

Adams Dockweiler Heritage Organizing Committee

MASTER APPEAL FORM CONTINUATION:

ENV-2019-1262 CE / CASE NO. ZA-2015-2214- CU- CUMP-1A / 2211-2219 SOUTH HOOVER ST. UNIVERSITY PARK HISTORIC PRESERVATION OVERLAY ZONE / CD-8 MARQUEECE HARRIS-DAWSON / SOUTH, L. A. PLANNING AREA

As its' Chair, and on behalf of the Adams Dockweiler Heritage Organizing Committee (A.D.H.O.C.) being aggrieved parties, we do object to and appeal the CEQA review supporting the South Area Planning Commission's actions of March 05, 2019 to:

1). NOT ADOPT the Mitigation Monitoring Program of the ENV-2015-2215-MND, NOT ADOPT the MND, DETERMINE that the Project is exempt from CEQA pursuant to CEQA Guidelines, Sections 15301, 15303 and 15332,

2). DENY the APPEAL, by A.D.H.O.C. (12-24-18) and SUSTAIN the DETERMINATION of Associate Zoning Administrator Theodore Irving of the Office of Zoning Administration, LADCP to approve pursuant Sections 12.24 W.27 of the Los Angeles Municipal Code (LAMC) a CONDITIONAL USE to permit deviations from Commercial Corner Development standards per Sections 12.22A.23(a)3 and 12.22A.23(a)(10)(C)

3). APPROVE pursuant to LAMC Section 12.20.3 L, a CERTIFICATE OF COMPATIBILITY to allow the replacement of existing signage, windows, landscaping and proposed 1,693 square-foot one-story addition.

4). DISMISS a request for a CONDITIONAL USE to allow an existing on-site pole sign, as allowed by Section 12.22 A.23 (a)6(i).

5). ADOPT the attached CONDITIONS of APPROVAL and FINDINGS of the Zoning Administrator.

For the reasons set forth in detail below, the SAPC, in issuing the DETERMINATION abused their discretion and issued a decision contrary to the factual record. In their decision, the SAPC has allowed the manipulated language and juggled facts of the AZA to falsely create an illusion of compliance with: the California Environmental Quality Act (CEQA) the University Park Historic Preservation Overlay Zone's Preservation Plan (UPPP), the L.A. City General Plan, and L.A. City South Area Community Plan, The actual facts of the Case do not support the conclusions made by SAPC and the implementation of the DETERMINATION would prove harmful to the public welfare and be deleterious to the University Park Historic Preservation Overlay Zone community.

The outrageous actions at the public hearing by AZA Irving who, without any prior public notice or posting, recommended a rescinding of the Project's existing Environmental clearance document, ENV-2015-2215-MND, and to simply switch-it out for the proposed Categorical Exemption and then have the SAPC adopt it that same afternoon appears to be, not only a violation of the Brown Act, but a deliberate attempt to thwart the very purpose of CEQA as well.

The Los Angeles Department of City Planning, and their Office of Historic Resources, has for the last several years been obsessively committed to implementing their highly questionable Policy of finding that almost any project's environmental review is qualified for a limited CE rather than an appropriate, legitimate and transparent Mitigated Negative Declaration. They have admitted that they believe this ostrich approach to administrative procedures results in fewer public challenges of their abusive decisions, and have

embraced a prevailing mantra: "Categorical Exceptions are harder to litigate than a Negative Declaration". This "Policy" position provides an easy cover for them to circumvent and limit public participation thereby enabling them to escalate the rate of their processing for the specific benefit of developer-applicants and at the expense of the community.

The universal classic fraud of "bait and switch" could not have been applied any more deliberately and effectively as when AZA Irving made his surprise announcement during the SAPC public hearing that he was now recommending the rescinding of the Project's MND and replacing it with a CE. He distributed a few limited copies of the undated single-page CE document along with copies of a 4-page undated "Justification for the Project Exemption / Case No. ENV-2019-1262-CE" to the Commissioners and the real-parties in interest.

In my restricted opportunity of oral rebuttal I did question the legitimacy of the AZA actions and the possible violation of the Brown-Act as there had been no public notice of the proposed CEQA switch prior to the current hearing. The only public notice of a possible MND-CE switch in fact was at the SAPC Meeting Agenda itself (03/05/19) for the Project (Item No. 08, pages 4&5). However the agenda's listing also reiterates the AZA action in his DETERMINATION including:

"APPEAL:

Appeal of the December 12, 2018, Zoning Administrator's determination which:

1. Found, pursuant to CEQA Guidelines Section 15074(b), after consideration of the whole of the administrative record, including the Mitigated Negative Declaration No. ENV-2015-2215-MND, as circulated on March 29 2017 ("Mitigated Negative Declaration") and all comments received, with the imposition of mitigation measures; there is no substantial evidence that the project will have a significant effect on the environment; found the Mitigated Negative Declaration reflects the independent judgment and analysis of the City; and adopted the Mitigated Negative Declaration and Mitigation Monitoring Program prepared for the Mitigated Negative Declaration;"

As noted above, AZA Irving's reporting on December 12, 2018 that the: "*City's independent judgment and analysis*" had found that the "*mitigation measures have been made enforceable conditions on the project*" and he had ADOPTED the MND and the Mitigation Monitoring Program prepared for the MND. However at the SAPC hearing the AZA came prepared with new documents at the ready to sway the Commissioners from both his own and the City's determination that the Project's MND was sufficient provided it utilized the Mitigation Monitoring Program.

