

MASTER APPEAL FORM

City of Los Angeles – Department of City Planning

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

REGARDING CASE #: VTT-72465-SL-1A, VTT-72465-SL and ENV-2013-3734-MND

PROJECT ADDRESS: 11767 Bellagio Rd, Los Angeles, CA 90049

FINAL DATE TO APPEAL: November 14, 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: Bruce D. Kuyper

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

Self Other: _____

Address: 11805 Bellagio Rd, Los Angeles, CA

Zip: 90049-2116

Telephone: (213) 304-3150 E-mail: bruce@kuyper.name

- Are you filing to support the original applicant's position?

Yes No

REPRESENTATIVE INFORMATION

Name: _____

Address: _____

Zip: _____

Telephone: _____ E-mail: _____

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: Bruce D. Kuyper Date: Nov. 7, 2014

Planning Staff Use Only

Amount <u>106.80</u>	Reviewed and Accepted by <u>Dennis Green</u>	Date <u>11/10/14</u>
Receipt No. <u>021175130</u>	Deemed Complete by <u>Jeanie J. [Signature]</u>	Date <u>11/10/14</u>

Determination Authority Notified

Original Receipt and BTC Receipt (if original applicant)

AGGRIEVED PARTY



WEST LOS ANGELES AREA PLANNING COMMISSION

200 N. Spring Street, Room 272, Los Angeles, California, 90012-4801, (213) 978-1300
www.lacity.org/PLN/index.htm

Determination Mailing Date: NOV 04 2014

CASE: VTT-72465-SL-1A
CEQA: ENV-2013-3734-MND

Location: 11767 East Bellagio Road
Council District: 5 - Koretz
Plan Area: Bel Air-Beverly Crest
Zone: [Q]RD1.5-1VL

Applicant: Farhad Ashofteh and Daniel Saparzadeh
Representative: Steve Nazemi - DHS & Associates, Inc.

Appellant: Bruce Kuyper

At its meeting on **October 15, 2014**, the following action was taken by the West Los Angeles Area Planning Commission:

1. Denied the appeal.
2. Sustained the decision of the Deputy Advisory Agency to approve Vesting Tentative Tract Map No. 72465-SL for a maximum of five small lots and the construction, use, and maintenance of five small lot single-family dwellings.
3. Adopted Mitigated Negative Declaration ENV-2013-3734-MND as the environmental clearance for the project.
4. Advised the applicant that, pursuant to California State Public Resources Code Section 21081.6, the City shall monitor or require evidence that mitigation conditions are implemented and maintained throughout the life of the project and the City may require any necessary fees to cover the cost of such monitoring.
5. Advised the applicant that pursuant to State Fish and Game Code Section 711.4, a Fish and Game Fee is now required to be submitted to the County Clerk prior to or concurrent with the Environmental Notice of Determination (NOD) filing.

Fiscal Impact Statement: There is no General Fund impact as administrative costs are recovered through fees.

This action was taken by the following vote:

Moved: Commissioner Halper
Seconded: Commissioner Waltz Morocco
Ayes: Commissioners Halper, Waltz Morocco, Margulies, and Donovan

Vote: 4 - 0


Rhonda Ketay, Commission Executive Assistant
West Los Angeles Area Planning Commission

Effective Date/Appeals: This action of the West Los Angeles Area Planning Commission **will be final within 10 days from the mailing date on this determination** unless an appeal is filed within that time to the City Council. All appeals shall be filed on forms provided at the Planning Department's public Counters at 201 North Figueroa Street, Third Floor, Los Angeles, or at 6262 Van Nuys Boulevard, Room 251, Van Nuys. Forms are also available on-line at www.lacity.org/pln.

NOV 14 2014

Final Appeal Date: _____

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.

Attachments: Advisory Agency's Determination Letter dated August 6, 2014

cc: Notification List
Heather Bleemers

**Justifications and Reasons for Appeal of
Case Nos. VTT-72465-SL-1A, VTT-72465-SL and ENV-2013-3734-MND**

I, Bruce D. Kuyper, appeal the West Los Angeles Area Planning Commission's November 4, 2014 determination denying my appeal (VTT-72465-SL-1A) of the entire August 6, 2014 Letter of Decision ("LOD") of the Advisory Agency in VTT-72465-SL and ENV-2013-3734-MND, for the reasons detailed below.

