NOEL WEISS

13700 Marina Pointe Drive, #1215
Marina del Rey, California 90292
Telephone: (310) 822-0239
Facsimile: (310) 822-7028
Email Address: noelweiss@ca.rr.com

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MEMBERS OF THE LOS ANGELES CITY COUNCIL **Via Email**
Los Angeles City Hall
200 North Spring Street
Los Angeles, California 90012

RE: *ITEM NO. 22 – AGENDA FOR WEDNESDAY , APRIL 29, 2019 COUNCIL FILE NO. 20-0087 (Case Nos. DIR-2019-929-TOC; ENV-2019-930-CE*

PROJECT SITE: 738 S. Normandie Avenue

Dear Councilmembers:

I write on behalf of the owner of the property located at 732 So. Normandie Avenue (Kent Apartments, LLC) in support of the pending appeal of Carolyn Zanelli to the Class 32 CEQA exemption sought by the proponent of the development at 738 So. Normandie. The 738 So. Normandie property is immediately adjacent to my client's property. The lack of any CEQA work-up on the proposed project is prejudicial to my client because (i) potential damage could occur during construction to my client's building (built in the 1920's and historically protected) and a CEQA work-up would involve the evaluation and imposition of protective mitigation measures to obviate any potential damage during construction; and (ii) the 738 So. Normandie project, as designed, if constructed, would substantially, materially, and prejudicially alter the culturally unique and historically significant streetscape of the entire geographical area of the South Normandie block. That is because the unbroken streetscape of the Victorian designed 4-5 story buildings on the eastern side of the 700 So. Normandie Ave. would be broken and permanently and prejudicially altered by the insertion of a 7-Story contemporary-designed building right between two historic buildings. The 700 So. Normandy block, together with the properties on the 700 So. Mariposa Ave. block comprise the nationally recognized historic "*District*" known as "***Normandie-Mariposa Historical Apartment District***".

Both of these matters should be taken up by way of a competent CEQA work-up, undertaken consistent with the City's procedures and protocols, none of which were followed in this instance, as detailed below. The appeal should be granted and the matter returned to the Planning Department so that all of the protections afforded the public by the City's laws will be respected and followed. Denying the appeal means that the only other alternative available to my client is to initiate a writ of mandate action which challenges the City's errors and omissions in its evaluation of the project and the errant effort to propagate and promote a CEQA exemption when the law directs that in this instance, a CEQA work-up is required because the property does not qualify for a CEQA exemption.

The Property Comes Within the "Exception" to the Class 32 CEQA "Exemption".

While the 738 So. Normandie site is vacant, it is located within the geographical *area* on South Normandie Avenue whose properties comprise what has been identified and named as the "***Normandie-Mariposa Apartment Historic District***". The "District" is listed in the National Register of Historic Places, having been nominated in 1994 when the CRA was operating. It is listed in the California Register of Historic Resources. As such, the *Normandie-Mariposa Apartment Historic District* is presumed to be historically or culturally significant. (Public Resources Code §21084.1 which defines what constitutes a *Historical Resource*. Because the 738 So. Normandie property is also part of the *Wilshire Center/Koreatown Recovery Redevelopment Project Area* (CRA), it is up to the City of Los Angeles, as successor agency to the CRA, to make sure that Section 520 of the CRA Guidelines adopted in December, 1995, are followed. That section provides for the implementation and administration of Design Guidelines of the precise type reflected by the character and scale of the *Normandie-Mariposa Historic District*. As such, the CRA Design Guidelines are applicable to this project and they have to be respected. This alone makes this site and this area unusual within the meaning of the holding of the California Supreme Court in *Berkeley Hillside Preservation vs. City of Berkeley* (2015) 60 Cal. 4th 1086.

That case held that "a party invoking the *exception* [to a CEQA Class 32 Exemption] may establish an unusual circumstance ***without evidence of an environmental effect***, by showing that the project has some feature that distinguishes it from others in the exempt class, ***such as its size or location***. In

such a case, to render the exception applicable, the party need ***only*** show a reasonable possibility of a significant effect due to that unusual circumstance. (*Berkeley Hillside Preservation vs. City of Berkeley, supra,* at page 1119). (Emphasis added).

Here, the unusual circumstance is reflected by the fact that (i) the Normandie Ave. streetscape is unique given that the entire 700 So. Normandie block consists of an unbroken chain of Victorian-designed 4-5 story structures built in the 1920's which (ii) have been recognized as unique and historic by their having been incorporated into a nationally recognized historic "district", and thus presumed to be historically significant.[1]

In addition, the ***Wilshire Community Plan*** has as one of its core objectives to "preserve and enhance neighborhoods having a distinctive and significant historical character." (Objective 17-2). This applies to in-fill developments as well as rehabilitation of existing structures. The scale of the existing historical resources within the "*Normandie-Mariposa Historical Apartment District*" must therefore be respected and evaluated in the context of a CEQA work-up.

