Communication from Public

Name:               
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Council File No: 19-0737
Comments for Public Posting: Please find attached our letter in support of the City’s CEQA determination (and against the CEQA appeal) on behalf of the applicant.
February 23, 2020

VIA E-MAIL

Councilmember Marqueece Harris-Dawson, Chair
Councilmember Bob Blumenfeld
Councilmember Curren D. Price, Jr.
Councilmember Gilbert A. Cedillo
Councilmember John S. Lee

clerk.plumcommittee@lacity.org

Re: CEQA APPEAL - ZA-2016-1630-CUB-1A-2595 South Hoover Street

Dear City Councilmembers:

As you know, our law firm represents the owners of 2595 South Hoover Street (the “Property”), who obtained approval of a conditional use permit (“CUP”) on March 14, 2019, to allow the sale and dispensing of beer and wine for onsite consumption in conjunction with an existing restaurant (the “Project”). This approval was upheld by the South Los Angeles Area Planning Commission (“South APC”) on May 21, 2019 and a determination letter was issued on June 14, 2019. A CEQA appeal challenging the adequacy of the categorical exemption issued for the Project was filed on June 22, 2019, which was finally scheduled for a hearing before the PLUM Committee by Councilmember Harris-Dawson’s office on January 28, 2020. To allow this hearing to be scheduled, our client agreed to include certain conditions in the Cal ABC license application for beer and wine service, as requested by the Councilmember. We understood these conditions would adequately address safety concerns alleged by the Councilmember and would help to justify denial of the appeal. These conditions were described in our previous letter to the PLUM Committee, dated January 27, 2020.

At Councilmember Harris-Dawson’s request, the hearing on January 28th was continued for 30 days to determine whether a recent change in the restaurant operator would have any bearing on the CEQA determination or underlying CUP approval, which (per condition No. 33) requires submittal of a new Plan Approval application when there is a change in operator. As explained below in more detail, the issue of the restaurant operator is irrelevant to the CEQA appeal. Also, please note that in previous hearings, we made it abundantly clear that service of beer and wine as an accessory to food service is an essential component to a having successful restaurant on the Property. Therefore, it is most unfortunate that the original restaurant
operator, Burgerim, had to terminate its operations due to the enormous delay in scheduling the CEQA appeal. If the CEQA appeal had been initially heard in a timely manner and denied (as overwhelmingly recommended by City Planning staff), the previous operator would have been able to submit the Cal ABC license application months ago and would likely have remained operating.

During the hearing last month, it was suggested by Councilmember Harris-Dawson that the change in restaurant operator could render the CEQA appeal moot, and the hearing was continued until March 25, 2020 to allow more time to review this issue. Needless to say, the outcome of the hearing was extremely disappointing, and the fact that there has been a change in operator has no bearing whatsoever on the outcome of CEQA appeal.

The purpose of a CEQA appeal, as explained in Los Angeles Municipal Code ("LAMC") §11.5.13 A, is to implement the requirements of CEQA – it is not an opportunity to revisit the merits of the CUP or review the conditions that were imposed. These issues were already addressed by the Zoning Administrator and the South APC in their determinations. In addition, the applicant and Property owner are still the same and will be bound by the conditions of approval, including the requirement to submit a Plan Approval application on behalf of the new operator, regardless of who that operator may be. In fact, the South APC’s determination letter explains that their decision is final “and it is not further appealable.” As stated in LAMC §11.5.13 C, it is only the CEQA determination, and in this instance, that the Project is exempt from CEQA which “may be appealed to the City Council.” Therefore, the scope of the PLUM Committee’s review is narrowly tailored to the adequacy of the categorical exemption that was issued for the Project under CEQA, only.

As determined by the Zoning administrator and upheld by the South APC on appeal, the Project was found to be exempt from CEQA pursuant to City’s CEQA Guidelines, §1, Class 5, Category 34. A Class 5 exemption applies to projects that consist of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density (CEQA Guidelines §15305; City Guidelines Art. III §1(e)). The project is located in an area with an average slope of less than 20% and designated for commercial use under the General Plan and Zoning Code. The sale of alcoholic beverages is permitted with the granting of a CUB (LAMC §12.24). The granting of a CUB will not result in a change in land use or density as it would only permit the sale of beer and alcoholic beverages in connection with sit-down restaurant service. Therefore, this land use alteration is minor.

In addition, the City’s CEQA Guidelines specify that this Class 5 categorical exemption applies to the granting of a CUP for the on-site consumption of alcoholic beverages pursuant to City zoning regulations, so long as beverages dispensed and consumed do not exceed an
occupant load of 200 persons. It should be emphasized that the City Guidelines have evaluated the state's CEQA exemptions, considered the exemptions in the context of the City of Los Angeles, and have explicitly identified the issuance of a CUP as the type of project for which an exemption is appropriate. Here, the restaurant for which the CUP is requested will include 39 seats, and further, not every patron will consume alcohol. Thus the project falls squarely within the parameters set by the City Guidelines. As such, the Project consists of minor alterations in land use limitations and would result in no significant increase in impacts.

Furthermore, neither the Zoning Administrator nor South APC on appeal found any substantial evidence demonstrating that an exception to the use of this categorical exemption (pursuant to CEQA Guidelines, Section 15300.2) could apply. As we have stated before, the CEQA appeal made claims regarding impacts on the neighborhood, without substantial evidence, that are simply not appropriate given the scope of this simple CUP to only allow onsite consumption of beer and wine in the restaurant. During last month's hearing, similar issues were raised with respect to potential impacts on “sensitive” uses. However, the Zoning Administrator and South APC gave substantial consideration to sensitive uses near the Property, and conditions were imposed for the Project to be compatible with these uses (as stated in the determination letter):

“The proposed sale of beer and wine for on-site consumption will not detrimentally affect the neighboring residential and commercial properties in the area because the sale of these beverages will be in a controlled environment within the restaurant. Beer and wine will be distributed by trained employees and subject to multiple security measures. The mode and character of this operation will be a restaurant and not a night club or bar or liquor store. There is no live entertainment and no public dancing, and the grant includes the condition that subjects the applicant to the City's noise ordinance. The applicant will also be subject to conditions imposed by the Alcoholic Beverage Control.”

The determination letter continues:

“The grant has been well conditioned, which will protect the health, safety and welfare of the surrounding neighbors, and potential effects of excessive noise or disruptive behavior, criminal activity and underage drinking have been considered and addressed by prohibiting off-site sales, requiring exterior lighting, requiring age verification devices, and requiring proactive security measures.”

Also, please note that if the CUP were allowed to become effective by denying this appeal, the new operator will be required to submit a Plan Approval application for review by
City Planning staff. This review will include additional CEQA analysis, and the Councilmember and members of the public will have additional opportunities to weigh in on the merits of the Plan Approval application and CEQA determination at that time.

Based on the foregoing information, we strongly believe the CEQA appeal lacks merit and the categorical exemption issued in conjunction with the Project should be upheld.

We appreciate your time and attention to this matter and look forward to our next meeting before the PLUM Committee on February 25, 2020.

Kindest Regards,

Ellia Thompson