Evidently sometime and somewhere between December 12, 2018 and March 15, 2019 the Project inexplicably and miraculously no longer had any "conditions" and therefore no longer needed a "Monitoring-Program". It had also shed any and all-possible conditions that would cause an exception to disqualify it as a Categorical Exemption. Fortunately (?) the AZA was somehow informed of this transformation in time to create his 4-pages of Justifications for the switch. I assume that the transformation occurred only after the Notice of the SAPC hearing was mailed or his actions would have been made public. Those persons attending the hearing could have prepared challenges to the application of CEQA exemptions 15301, 15303 and 15332 which clearly do not apply to this project.

My question now is; why has the presiding AZA even troubled himself with a new proffer that the existing and approved MND-(bait) should be forfeit to the CE-(switch) when the conclusions of the MND had essentially the same net affect as the CE; that the Project has no impact. Could the reasoning for this action be nothing more-or-less than the forced implementation of the Departmental CEQA Policy that a CE is not as litigable as an MND? Is it as bureaucratically elemental as: we eliminate an MND, we substitute a CE, and all potential litigation problems go away?

This could explain why the AZA waited until my appeal had been filed before tampering with the CE. Is his action nothing more than an attempt to evade any evaluation of the deficiencies in the MND that had been called out extensively through public comment? I, along with other commentators to the administrative record, have challenged the veracity of the MND. Indeed my A.D.H.O.C. appeal to the SAPC is a CEQA issue about those deficiencies of the twice-circulated MND.

It had been by hope that my responding in writing and by oral testimony to the administrative record about the failures of the MND to identify and then alter or mitigate the negative impacts the Project has on the historic fabric of the University Park H.P.O.Z., such impacts could be corrected. Instead of responding to the public comments and correcting the exposed deficiencies of their MND, the Department has doubled-down on their "no-impact" stance by hiding behind their CEQA challenge-proof Categorical Exemption.

That obviously is not happening. A.D.H.O.C. was preparing to challenge the Project's MND-(bait) and is therefore not fooled or deflated by the Department's CE-(switch). In fact the questions we raised and the arguments made by ADHOC and other commentators about the deficiencies of the Mitigated Negative Declaration now function as a skeletal pathway to question the same problems that are now found in the CE.

Ironically one of the advantages the public can now benefit from is that the MND had a 47-page Initial Study and Checklist. These published documents were the foundational rationale for the Department's conclusions: that there are no significant impacts and no conditions. Although the new CE only supplied 4-pages of justification, the lengthy Departmental MND analysis and conclusions are much the same but contain specific relevant details.

Since the deficient MND-(bait) and the not-applicable CE-(switch) share the same erroneous conclusions based on the analysis of the same facts, I am listing the following specific comments that were part of my original Appeal to the SAPC:

APPEAL COMMENTS: ENV-2015-2215-MND (and-or ENV-2019-1262-CE)

The proposed MND (CE) is not sustainable in the light of the whole record as it fails to:

1. Assess impacts.
2. Provide the facts to assist a decision maker to understand the significant impacts.
3. Mitigate impacts to insure compatibility.
4. Provide adequate parking for the new uses.
5. Strengthen the character defining features of the neighborhood.

The Initial Study and Checklist upon which the MND-(CE) is based is a cursory and arbitrary analysis not based on facts. The MND-(CE) recognizes no impacts or no significant impacts in any category whatsoever other than *Ill.d. Air Quality*. This ignores testimony that has been provided to the City and the decision maker from persons and organizations with expertise about neighborhood conditions and impacts. In addition, the City has disregarded expert opinion in writing from the HPOZ Board and others.

There is substantial evidence in the record that the project will have a significant effect on the environment and this evidence has been ignored. On August 9, 2018 a public hearing was held at City Hall and numerous residents and community organizations voiced their strong opposition to the conditional use and variances. The testimony included expert analysis as well as community observations that supported the rejection of the project as it is presently proposed.

Among the experts at the hearing were staff from Councilmember Marqueece Harris-Dawson CD 8, local businesses, residents, land use and historic preservation experts and other members of the public who provided fact based as well as observational information in opposition to the granting. Nevertheless, the City has dismissed this substantive testimony and adopted the MND (and now replaced it with a CE).