The Planning Department's argument that the site is "non-contributing" to the District's historical significance and whose design will otherwise comply with the standards of the Secretary of Interior is a complete deflection. The historical "District" does not go away after the development is completed. It remains. The development must contribute to and not detract from the District's historical

[1] The National Park Service defines a "historical district" as "***a significant concentration, linkage, or continuity of sites, buildings, structures***, or objects ***united historically or aesthetically by plan or physical development***. (National Register Bulletin 15. How to Apply the National Register Criteria for Evaluation. Washington DC: National Park Service, US Department of the Interior, page 5.). As such, the "*Normandie-Mariposa Historical Apartment District*" derives its significance and uniqueness as a single unified entity (a group of buildings and sites (even undeveloped sites)). So even though the 738 So. Normandie site is vacant, when it is developed, it will be a contributing property to the character, scale, essence, and feel of the "*Normandie-Mariposa Historical Apartment District*". Ms. Zanelli's appeal notes that the street is used regularly for filming where there is a need for a real "New York streetscape". Constructing an over-sized 7-Story contemporary building between two historically recognized Victorian 4-5 story structures which "breaks" what is now an "unbroken" Victorian streetscape will be prejudicial and do substantial damage to the "*Normandie-Mariposa Historical Apartment District*".

essence. How to preserve its historical significance and integrity and how to mitigate against adverse impacts to an important historical resource is the precise issue which needs to be evaluated by way of a CEQA work-up given that the historic identity of the entire (protected) 700 South Normandie Ave. block is substantially undermined by this project. Moreover, the Project, as designed, cannot be said to meet the criteria of Standard #9 of the Secretary of Interior Standards because it ignores issues of scale, design, set-backs, street-wall, sheer size, and the fact, as noted herein, that as an over-sized contemporary structure inserted into what is otherwise an unbroken chain of smaller (4-5 story) Victorian structures, substantially impairs the historical significance of the *Normandie-Mariposa Historical Apartment District*.

There is no question that the 700 So. Normandie block (both sides of the street) is considered to be historically significant. Under Section 15064.5(a)(3) of the State CEQA Guidelines, "[a] resource shall be considered by the lead agency to be 'historically significant' if the resource meets the criteria for listing on the California Register of Historical Resources." The fact that we are talking here about an "area" (or accumulation of adjoining properties – labeled a (historic) "district") means that the ***entire*** 700 So. Normandie block is historically significant. In its letter of February 13, 2020, Planning acknowledges that the "*Normandie-Melrose Apartment Historic District*" is listed in the California Register of Historic Resources.

The entire 700 So. Normandie block has retained its integrity of location, design, setting, feeling, and association for nearly a century. A significant, substantial, adverse impact on the historical significance of this historical resource (consisting of the entire 700 So. Normandie block) would occur where (in the words of the City's CEQA Guidelines) the construction of the 738 So. Normandie 7-story contemporary designed project would reduce "the integrity and significance" of the entire "*Normandie-Mariposa Historic Apartment District*" by breaking up what is now an unbroken street frontage of 4-5 story Victorian designed buildings with a 7-Story contemporary structure. Having broken this "significance threshold", the Project must undergo a CEQA work-up where ways can be discussed and found to mitigate what would otherwise be a substantial adverse change in the significance of an important historical resource, the *Normandie-Mariposa Historic Apartment District*.

It is also an unusual circumstance that the project is going to be constructed next to the 732 So. Normandie building. Because the project will have an underground parking garage, a CEQA work-up will protect the interests of the owner of the 732 So. Normandie building because mitigation measures will need to be found to ensure against damage to the building or its foundations from the excavation or the construction. Giving the proponent a Class 32 CEQA exemption undermines this policy objective.

As part of a CEQA work-up, there would also be an evaluation of the level of significant adverse impact to the *Normandie-Mariposa Historic Apartment District* after mitigation. Without a CEQA work-up, no way exists to evaluate the full impact of the 738 So. Normandie development on either the *Normandie-Mariposa Historic Apartment District* or my client's adjacent building at 732 So. Normandie.

In short, the proposed "Findings" set out by Planning in its report to the Council in support of the CEQA exemption do not support the exemption. To the contrary, the facts demonstrate the existence of unusual circumstances where there is a reasonable possibility that the project will have an substantial, adverse change in the significance of a nationally and state-recognized historical resource – the "*Normandie-Mariposa Historical Apartment District*". As such, the provisions of the CEQA law which provide for an "exception" to the Class-32 CEQA exemption apply to defeat the request for the exemption and support the granting of the appeal.

Lastly, the Planning Department has prejudiced this proceeding in favor of the developer by omitting very important information; specifically (i) that this developer had already procured a variance in October, 2017, to develop a 7-Story 34-unit (all studios) contemporary structure on the site. (Case No. ZA-2-14-4100-ZV-ZAA-MSC)[2] In so doing, the developer has *de facto,* abandoned the existing entitlement.

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[2] This started out as a 26 unit (all studios), 6 story development which then morphed into a 34 unit (all studios) 7-Story development. The current project has less total square footage than did the approved (variance) project. That is because the size of the units were halved. This is objective evidence that the developer does not need 50 units to deliver 5 extremely low affordable units. It shows that the developer could deliver the affordable units in a building which has 5 stories of residential. The City's failure to enforce its laws respecting the mandate for an *economic pro-forma* when "off-menu" concessions or incentives are sought as part of the density bonus component of the

Planning also omitted any reference to two other approved projects on South Mariposa; both of which should be considered as part of the cumulative impacts component of a CEQA work-up: (1) 744 So. Mariposa (Case No. ZA-2017-2285-ZV-ZAA approved April 30, 2018) (a six story (with two levels of parking – one at grade; one underground) 31 unit (19 studios; 12 1-Bedrooms); and (2) 715 So. Mariposa Ave. (Case No. ZA-2017-21 (ZA-ZAA-MSC – approved May 19, 2017) (7 story, 38 units (all studios- Started out as a 60' tall structure with 29 units).