I. Reasons for the Appeal

As detailed in section IV below, the LOD violates the California Subdivision Map Act, the City Charter, the Q condition, the Los Angeles Municipal Code and CEQA. The LOD also ignores the Neighborhood Council's vote against support of the project.

II. Specifically the Points at Issue

- A. The LOD violates the California Subdivision Map Act, the City Charter, the Q condition and the Los Angeles Municipal Code;
- B. The LOD violates CEQA; and
- C. The LOD ignores the Neighborhood Council's vote against support of the project.

Each of these points is detailed in section IV below.

III. How I Am Aggrieved by the Decision

I own and reside in a single-family home (at 11805 Bellagio Rd.) that is 4 lots away from the proposed project. The project will replace an attractive, 60-year old, single-story, single-family home with a massive 5-unit complex of 3-story units with rooftop decks. The proposed project will increase density on my street, resulting in increased parking in front of my home, increased traffic on my street (decreasing safety), and increased noise at my home. The decision approving this project will make my home less enjoyable and less desirable for these reasons. It will decrease my home's and my neighborhood's value and desirability. In addition, the decision violates the California Subdivision Map Act and the City Charter in my immediate neighborhood.

IV. Why I Believe That the DAA Erred and Abused His Discretion

- A. **The LOD Violates the California Subdivision Map Act, the City Charter, the Q Condition and the Los Angeles Municipal Code.**
 - 1. The proposed map is inconsistent with the applicable general and specific plans.

California Government Code section 66474(a) and Los Angeles Municipal Code section 17.05 require that a map not be approved if it is inconsistent with applicable general and specific plans.

The Bel Air-Beverly Crest Community Plan¹ (which shows in its metadata that it was authored by DAA Mr. Kim (“Author: jhkim”)), contains numerous statements and directives that this proposed project contravenes, among which are:

- “**Preserving and enhancing the positive characteristics of existing uses** which provide the foundation for Community identity, such as **scale, height, bulk, setbacks and appearance**.”
- One of “the most significant planning land use issues and ... facing the Bel Air-Beverly Crest Community” is the “**[n]eed to ... limit land use intensity ...**”
- “**The Plan encourages preservation of low density, single-family residential areas ...**” To the contrary, this project destroys an existing single-family home that is surrounded by other 1-story and 2-story single family homes, replacing it with five 3-story townhomes with open roof decks. The project is a physically connected monolith with substantially smaller setbacks than the existing single family home.
- “**Land use densities should be maintained at the lowest reasonable level** until a balance between land use and transportation facilities is achieved.”
- “Without an appropriate balance between the land use and circulation systems, **future subdivisions may be disapproved ...**”

(emphases added.) The Planning Department’s Appeal Recommendation Report does not address any of these elements of the community plan.

The Bel Air-Beverly Crest Community Plan designates the site for Low Medium II Multiple Family use, not Medium Multiple Family use. The plan’s land use legend clearly indicates that the RD1.5 zone corresponds to Low Medium II use, not Medium use. The Planning Department’s Appeal Recommendation Report does not address this appeal point. It therefore concedes it.

Los Angeles Municipal Code Section 12.09.1.B.4 requires **a minimum lot area of 5,000 square feet** and **a rear yard setback of 15 feet** in the RD1.5 zone, where the proposed subdivision is located. The requirements for RD1.5 zones, like all zone requirements, **can only be changed by action of the City Council after the making of specific findings**, as required by the City Charter.² The City Council has not acted to change the RD1.5 zone requirements for the proposed site and has made no findings specific to the site.

Article 2 of the Los Angeles Municipal Code, where Section 12.09.1.B.4 is located, is entitled “**SPECIFIC PLANNING – ZONING; COMPREHENSIVE ZONING PLAN.**” Thus, the Municipal Code’s zoning requirements of minimum lot size and rear yard setbacks, among other requirements, are part of a specific plan that the proposed project contravenes.

¹ <http://planning.lacity.org/complan/pdf/barcptxt.pdf>.

² See Charter Sections 558(a)(2) (“zoning or other land use regulations concerning permissible uses, height, density, bulk, location or use of buildings or structures, size of yards, open space, setbacks, building line requirements, and other similar requirements”) and 558(b)(2)-(3).

The LOD astoundingly asserts that the project will meet the community plan's need of "[l]ow and moderate income housing."³ The applicants stated in their application for the project at 6 units that the price range would be \$700,000 to \$900,000. At 5 units, the prices will be greater. Those prices clearly do not meet the "[l]ow and moderate income housing" need in the community plan that the DAA cites.

