

MASTER APPEAL FORM

ORIGINAL

City of Los Angeles – Department of City Planning

APPEAL TO THE: City Council
(DIRECTOR, AREA PLANNING COMMISSION, CITY PLANNING COMMISSION, CITY COUNCIL)

REGARDING CASE #: CPC-2013-4134-TDR-MCUP-ZV-SPR

PROJECT ADDRESS: 820, 826 S. Olive Street, 817, 819, 825 S. Hill Street

FINAL DATE TO APPEAL: November 3, 2014

- TYPE OF APPEAL:**
1. Appeal by Applicant
 2. Appeal by a person, other than the applicant, claiming to be aggrieved
 3. Appeal by applicant or aggrieved person from a determination made by the Department of Building and Safety

APPELLANT INFORMATION – Please print clearly

Name: CREED LA

- Are you filing for yourself or on behalf of another party, organization or company?
 Self Other: _____

Address: 501 Shatto Place, Suite 200

Los Angeles, CA Zip: 90020

Telephone: (877) 810-7473 E-mail: jeff@creedla.com

- Are you filing to support the original applicant's position?
 Yes No

REPRESENTATIVE INFORMATION

Name: Ellen Trescott, Adams Broadwell Joseph & Cardozo

Address: 520 Capitol Mall, Suite 350

Sacramento, CA Zip: 95814

Telephone: (916) 444-6201 E-mail: etrescott@adamsbroadwell.com

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

JUSTIFICATION/REASON FOR APPEALING – Please provide on separate sheet.

Are you appealing the entire decision or parts of it?

Entire

Part

Your justification/reason must state:

- The reasons 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

ADDITIONAL INFORMATION/REQUIREMENTS

- Eight (8) copies of the following documents are required (1 original and 7 duplicates):
 - Master Appeal Form
 - Justification/Reason for Appealing document
 - Original Determination Letter
- Original applicants must provide the original receipt required to calculate 85% filing fee.
- Original applicants must pay mailing fees to BTC and submit copy of receipt.
- Applicants filing per 12.26 K "Appeals from Building Department Determinations" are considered original applicants and must provide notice per 12.26 K 7.
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the City (Area) Planning Commission must be filed within 10 days of the written determination of the Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (i.e. ZA, APC, CPC, etc...) makes a determination for a project that is not further appealable.

*"If a nonelected decision-making body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decision-making body, if any."
--CA Public Resources Code § 21151 (c)*

I certify that the statements contained in this application are complete and true:

Appellant Signature:  Date: 11/3/2014

Planning Staff Use Only

Amount \$ 106.80	Reviewed and Accepted by MNGUMEN	Date 11/3/14
Receipt No. 20211	Deemed Complete by	Date

Determination Authority Notified

Original Receipt and BTC Receipt (if original applicant)

ADAMS BROADWELL JOSEPH & CARDOZO

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November 3, 2014

Los Angeles City Council
c/o: Los Angeles Development Service Center
201 N. Figueroa Street, 4th Floor
Los Angeles, CA 90012

Re: Reasons for Appeal, and Request for Appeal Hearing Concurrent with
TFAR Hearing (CPC-2013-4134-TDR-MCUP-ZV-SPR)

Dear City Council Members:

The Coalition for Responsible Equitable Economic Development (“CREED LA”) appeals the City Planning Commission’s October 9, 2014 approval of variances and other concessions for a 50-story high-rise development between South Olive and South Hill Streets, and West 8th and West 9th Streets, in downtown Los Angeles (“Project”), proposed by Onni Real Estate. CREED LA also contends that the Planning Commission acted based on inaccurate and misleading information regarding the scope of the City’s discretion under the Transfer of Floor Area Rights (“TFAR”) Ordinance. Because there is significant overlap between the issues raised in this appeal and in the Planning Commission’s recommendation to adopt the requested Transfer of Floor Area Rights for the Project, CREED LA requests that the City Council hear both items together at the same hearing.

As explained more fully below, the Planning Commission abused its discretion in granting variances for the Project and allowing other deviations from the City Code and the Downtown Design Guide. As stated in the Municipal Code, a variance is a “special privilege.”¹ The Applicant has chosen to design a high-rise Project that will utilize a large proportion of the City’s Convention Center floor area rights. An Applicant’s project design decisions are not alone an adequate reason to grant special privileges regarding compliance with the City’s development

¹ Los Angeles Municipal Code (“LAMC”) § 12.27.D.