A CEQA work-up must, of necessity, evaluate whether the cumulative impacts of the proposed project and related projects in the area, when taken as a whole, would substantially impair the historical status of the *Normandie-Mariposa Historical Apartment District*. Granting a CEQA exemption precludes this very important and needed analysis. The omission by Planning from its work-up to date is prejudicial to the public and to the other property owners along the 700 So. Normandie block[3].

Under Section 15300.2(b) of the State CEQA Guidelines, an "*exception*" to the exemption applies when "the cumulative impact of successive projects of the same type in the same place, over time, is significant".

This will be now be the third project over the past three years to be developed within the geographical boundaries of the *Normandie-Mariposa Historical Apartment District*. As noted above, the area is unique because it is likely the best-preserved block of pre-war apartment buildings in Los Angeles. The fact that the Mariposa side has been compromised is not a license to obliterate the *Normandie Street side of the Normandie-Mariposa Historical Apartment District*. The So.

Transit Oriented Communities Affordable Housing Incentive Program (LAMC §12.22(A)(31) is another error committed by the City which supports granting the appeal and sending the project back to Planning so that the provisions of LAMC §12.22(A)(25)(g)(3) can be properly and lawfully applied.

[3] Also excluded from the package presented to Council and the public was the proponent's Transient-Oriented Communities Referral Form. This exclusion prejudices the process because the record lacks the facts reflective of how the proponent has calculated the number of density bonus units it seeks, and why it needs them to provide the affordable units. This omission was intentional and prejudicial. The proponent should not be aided by its omission from this record.

Normandie Victorian streetscape is unique and unusual because of the unbroken Victorian streetscape of 4-5 story buildings. Inserting a contemporary designed structure right in the middle of what is an unbroken street-scape will result in substantial impairment of the historical resource known as the *Normandie-Mariposa Historical Apartment District*. This is the point where the proverbial straw is about to break the camel's back. Material impairment of the historical resource (i.e. the "District") resulting from these cumulative impacts of what has already been approved justify denial of the exemption and the invocation of the "exception".

The Project Does Not Qualify for an Exemption because the Zoning Regulations, Procedures, and Protocols Attendant to the TOC Entitlement Were Not Followed.

a. *The Lack of Site Plan Review*.

Because the project involves 50 units, a *Site Plan Review* is required under LAMC §16.05(C)(1)(b). The City attempts to get around this requirement by asserting that the threshold number which triggers the application of the Site Plan Review protocol is the base unit count allowed "by right" under the zoning code (in this case 37 units); rather than the 50 units which consist of the additional 8 market rate density bonus units which allegedly support and subsidize the 5 density bonus affordable units.

However, nothing in LAMC §16.05 (the Site Plan Review Ordinance) qualifies the 50 unit threshold in this way. The fact that the project is 50 units therefore mandates a site plan review. The project is subject to Site Plan Review under LAMC §16.05 because it contemplates 50 units; and nothing in the Site Plan Review Ordinance qualifies this 50 Unit requirement. The relevant portion of LAMC §16.05 reads:

C. Requirements.

1. **Site Plan Review. (Amended by Ord. No. 184,827, Eff. 3/24/17.)** ***No grading permit***, foundation permit, ***building permit, or use of land permit shall be issued for any of the following development projects unless a site plan approval has first been obtained pursuant to this section***. This provision shall apply to individual projects for which permits are sought and also to the cumulative sum of related or successive permits which are part of a larger project, such as piecemeal additions to a building, or multiple buildings on a lot, as determined by the Director.

(a) Any development project which creates, or results in an increase of, 50,000 gross square feet or more of nonresidential floor area.

(b) ***Any development project which creates***, or results in an increase of, ***50 or more*** dwelling units ***or guest rooms***, or combination thereof.

The City's position is that because the project only involves 37 "by right" (base) units allowable under the zoning code, that is the number that controls for purposes of whether site plan review is to be initiated (i.e. the density bonus units are not taken into account). Noted below is a screen-shot of Item 9 (page 4 of 6) of the "*Transit-Oriented Communities – Referral Form*" (CP-4050[5.15.2018]) (omitted by Planning from the Council File)

. **SITE PLAN REVIEW CALCULATION** An application for Site Plan Review may be required for projects that meet an of the Site Plan Review thresholds as outlined in LAMC Section 16.05.C. unless otherwise exempted per Section 16.05.D. For Transit Oriented Communities projects involving bonus units, please use the formula provided below to determine if the project meets the Site Plan Review threshold for unit count. If project meets the threshold(s) but qualifies under the exemption criteria per Section 16.05.D please confirm exemption with Department of City Planning's DSC Housing Unit.

_____ units allowed by right (permitted by LAMC) – _____ existing units =_____units

- ☐ YES, Site Plan Review is required, if proposed by right units minus existing units is equal to or greater than 50[7]
- ☐ NO, Site Plan Review is not required, if Base Density units minus existing units is less than 50
- ☐ Exempt *(please specify)*:_____

Site Plan Review requires an evaluation of the character and scale issues as well as the historical issues. While the Director has the discretion to set a public hearing, if a public hearing is not set, the decision can be appealed to the Area Planning Commission where there will be a public hearing. This, of course, the developer does not want to make happen. So it appears that Planning is very willing to accommodate the developer's desires in that regard.