Lastly, the LOD violates Charter section 562 by granting the above variances from the RD1.5 zoning requirements without holding the required hearing (Charter section 562(a)) and by not making any of the required findings (Charter section 562(c)).

2. The design of the proposed subdivision is not consistent with applicable general and specific plans.

For the same reasons stated immediately above (section IV.A.1 above), the design of the proposed subdivision is inconsistent with applicable general and specific plans. This violates California Government Code section 66474(b) and Los Angeles Municipal Code Section 17.05.

3. The site is not physically suitable for the proposed density of development.

In contravention of California Government Code section 66474(d), the site is not physically suitable for the proposed density of development. The proposed density will substantially increase traffic on an already busy street, and on an alley that is insufficient for the additional frequent traffic of up at least 8 additional cars using the 8 off-street parking spaces provided in the 4 lots' garages on the alley.

In addition, the proposed density of development will increase the demand for on-street parking from family members' and visitors' cars, as well as owners' likely use of at least one garage parking place for storage of items other than automobiles. The on-street parking in front of the site is usually occupied outside of weekday working hours. The proposed density of development will remove at least 2 on-street parking places by the removal of curbs for driveway aprons for Lot 1 and the addition of a fire hydrant. This increased demand and reduced supply will increase the demand for parking beyond the site and further into the neighborhood, where no such problem currently exists. There are no curb cuts in this section of Bellagio Rd. (including all of the RD1.5 lots), where there is an alley in the back.

The proposed density of development also contravenes City policies restricting the size and density of development in Hillside Areas, where the site is located.

4. The Project Violates the Q Condition and the Los Angeles Municipal Code.

The proposed project's roof structures housing stairwells violates the Q condition that limits the height of the project to 32 feet. Rooftop stairwell structures are only allowed 5

³ LOD at 23.

additional feet under LAMC section 12.21.1 B.3(a). That section's exception that "roof structures for the housing of elevators and stairways may exceed the building height limit by up to ten (10) feet in height" applies only "where height is limited to thirty (30) feet or forty-five (45) feet," (emphasis added), which does not apply to the Q condition's height limit of 32 feet. The Planning Department's Appeal Recommendation Report (page B-3) conveniently omits this qualification and ignores it. The project's rooftop stairwells exceed this 37-foot height limit.

B. The Initial Study and MND Violate CEQA.

1. The Project's cumulative impacts were never considered. (Checklist Item XVIII(b))

The Initial Study's explanation for this checklist item⁴ incorrectly states that "there are no known current or future projects in the immediate vicinity that, in conjunction with this proposed project, would result in cumulatively significant environmental impacts." In the immediate vicinity is the current I-405 widening project, which has been going on for over 4 years. Also in the immediate vicinity is the construction of the 23-unit apartment building at 11731 Bellagio Rd., in the R3 zone that is at the very beginning of the block. In it inconceivable that these current projects in the immediate vicinity of the proposed project were not considered and included in the Initial Study. The project will obviously have cumulative substantial environmental impacts with the substantial environmental impacts that have caused and that are continuing to cause substantial environmental impacts already. The Planning Department's Appeal Recommendation Report (page B-4) admits that the only analysis of the I-405 widening project was analyzed simply by not observ[ing] any street closures or construction staging" during only one site visit. Had staff visited at night or on other days, they would have seen significant street closures and construction activity that has had substantial environmental impacts on the neighborhood.

The explanation also ignores the checklist item's definition of "Cumulatively considerable" that requires analysis of "the effects of past projects."⁵ There was a recent construction project in the vicinity of this project, a large commercial building at 662 N. Sepulveda Blvd., that had a significant environmental impact and that will make a further significant environmental impact with the cumulative environmental impacts of this project that are conceded in the MND (*e.g.*, land use, transportation/traffic, and noise).⁶ Not even the Planning Department's Appeal Recommendation Report discusses past projects, an admission that the required analysis of past projects was not considered. It only discusses how the 23-unit building will become an immediate past project soon, improperly failing to consider it as either a current project or a past project.

Because of the substantial cumulative environmental impacts of this project with the current and past projects, a full EIR is required. At a minimum, the MND needs to be revised to

⁴ MND at 29.

⁵ MND at 17 (emphasis added).

⁶ MND at 15-17 (Items X, XII, and XVI).