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standards. In fact, the TFAR Ordinance expressly states that projects utilizing the City's TFAR option must comply with all such standards. The Applicant here will not suffer unnecessary hardships if the requested variances are denied. There are no special circumstances on the Project site that warrant the variances, and the variances are not required for the preservation and enjoyment of a substantial property right.

CREED LA also opposes the Transfer Plan that the Planning Commission recommended for City Council approval under the TFAR Ordinance. CREED LA urges the City Council to reject the Applicant's request to purchase the City's limited TFAR rights for a project that will deviate from City development standards, given the Applicant's failure to consider providing direct public benefits by committing to local hire and prevailing wages, as encouraged by the Planning Commission and authorized by the TFAR Ordinance. It is within the City Council's discretion to authorize these direct benefits, in lieu of a portion of the Applicant's proffered "public benefits" payment. CREED LA urges City staff and leaders to consult in earnest with the Applicant regarding these issues, in the hopes of expeditiously resolving this appeal.

I. INTEREST OF APPELLANT

CREED LA is an unincorporated association of individuals and labor organizations that may be adversely affected by the City's determinations regarding the Project, and the City's decision to sell valuable floor area rights to the Applicant. CREED LA's mission is to ensure that proposed development projects in the City of Los Angeles foster sustainable communities by minimizing environmental impacts and ensuring community benefits, including the advancement of a safe and skilled construction workforce through job training and career path construction industry jobs that maintain area wage standards and working conditions.

CREED LA's members include the Sheet Metal Workers Local 105, International Brotherhood of Electrical Workers Local 11, Southern California Pipe Trades District Council 16, and their members and their families who live and work in the City of Los Angeles. Individual members of CREED LA and its member organizations include Thomas Brown, Shomari Davis, Luther Medina, and John Ferruccio, who live, work, recreate and raise their families in Los Angeles. Accordingly, they would be directly affected by the Project's failure to meet the

development standards established by the City, and by the City's unwillingness to consult with the Applicant regarding the provision of public benefits for workers. CREED LA has an interest in enforcing City planning standards that encourage sustainable development and a high quality of life for City residents. CREED LA also has an interest in opposing the sale of the City's limited floor area rights to developers who fail to provide public benefits consistent with the TFAR Ordinance by committing to local hire and the payment of prevailing wages.

II. REASONS FOR APPEAL

A. Failure to Include All Planning Commission Conditions of Approval

The City Planning Commission specifically approved a parking variance from the Project *on the condition that* the Applicant run conduit to 20% of the parking spaces for future electric vehicle charging stations, and the Applicant readily agreed to this at the Planning Commission hearing.² The Planning Commission's decision letter, however, does not include the charging station conduit condition. Accordingly, the decision letter is incomplete and fails to include all approval conditions imposed by the Planning Commission.

B. Failure to Require All Parking Spaces in Accordance with City Standards

The Los Angeles Municipal Code mandates that all parking spaces required by City parking standards "shall be provided" by a project.³ In this case, however, the Planning Commission's Condition of Approval number 10 states that the Project shall provide a *maximum* of 533 parking spaces.⁴ This condition is inconsistent with City standards and should be revised so that no less than 533 parking spaces must be provided by the Project.

² An audio recording of the Planning Commission hearing is available at: <http://cityplanning.lacity.org/>, by selecting "Meetings and Hearings" then "City Planning Commission" from the left-hand menu, then selecting the "Audios" icon for the October 9th meeting, and selecting the highlighted title links under Meeting Item No. 6. The Planning Commission's motion to require conduit for electric vehicle charging stations is at "Part 2" of the audio tape, at 23:25.

³ LAMC § 12.21.A(4)(p).

⁴ Planning Commission Determination Letter dated October 17, 2014, p. C-3.