To be noted is the fact that even though the developer is asking for 50 units, the building permit application submitted on December 23, 2019 (Permit No. 19010-10000-06053) states that the permit seeks permission to build 49 units. Coincidence? Doubtful given the 50 unit threshold to initiate site plan review. It is more likely that Jamison is trying to game the system by deflecting attention away from the fact that site plan review is needed; and then once the City Council has concluded its work, Building & Safety will process the permit (either accidentally or by design) for a 50 unit building. If they tried to play games, the building permit would have to be challenged.

What is the significance of having a Site Plan Review? (1) It triggers the need for a public hearing (in the Director's discretion (which if abused can be challenged in court); (2) it provides for an appeal right to the Area Planning Commission, with a further appeal to Council; (3) *specific "Findings" have to be made that the project is or will be compatible with existing and future development as respects adjacent and neighboring properties*; and of equal importance, (4) *no grading permit can be issued in the absence of a competent site plan review having been undertaken*. The ordinance specifically mentions that the developer proceeds at its own risk should it try to obtain a grading permit without having first complied with the site plan review protocol set out in LAMC Section 16.05.

It is thus in the interests of the City and the developer to do the right thing and grant this appeal.

b. *The Infirm TOC Process Utilized Here*.

Again, the significance of this discussion is that the issuance of a valid CEQA exemption presumes that all of the City's land use entitlement protocols and requirements have been met. If not, then there can be no CEQA exemption.

In its effort to deny the public a meaningful opportunity to provide comment on large projects (which require site plan review), the City has decided to create a system which it allies with developers to facilitate the gaming of the City's own procedures and protocols intended to (i) provide procedural and substantive due process in connection with "straight" density bonus projects (LAMC Section 12.22(A)(25)) and with density bonus projects which are incorporated into the

Transit Oriented Communities Affordable Housing Incentive Program (LAMC Section 12.22(A)(3).

Because the City's land use entitlement laws are such a jig-saw puzzle-like morass of seeming confusion borne, in part, out of how the various ordinances cross-reference each other, it is easy to game the system and disable meaningful public discourse by attempting to obviate and eliminate what should be required public hearings (in this case by the City Planning Commission) where the public can communicate the legal and factual reasons why a project should be rejected or modified.

In this case, the pattern used was to (i) ignore the mandate of LAMC Section 12.22(A)(25)(g)(***3***) (the City's density bonus implementation ordinance) that *off-menu* incentives be heard by the City Planning Commission at a public hearing. This was done by way of the reference in the TOC (*Transit Oriented Community Ordinance*) that the procedures to process the TOC Application are to be the procedures "outlined" in LAMC Section 12.22(A)(25)**(g).** Because sub-paragraph (g) of LAMC Section 12.22(A)(25) has three sub-paragraphs, all of them are relevant. However, the TOC protocol in this case only used the protocol involving "*on-menu*" incentives (subparagraph (g)(2)) and ignored the sub-paragraph which deals with "*off-menu*" incentives (sub-paragraph (g)(***3***). This contradicts the TOC Ordinance. Sub-paragraph (g)(***3***) requires a hearing of off-menu incentives be heard by the CPC. The incentives here for set-backs (front, side, and rear), and for open space were all "off-menu" incentives. They were processed as "on-menu" incentives under sub-paragraph (g)(2). They should have been processed as "off-menu" incentives under sub-paragraph (g)(***3***) (which would have resulted in a public hearing before the CPC).

Secondly, the TOC Ordinance incorporates the state density bonus law (***Government Code §65915(d)(2)*** in the granting of concessions and incentives. Here, the developer sought and was granted 3 "off-menu" concessions and incentives. However, Government Code §65915(d)(2) only permits or allows *two* concessions in this circumstance where 10% of the units are set aside for very low income households. (The state law does not have a category for "extremely low income" as does the TOC law. The extremely very low affordable income category is therefore subsumed within the "very low" category for purposes of this analysis). Planning made use of the base number of 37 units allowed under the zoning "by right" as one factor, then substituted a factor of 11% instead of the state law use of 15% (to qualify for the third incentive). This, it is contended, is

legal error because it contradicts the express wording of the state density bonus law. The state density bonus law is made relevant by virtue of its incorporation into the TOC Ordinance (LAMC §12.22(A)(31)(b)(2)(iii)). So either way, there should ***not*** be a third incentive.

There is an additional argument that there should only be one incentive because under Government Code §65915(d)(2)(B), to get two incentives, at least 20% of the total units must be set aside for very low income households. Here, only 5% of the total units are set aside for very low income households. Under that scenario, as per Government Code §65915(d)(2)(A), only one concession is available. Now the Council could amend the TOC ordinance and eliminate the reference to the state density bonus law (Government Code Section 65915(d)(2)) as the controlling criteria; but it has not done so. Since the Guidelines cannot supersede the Ordinance, the Ordinance's reference to Government Code Section 65915(d)(2) controls. Either way, the granting of three incentives is too many; and arguably, two incentives is also one too many.

c. *The City Planning Commission is the Initial Decision-Maker under TOC Ordinance which Incorporates the Protocol Under the City's Density Bonus Implementation Ordinance.*

Where the City Planning Commission is the initial decision-maker and the TOC Ordinance incorporates the entire protocol of subsection (g) of LAMC Section 12.22(A)(25) (not just sub-paragraphs (g)(1) and (g)(2)), the attempt by the TOC Guidelines to ignore the Ordinance is opined to be unlawful since the guidelines cannot obviate, supersede, or contravene the Ordinance which specifically and clearly states that it is the totality of the procedures set out in LAMC Section 12.22(A)(25)(g) that control; not just sub-paragraphs (g)(1) or (g)(2).

