly 18" side setbacks), will potentially have a significant impact these three historic structures by casting a huge shadow over them for much of the day, by obscuring them from view for most of the block and by aesthetically damaging the way they visually appear on their respective properties.

4. The Project's blanket CEQA exemption is also inappropriate because the Commission's analysis turns a blind eye to the “**cumulative impact of successive projects of the same type in the same place**”. There are four residential projects (one of which has already begun construction) surrounding the proposed project within a 5 minute walk that have a cumulative total 785 proposed residential units, along with an additional 96,000+ SF of retail, office and/or commercial space. Per the attached map, those projects are represented by yellow pins at:

1. 5750 Hollywood Blvd. -proposed 161 unit residential
2. 5600 Hollywood Blvd. -proposed 32 unit residential/ 3000SF retail
3. 5525 W. Sunset Blvd. -proposed 293 unit residential/ 3300SF retail
4. 5929 W. Sunset Blvd. -proposed 199 unit residential/ 90000SF office, retail, commercial



It was negligent of the Commission to fail to address the cumulative impact of the Project vis a vis the potentially dramatic increase in housing stock in the immediate vicinity. Moreover, it was similarly myopic for the Commission not to take into account to examine the buildings on the immediate block and to note that the Project is a dramatic outlier that could negatively impact the aesthetic of the block, not only from the perspective of the dramatic height differential relative to the other buildings, but also

due to its complete absence of a front setback consistent with all the other existing buildings. Finally, it should be born in mind that California law lays out a rigorous standard for permitting CEQA exemptions. Exemptions from CEQA's requirements are to be construed narrowly in order to further CEQA's goals of environmental protection. See *Azusa Land Reclamation Co, v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1220. Projects may be exempted from CEQA only when it is indisputably clear that the cited exemption applies. See *Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 697. The Commission's analysis abjectly fails to make an "indisputably clear" showing.

In light of the foregoing, the Planning Department clearly failed to meet the standard required for exemption from CEQA. Approval of this Project would detrimentally alter the nature and character of the immediate vicinity, devaluing the very significant investment I have in 5705 Carlton Way, and materially reducing the quality of life of the my tenants as well as other tenants on the block. The impacts on traffic and safety concerns resulting therefrom will impact a much wider swath of citizens than just those immediately residing by the 5700 block Carlton Way. I therefore respectfully request that this Council protect us by mandating a proper CEQA review.

****California Vehicle Code Sec. 590 - "Street"** is a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. Street includes highway.

Los Angeles County Dept of public works defines Alley as "A narrow service street for serving rear of lots, less than 30 feet in width"

City of Los Angeles Administrative Code Division 6, Chapter 2 Section 6.18 (4) provides that a **"Street"** includes avenues, highways, lanes, **alleys**, crossings of intersections, courts and places which have been dedicated and accepted according to law, or which have been in common and undisputed use by the public for a period of not less than five years next preceding.