C. Improper Variance Allowing 40% Compact Vehicle Parking

The Project will remove 142 existing affordable public parking spaces in downtown Los Angeles, and will provide the bare minimum number of parking spaces, using all available reductions under the City Code. Because the Project is in the Central City Area, it qualifies for an overall reduction in the required number of off-street parking spaces. The Project is required to provide only 1.25 spaces for units with more than 3 rooms, and 1 parking space for units with less than 3 rooms.⁵ The Applicant has opted to further reduce this amount by 9.2%, by providing increased bicycle parking.⁶ The Project will provide no guest parking, and no parking for the retail space located on the ground level.⁷ In total, the 50-story high-rise tower will provide 533 parking spaces, only 391 more than currently exist.⁸

Despite the fact that the Project's location allows the Applicant to provide this bare minimum number of parking spaces, the City Planning Commission approved a variance from Municipal Code section 12.21.A5(c). That section disallows the use of compact parking spaces for residential units, unless a standard space is provided for each unit. Compact parking spaces are 1 foot narrower in width and 3 feet shorter in length than standard spaces.⁹ In connection with the variance, the Planning Commission adopted a Condition of Approval allowing approximately 40% of the spaces (209 spaces) to be compact in size.

In order to approve the variance and related condition of approval, the Planning Commission needed to find that there would be "practical difficulties or unnecessary hardships" unless the variance was approved.¹⁰ The only argument

⁵ Los Angeles Municipal Code ("LAMC") §§ 12.21.A(4)(a), (p).

⁶ *Id.* § 12.21.A(4).

⁷ Not requiring any parking for the retail space is an odd interpretation of the parking standards for commercial buildings in the Downtown Business District. Under LAMC § 12.21.A(4)(i), commercial buildings with a gross floor area of 7,500 square feet or larger must provide 1 parking space for every 1,000 square feet of usable space. City Planning staff apparently interpreted the word "building" to mean only the retail space on the first floor of the building, which is less than 7,500 square feet. This is an incorrect interpretation of the parking standards, not only because the "building" is much larger than the retail space, but also because the "gross" floor area of the first floor of the building alone is much greater than 7,500 square feet.

⁸ Planning Commission Determination Letter dated October 17, 2014, p. F-9.

⁹ LAMC § 12.21 A.5(a).

¹⁰ *Id.* § 12.27 D.1.

put forward for why this factor was met is that the Applicant designed its 50-story tower so that it does not have enough space to provide adequate parking, and the Project is located near public transit.¹¹ These are not practical difficulties or unnecessary hardships that qualify for a variance.

The Municipal Code looks unfavorably on granting a variance “if the conditions creating the need for the variance were self-imposed.”¹² Designing a high-rise without adequate space for parking is a difficulty that is solely of the Applicant’s own making. It appears that the Applicant is perfectly capable of redesigning the Project to meet City standards. For example, the Project application materials and Mitigated Negative Declaration for the Project both indicated that that the Project would include 589 residential units, whereas the Project that the Planning Commission approved only included 522 units.

The Project’s location near transit is also not enough to justify a variance. The Applicant has already received almost a 50% reduction in the number of required residential parking spaces, another 9.2% reduction by providing bicycle spaces, *and* an exemption from providing retail parking spaces, solely due to the Project’s location.¹³ The first factor for granting a variance is not met.

The Planning Commission was also required to find “special circumstances” on the Project site, such as lot size, topography, location, or surroundings, which are not present on other sites. There is no substantial evidence that the Project site has any such special circumstances. The only plausible argument for special circumstances is that the Project site is “relatively small and narrow.”¹⁴ Other nearby projects have constructed higher parking ratios, however, on smaller lots

¹¹ Planning Commission Determination Letter dated October 17, 2014, p. F-28.

¹² LAMC § 12.27 D.

¹³ LAMC §§ 12.21 A.4 (buildings near transit may reduce parking spaces by providing bicycle parking); 12.21 A.4(i) (exception for commercial parking in Downtown Business District); 12.21 A.4(p) (residential parking reduction in Central City Area).

¹⁴ Planning Commission Determination Letter dated October 17, 2014, pp. F-29 to F-30. The other stated reasons include that the Project will provide 533 parking spaces, that the Project is in a transit-oriented location and thus already qualifies for reduced parking requirements, and that the Project includes a “replacement of existing office parking” [it does not], none of which is a special circumstance related to the size, topography, location or surroundings of the Project site.

than the Project site, with fewer compact spaces.¹⁵ The Applicant has chosen to construct a very tall 50-story tower with inadequate space to meet the City's parking requirements, which is a self-imposed condition.