LAMC §12.22(A)(31)((b)(2)(iii)) (The TOC Ordinance), reads as follows:

(iii) **Incentives and Concessions.** ***An Eligible Housing Development may be granted up to either two or three incentives or concessions based upon the requirements set forth in California Government Code Section 65915(d)(2).***

The requirements of Government Code Section 65915(d)(2) are noted in Footnote 1. Because the scope of TOC guidelines is, by definition, limited by the scope of

the Ordinance, the guidelines must conform to the ***the requirements of the density bonus law*** in Government Code §65915(d)(2)). Government Code Section 65912(d)(2) conditions the granting of *a second* concession on there being at least a 10% set aside of the total units for very low income households. To obtain a *third* concession or incentive, the set aside to very low income households has to be *15%* or more. (There is no "extremely very low" category in the state law– so it is assumed that "extremely very low" and "very low" fall into the same "very low" category for purposes of applying the Government Code §65915(d)(2) standard set out in the Ordinance).

Here, the set-aside for the extremely very low income households is 10%. Under Government Code §65915(d)(2), only one concession should be available.

Even under the City's interpretation, where they calculate the number of incentives on the density allowable under the zoning (37 units), they only come up with a set aside percentage of *13%* of the 37 base units (5 affordable units/37 units allowable under the zoning = 13%). This fails to meet the 15% threshold for the third incentive under Government Code §65912(d)(2).

Also to be kept in mind is that it is not clear whether how many of the 45 market rate units are to be short-term transitory rentals (Air BnB) or longer-term (traditional/non-transitory) rentals. This is important because it impacts on the economics of the project and whether the developer needs as many market rate units to subsidize the provision of the 5 extremely very low affordable units).

The Bottom Line: The project only qualifies for only one additional concession if the criteria mandated by Government Code §65915(d)(2) is used; for only two concessions if the contrived "tiered" criteria, as applied by the City, for this TOC project given that only 13% of the base units (37 units allowed under the zoning) are set aside, instead of the required 15% under Government Code §65915(d)(2).

Here is the City's contention which, for the reasons noted above, is legally infirm:

> The project is seeking three (3) Additional Incentives for reduced front/rear yard setbacks, reduced side yard setbacks, and reduction in usable open space, which requires at least 11 percent, or five (5) units, of the 37 base units to be set aside for Extremely Low Income Households. The project proposes to set aside five (5) dwelling units for Extremely Low Income Households, which is 13 percent of the 37 base units. As such, the project meets the eligibility requirement for three Additional Incentives.

1. The TOC Ordinance adopts the protocol from the City's density bonus implementation ordinance when it comes to implementing the TOC Ordinance. Here is the specific language from the Ordinance LAMC §12.22(A)(e):

> (e) **Procedures.** ***Application for the TOC Incentives shall be made on a form provided by the Department of City Planning, and shall follow the procedures outlined in Los Angeles Municipal Code Section 12.22 A.25.(g).***

Note that the TOC ordinance references ***the complete*** subparagraph (g) of the City's density bonus implementation ordinance (LAMC §12.22(A)(25)). However, when it comes to processing the TOC application, the TOC Guidelines only references sub-paragraph (g)(2) of LAMC §12.22(A)(25) as follows:

> b. **Projects Requesting Additional Incentives.** Projects requesting Additional Incentives shall be reviewed by the Department of City Planning per the procedures in LAMC 12.22 A.25(g)(2).

Sub-paragraph (g)(2) of LAMC §12.22(A)(25) covers the procedures and protocol attendant to the choice of "on-menu" incentives. In that circumstance, the Director makes the determination, issues a letter of determination to abutting landowners, including property owners across the street or alley, or having a common corner with the property to be developed (no mention of tenants). Any appeal from the determination is then made to the City Planning Commission. What is omitted is sub-paragraph

Sub-Paragraph (g)(3) of LAMC §12.22(A)(25) sets out the procedures to be followed when "off-menu" incentives are chosen. This section is reprinted below. For our purposes there are two criteria which are important: (1) the requirement

for an economic pro-forma, and (2) the mandate that that the initial decision-maker is the City Planning Commission. This protocol was not followed here and the failure to adhere to the protocol was a violation of a mandatory duty and thus and error of law.

"(3) **Requests for Waiver or Modification of any Development Standard(s) *Not* on the Menu.**

(i) For Housing Development Projects that qualify for a Density Bonus and for which the applicant request a waiver or modification of any development standard(s) that is not included on the Menu of Incentives in Paragraph (f), above, and that are not subject to other discretionary applications, the following shall apply:

a. ***The request shall be made on a form provided by the Department of City Planning, accompanied by applicable fees, and shall include a pro forma or other documentation to show that the waiver or modification of any development standard(s) are needed in order to make the Restricted Affordable Units economically feasible.***

b. **Notice and Hearing.** The application shall follow the procedures for conditional uses set forth in Section 12.24 D. of this Code. ***A public hearing shall be held by the City Planning Commission*** or its designee. The decision of the City Planning Commission shall be final.

c. ***The City Planning Commission shall approve*** a Density Bonus and requested waiver or modification of any development standard(s) unless the Commission, based upon substantial evidence, makes either of the two findings set forth in Subparagraph (g)(2)(i)c., above.