The MND was deficient in the following areas:

AESTHETICS

The expansion of the retail use in a mini mall configuration is a visual intrusion into a historic zone. Allowing the continuing use of a pole sign, which is a visual blight further, codifies what is a negative impact to the historic neighborhood. Reducing landscaping and setbacks further impacts aesthetics.

AIR QUALITY

Ill. d. Expose sensitive receptors to substantial pollutant concentrations? Less than significant with mitigations incorporated. (Initial Study and Checklist section of the MND). This is the ONLY checked recognition of impacts and it states the impacts are mitigated. What is not considered is the impact of cars driving in circles attempting to find parking to visit one of four new retail stores, or to visit the 57 seat restaurant, or the expanded mini-market (since the 19 spaces on site are full) and the accompanying emissions from these vehicles.

CULTURAL RESOURCES

The preparer dismisses any impacts to historic University Park because the building is a non-contributor. The preparer fails to understand that non-contributors as well as up contributors have impacts to historic resources which include that to the zone itself which would be impacted by this project. Several factors in the ZA decision severely impact aesthetics, land use and population, neighborhood character, traffic and parking.

To allow the continued use of a pole sign creates visual blight that ought to have been mitigated by requiring conditions for the signage.

GEOLOGY AND SOILS

There is nothing in the record that supports the soil beneath the garage bay use is not toxic; decades of garage and auto repair usage should require a soil analysis.

The above listed comments apply both to the Project's original MND-(bait) and the newly minted CE (switch). The issues: unrecognized potential impacts, lack of any appropriate mitigations, and the disregard of public comment make either of the "Findings" or "Justifications" failures for compliance with CEQA.

That the City has issued now a CE is not permissible under CEQA. CEQA sets a very low threshold for not permitting a Categorical Exemption, namely that it should not be used where there is a reasonable possibility of the activity having a significant effect.

Title 14, California Code of Regulations, Chapter 3, Guidelines for Implementation of CEQA, states a categorical exemption should not be used *where the activity would cause a substantial adverse change*. Furthermore, Section 15300.2 (c), explains: *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.*

Section 15300.2 *Exceptions: (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.* The use of a Categorical Exemption is impermissible when a project cumulatively adds to the significant impacts of projects that have preceded it, even if those projects were initiated by other owners/developers/applicants.

The justifications for a CE under Article 19 provided by the City (Sections 15301, 15303 and 15332) are not sustainable based on the CEQA Guidelines:

Section 15301 does not apply because it requires that as a condition: *"(B) The area in which the project is located not environmentally sensitive."*

Section 15303 does not apply because it is not: new construction or conversion of small structures *"where only minor modification are made in the exterior of the structure....and the surrounding area is not environmentally sensitive."*

Section 15332 (Infill Development) does not apply because one would have to find that *"(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality or water quality."* The record shows otherwise.

CONCLUSION:

A quick re-cap of the Project and its' CEQA processing:

- The applicant filed his initial plans on June 10, 2015 and the Project' environmental document ENV-2015-2215-MND was assigned.
- The MND was re-noticed for public comment on March 09, 2017.
- The MND was "circulated" on March 29, 2017.
- The Zoning Administrator's public hearing was held on May 10, 2018
- The Zoning Administrator's public hearing was held on August 09 2018, 2018
- The ZA issues a Determination notice December 12, 2018 for the Approval of the Project and the MND with a Monitoring Program.
- The A.D.H.O.C. filed an Appeal on December 24, 2018 A.D.H.O.C. to the South Area Planning Commission of the ZA Determination for the Project & CEQA Approval.
- The SAPC on March 09, 2019 held a public hearing on the Case and denied the appeal and adopted ENV-2019-1262-CE.

- The SAPC issues a Determination on March 26, 2019 to Deny the Appeal, to Approve the Project, reject MND-2015-2215-MND and Adopt ENV-2019-1262-CE.
- The A.D.H.O.C. files an Appeal on April 11, 2019 A.D.H.O.C. to the LA City Council of the SAPC Determination for the Project & CEQA Approval.

No matter whether I must file an appeal of ENV-2015-2215-MND or ENV-2019-1262-CE their failures to comply with CEQA because of inaccurate and misleading Findings or Justifications obfuscate the underling negative impacts to the historic fabric of the University Park H.P.O.Z. and must be corrected. The Zone itself is a historic resource.

I respectfully request therefore that the LA Angeles Council through its' Planning and Land Use Committee find for my Appeal and require that a new, inclusive, accurate CEQA document be prepared for the Project.

Thank you for your consideration.

Jim Childs, Chair ADHOC
213-747-2526 / Email: jeanjim2341@att.net
2326 Scarff Street
University Park, Los Angeles, Calif. 90007