Finally, the Planning Commission was required to make a finding that a variance is needed for the "preservation and enjoyment of a substantial property right" possessed by other similar sites. This has not been shown. The Planning Commission's written determination notes that three other nearby projects have been granted variances allowing a certain percentage of residential units to have compact parking spaces instead of standard sized spaces. The City approved variances allowing 8% of the residential units to have compact parking in the Evo project, 56% of units to have compact parking in the Fashion Institute of Design (FIDM) student housing project, and 26% of units to have compact parking in the Glass Tower project.¹⁶

None of these prior variances show that others have been granted the same kind of special treatment requested by the Applicant. The Evo project was allowed only 8% compact spaces, which is significantly less than the 40% percent approved for this Project. Furthermore, the Evo project provided 1.37 parking spaces per unit, plus guest parking spaces, which is a significantly higher parking ratio than this Project will provide (1 space per unit plus no guest or retail parking).¹⁷

The Glass Tower project was allowed 26% compact spaces, which is also much less than the 40% approved for this Project. The Glass Tower project provided seven levels of parking (the same as this Project) for a much smaller tower (22 stories), and provided 1.57 parking spaces per unit, plus parking spaces for guests, which is much more parking than will be provided by this Project.¹⁸

The FIDM project provided a ratio of 1.5 parking spaces per unit, which is a 50% higher ratio than this Project will provide, plus parking for residential guests, and a significant amount of parking for non-residential use.¹⁹ The City authorized

¹⁵ See e.g. <http://pdis.lacity.org/pdf/viewPDF.aspx?Query=Type=PDIS:Doc=1CF16>, p. 6 (1.57 spaces per unit provided for a 22-story tower on a 23,600 square foot lot, plus guest parking, with 26% compact spaces. The Project site is 39,000 square feet.)

¹⁶ *Ibid.* p. F-31.

¹⁷ <http://pdis.lacity.org/pdf/viewPDF.aspx?Query=Type=PDIS:Doc=9EF3>, pp. 10, 12.

¹⁸ <http://pdis.lacity.org/pdf/viewPDF.aspx?Query=Type=PDIS:Doc=1CF16>, p. 6.

¹⁹ <http://pdis.lacity.org/pdf/viewPDF.aspx?Query=Type=PDIS:Doc=16F12>, p. 6.

56% of the residential units to use compact spaces, but this was because the site was irregularly shaped and was already proposing to provide 4.5 levels of subterranean parking.²⁰ The City found that requiring a full fifth level of subterranean parking would not have been economically feasible.²¹ The City later noted that the students living on the Project site would be located close to the FIDM campus, and explained that “there are special circumstances applicable to the subject property such as location and surroundings relative to the FIDM campus and its related uses that do not apply generally to other property in the same zone and vicinity.”²²

The Project Applicant would not be deprived of a substantial property right that is possessed by other similar sites if it were required to provide standard sized spaces as required by the Municipal Code. The Project proposes two levels of subterranean parking, which is much less than other similar projects, and it will provide a much lower parking ratio than any of the other projects that received a variance for compact spaces. The City should not approve such a high percentage of compact spaces for this Project, which would effectively grant a windfall to a developer that is already receiving significant benefits through the purchase of the City’s TFAR credits.

D. Improper Variance Allowing Dispersed Bicycle Parking

The City should not have granted a variance from the requirement that long-term bicycle parking inside a parking garage “shall be located along the shortest walking distance to the nearest pedestrian entrance of the building” and “shall be located on the level of the parking garage closest to the ground floor.”²³ The variance was requested because the Applicant’s Project design left “little space” for the required bicycle parking.²⁴

Instead of meeting the location and access standards of the City Code, which are intended to provide convenient access for bicyclists, the variance would allow bicycle parking spaces to be distributed throughout the seven-level parking garage, and accessible only by elevator.²⁵ The Planning Commission’s decision letter

²⁰ *Ibid.*, p. 13.

²¹ *Ibid.*

²² *Ibid.*, p. 15.

²³ LAMC § 12.21 A.16(e)(2)(iii).

²⁴ Planning Commission Determination Letter dated October 17, 2014, p. F-29.

²⁵ *Ibid.* pp. F-29, F-32.