(ii) For Housing Development Projects requesting waiver or modification of any development standard(s) ***not*** included on the Menu of Incentives in Paragraph (f) above, ***and which include other discretionary applications***, the following shall apply:

a. ***The applicable procedures set forth in Section 12.36 of this Code shall apply***.

b. The decision must include a separate section clearly labeled "Density Bonus/ Affordable Housing Incentives Program Determination".

c. The decision-maker shall approve a Density Bonus and requested waiver or modification of any development standard(s) unless the decision- maker, based upon substantial evidence, makes either of the two findings set forth in Subparagraph (g)(2)(i)c., above.

So, in summary, the full menu protocol set out in 12.22A25.(g) (incorporated into the TOC Ordinance) is to be utilized (i.e. the distinction between on-menu and off-menu incentives), and (ii) the protocol to be utilized when ***off-menu*** incentives are chosen (as is the case here because the front, side, and rear yard set-backs all exceed the 20% divergent threshold, as does the open space incentive) is set out in Section 12.22A.25(g)(3). That protocol mandates (i) the submission of an *economic pro-forma* justifying the need for the incentives and concessions sought (i.e. that without them, the 5 extremely low affordable units could not be provided and be subsidized by the requested number of market rate units (45)[4]

[4] ***There is an issue here with regard to the unit mix*** and specifically whether all of the market rate units are going to be long-term rentals, or whether a portion of the units are to be set-aside for short-term (AirBnb-type) rentals. In the latter instance (where there is a mix between long-term and short-term rentals, the revenue streams arguably are greater; thus removing the need for as many market-rate units. This is the kind of project-specific economic work-up (as opposed to just a general economic study) "pro-forma" should be submitted as part of the application package. The City takes the position that AB 2501 amended the density bonus law to remove any need for an economic pro-forma. All the legislature did was eliminate the requirement for an economic study. If the legislature had intended to remove the requirement for *economic pro-formas*, it would have done so clearly and explicitly. Moreover, the City Council never removed the language in the density bonus implementation law which mandated an economic pro-forma for off-menu concessions or incentives sought by the developer. So the mandatory duty to require it still exists. If the City Council believed the legislature's action in AB 2501 was controlling, then it should have repealed this provision. Finally, it should be noted that *by definition*, the TOC Ordinance explicitly, by its terms, only applies in lieu of any density bonus "ask" by the developer, not in addition to or on-top of any other rights a developer would have under the density bonus law. This is relevant and significant because the TOC law references the City's density bonus implementation law for purposes of specifying the protocol to be followed when a developer proposes a TOC project which includes density bonus units. So the density bonus protocol (the full

c. The City Planning Commission as the Initial Decision-Maker under LAMC §12.36 (Projects Requiring Multiple Approvals).

If Site Plan Review is required, two levels of discretionary approval are implicated. LAMC §12.36 directs that in such a circumstance, the City Planning Commission will make all the decisions as the initial decision-maker. Here is the relevant portion of LAMC §12.36(C)(1):

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protocol) must be applied as written. . . That means (i) making use of the "on-menu/off-menu" choice, (ii) requiring an economic pro-forma for off-menu incentives, and most importantly, (iii) a public hearing before the City Planning Commission who acts as the initial decision-maker. So the protocol used here where the director was the initial (and sole decision-maker) was and is inconsistent with the protocol mandated by the code.

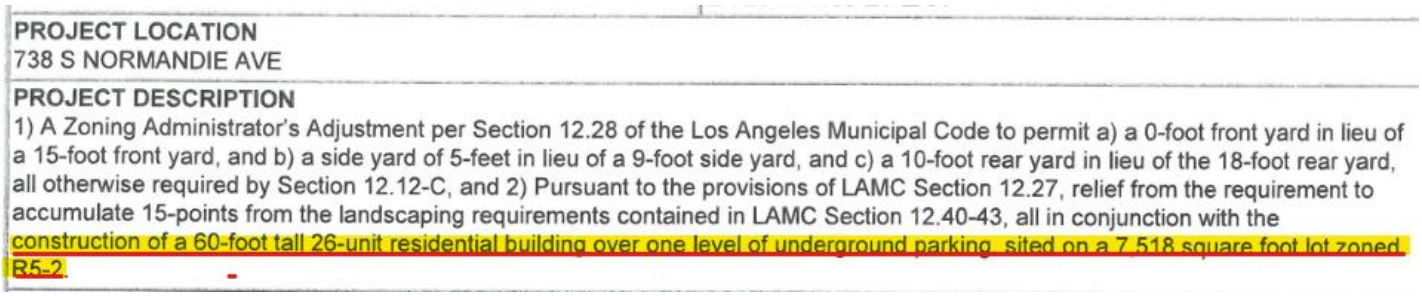
Finally, it also should be noted that if the project (because it has 50 residential units) ***requires*** *site plan review* under LAMC 16.05 then under LAMC Section 12.26, that determination would be made by the City Planning Commission as the *initial decision-maker*. That was not done here either. Planning says erroneously that the 50 unit threshold to trigger site plan review under LAMC Section 16.05 excludes the density bonus units from the calculation. As noted herein, LAMC Section 16.05 does not provide any such exclusion, which supports the assertion that that Planning is wrong here as well, as a matter of law (versus applying an abuse of discretion standard - because here we have two mandatory actions directed under the City's protocol (1) the granting of a density bonus, and (2) the invocation of site plan review (both of which are two separate discretionary actions) which are being ignored for the purpose of avoiding at all costs any kind of (a) extended public hearing, where the public is notified and has a chance to comment (a clear denial of procedural and substantive due process).

> **C. Decision-makers.** ***Notwithstanding any provision of this Code to the contrary***, the following shall apply for projects requiring multiple approvals.
>
> 1. **City Planning Commission.** ***If a project requires any approval or recommendation separately decided by an Area Planning Commission, the Zoning Administrator, and/or the Director, as the initial decision-maker, and also requires any approval or recommendation by the City Planning Commission as the initial decision-maker, then the City Planning Commission shall have initial decision-making authority for all of the approvals and/or recommendations***.

So either way, whether by application of the density bonus implementation protocol, combined with Site Plan Review, or just the use of the density bonus protocol by itself, the City erred in failing to have the City Planning Commission act as the initial decision-maker with respect to this project.

d. *The Project Does Not Have to Go 7 Stories For the Proponent to Supply the 5 Extra Very-Low Income Units*

The project originally started out as 26 units (all studios), 6 stories, with one level underground parking. That meant that the residences would consist of 4 stories, with one story ground level parking, and one story below ground. See Screen-Shot from the MND below:



PROJECT LOCATION
738 S NORMANDIE AVE

PROJECT DESCRIPTION
1) A Zoning Administrator's Adjustment per Section 12.28 of the Los Angeles Municipal Code to permit a) a 0-foot front yard in lieu of a 15-foot front yard, and b) a side yard of 5-feet in lieu of a 9-foot side yard, and c) a 10-foot rear yard in lieu of the 18-foot rear yard, all otherwise required by Section 12.12-C, and 2) Pursuant to the provisions of LAMC Section 12.27, relief from the requirement to accumulate 15-points from the landscaping requirements contained in LAMC Section 12.40-43, all in conjunction with the construction of a 60-foot tall 26-unit residential building over one level of underground parking, sited on a 7,518 square foot lot zoned R5-2.

These studio units were 845 sq. feet in size as per the screen shot below from the approved plans:

738 S. Normandie Ave

Site Address	738 S. Normandie Ave					
Zoning	Existing	R5-2		Proposed		R5-2
Density	Allowable Unit #*	37.8	37	Proposed Unit #		34
	* 200 sf/unit per R5-2/ Regional Center					
FAR	Allowable	R5-2	6.0	Proposed		5.0
Lot Area	R5-2		7,517.7			
	Total		7,517.7			
FAR Calc Area(S.F.)	Allowable	5750x6.0=	34,500	Proposed		28,734
	*Buildable R5-2 Area=4,765					
Parking	Required*	Residential	34	Proposed	Residential	29
	* 1 for Studio, 1.5 for 1BR, 2 for 2BR W/ 15% TRANSIT REDUCTION				TOTAL	29
Bike Parking	Required*	Residential	38	Proposed	Residential	38
	* 34 for long term & 4 for short term				TOTAL	38
Open Space	Studio	34 units		Proposed		
				Comm Space		
				Court yard/ Roof Deck		1,700
				Rear yard		
				Private Deck		1,700
	Required*		3,400	Total		3,400
	* 100sf for Studio					

Unit Mix	STUDIO	1BR	2BR	TOTAL	Remark
GROUND FLR.					
2F	6			6	
3F	6			6	
4F	6			6	
5F	6			6	
6F	5			5	
7F	5			5	
TOTAL	34			34	
% of Total	100.0%	0.0%	0.0%	100.0%	
Unit Average	845.00				
Net Rentable	28,730.00				

Total Residential Building Area	32,749.00
Total Subterranean Parking	7,105.00
Total Surface Parking	5,379.00

This latest iteration has the studio units cut in half to between 360 sq. ft and 438 sq. ft. So instead of the studio units averaging 845 sq. ft., they average 399 sq. ft. which is less than half of the average sq. footage of the studio units in the prior iterations.

So the developer did not increase the number of units by increasing the square footage of the building. The unit increase came from a decrease in the square footage of the units. Usually, when developers seek concessions or incentives to incorporate density bonus units into their project (some of which are market-rate units (to subsidize the provision of the affordable units; while others are the affordable density bonus units), they increase the square footage of the project.

What occurred here is precisely the opposite. The square footage of the market rate units was ***reduced*** and affordable units added. Does this make any sense? Answer: No. What is means is that since the size of the studio units can be manipulated (in this case decreased), the developer could and should be able to provide the five extra-low affordable units consistent with the six-story structure (twenty-feet shorter) originally proposed. So, for example, assuming the 26 studio units originally proposed were 845 sq. ft, and assuming further the size of the studio units was reduced by half, that would mean that within the same building envelope 52 studio units could be provided in a sixty-foot tall structure and the project still be profitable. This project has 50 units total, and 5 affordable units (extra-very-low affordable units).

Therefore, there is nothing in the record which demonstrates that the developer is unable to provide the 5 affordable units within the five residential stories contemplated in the 26 (studio) unit proposal given that the number of studio units has now risen from 26 (then 34) to now 45. The only difference is that the building is 1-2 stories taller.

But in going for those extra 1-2 stories, as noted above, the developer is significantly damaging and impairing a very important historical resource, the *Normandie-Mariposa Historical Apartment District*.

In short, this entire proposal is a scam to artificially increase the developer's profit using the TOC law (Transit-Oriented Affordable Housing Incentive Program) while getting a CEQA exemption to boot when the facts and evidence demonstrate on their face that the five affordable units could be provided within a 5-6 story building envelope simply by decreasing the square footage of the studio units (and thus increasing the number of units).

All of this can and should be more thoroughly evaluated in the context of a "re-do" before the Planning Commission as required under LAMC

§12.22(A)(5)(g)(3), based on the economic pro-forma mandated under LAMC §12.22(A)(25)(g)(3)(a), together with a CEQA work-up which objectively evaluates the impact this proposed development will have on the *Normandie-Mariposa Historical Apartment District*.

For each of the foregoing reasons, the appeal of Carolyn Zanelli should be granted.

Very truly yours,

NOEL WEISS

NW: nww
042820

cc: Client & Counsel
Carolyn Zanelli

Public Comment Submitted in Support of **Appeal of Carolyn Zanelli** – **Council File No. 20-0087**

Item No. 22 – City Council Agenda for **Wednesday, April 29, 2020**.

My client, Kent Apartments, LLC. supports the appeal of Carolyn Zanelli challenging the proposed CEQA Class 32 Categorical Exemption sought by 738 Normandie, LP in connection with its development of the 738 So. Normandie Ave site. Kent Apartments, LLC is the owner of the adjacent property located at 732 So. Normandie. The reasons the appeal should be granted are noted in greater detail in the attached letter to the City Council, but can be summarized as follows:

(1) An exception to the granting of the CEQA (in-fill) exemption applies under Section 15300.2(d) of the CEQA guidelines because the project if built-out as proposed will result in a substantial adverse change in the historic significance of the Normandie-Mariposa Historical Apartment District. The "District", as a protected historical resource, consists in this case of a geographic area on Normandie Avenue and Melrose Avenue, bordered by 7th Street on the North and 8th Street on the South. The "District" is, by definition, a "historical resource" and is presumed to be historically and culturally significant unless the preponderance of the evidence demonstrates that the resource is not historically or culturally significant. Public Resources Code Section 21084.1 The integrity and significance of the Normandie Avenue streetscape will be substantially, materially, and prejudicially altered by this project because a contemporary 7 story structure is inserted in the middle of what is unbroken street frontage consisting of 4-5 story Victoria buildings which remain as they were when constructed in 1926-1930. This area of Normandie Ave. is possibly the single-best preserved block of 1920's (pre-war) apartment buildings in all of Los Angeles. The size, character and design of the 738 So. Normandie project is out of place with the Victorian design, sense, and sensibility of the historically protected geographic "District" and if built as designed, the integrity, setting, feeling, and association of the remaining buildings in the “District” will be destroyed. Therefore, the "exception" to the CEQA Class 32 "exception" applies. A CEQA work-up is merited so that mitigating measures can be taken to protect the “District” as a historical environmental resource. As part of the CEQA work-up, a shoring plan would be evaluated and approved to protect the adjacent historical property at 732 So. Normandie from damage during construction. Granting the CEQA Exemption would deny the owner of the 732 So. Normandie property this benefit.

(2) The CEQA work-up needed would also involve an analysis of the cumulative impacts of the project, which, when taken as a whole, would substantially diminish the historical significance of the "District". Planning omits reference to projects which have been approved at 715 So. Mariposa Ave or 744 So. Mariposa Avenue. Those projects ignored any evaluation of their impact on the significance of the "District" as a historical resource. Planning also omitted reference to the fact that in October, 2017, a variance was granted to this same applicant to build 34 units on the same site which, it now appears, the proponent has abandoned in lieu of this proposed 50 unit project. A CEQA work-up would properly take account of the development already approved and whether this project would further erode the historical significance of the "District". Under Berkeley Hillside Preservation vs. City of Berkeley (2015) 60 Ca. 4th 1086, to trigger the "exception" to the (CEQA) "exemption" one need only show a "reasonable possibility" of a significant effect due to an unusual circumstance. The unusual circumstances in this case are (i) that the "District" (the entire two-block visage) is a recognized historical resource, and (ii) that its character and feel and history as an example of a unique streetscape of 1920's buildings containing an unbroken street frontage of 4-5 story buildings of Victorian design, will

be completely obliterated and broken by a 7-story contemporary structure building constructed right in between two historic Victorian structures;

(3) Design guidelines adopted by the CRA to in December, 1995, and following, to protect the "District" as a historical resource, must be followed by the City as the successor to the CRA. By not having conducted a CEQA work-up and design review, the City has failed to carry out its responsibilities as the successor to the CRA to ensure that the Wilshire Center/Koreatown Redevelopment Plan is followed;

(4) To qualify for the exemption, the City must follow its own protocols and procedures. It has not done so in this case. (i) No Site Plan Review as required under LAMC Section 16.05(C)(1)(b) was done; (ii) No hearing before the City Planning Commission was held as a result of the use of "off-menu" incentives; & (iii) the proponent did not submit an economic pro-forma justifying the need for the concessions sought as per LAMC Section 12.22(25)(g)(3), as incorporated into LAMC Section 12.22(A)(31)(e).