

MASTER APPEAL FORM

City of Los Angeles – Department of City Planning

5.

APPEAL TO THE: CITY COUNCIL

(DIRECTOR, AREA PLANNING COMMISSION, CITY PLANNING COMMISSION, CITY COUNCIL)

REGARDING CASE #: CPC-2014-666-VCU-ZAA-SPR

PROJECT ADDRESS: 11725 W. Sunset Boulevard, 11728 W. Chaparal Street, and 141 N. Barrington Avenue

FINAL DATE TO APPEAL: MAY 28, 2015

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: THELMA WAXMAN

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

Self

Other: THELMA AND ERIC WAXMAN and RESIDENTIAL NEIGHBORS OF ARCHER

Address: 11840 CHAPARAL STREET

LOS ANGELES

Zip: 90049

Telephone: (310) 472-1282

E-mail: THELMA.WAXMAN@GMAIL.COM

- 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: Julie Woz Date: 5-27-15

Planning Staff Use Only

Amount <u>\$106.80</u>	Reviewed and Accepted by <u>Ann M. Vidal</u>	Date <u>5/27/15</u>
Receipt No. <u>0203224882</u>	Deemed Complete by <u>[Signature]</u>	Date <u>5/21/15</u>

Determination Authority Notified

Original Receipt and BTC Receipt (if original applicant)

CPC-2014-666-VCU-ZAA-SPR

11725 W. Sunset Boulevard

11728 W. Chaparal Street

141 N. Barrington Avenue

Justification for Appeal by Aggrieved Persons Thelma and Eric Waxman and Residential Neighbors of Archer

Appellants appeal the entire decision of the City Planning Commission ("Commission") to the City Council in the above referenced matter and in particular the following decisions:

1. Certification of Draft and Final Environmental Impact Report, Errata No. 1, Errata No. 2 comprising ENV-2011-2689-EIR (State Clearinghouse No. 2012011001); Adoption of the accompanying Mitigation Monitoring Program and the related Environmental Findings and Statement of Overriding Considerations.
3. Approved determinations to permit the following height and area modifications:
 - a. A height of 41 feet, 4 inches, with a roof slope of 25 percent, for the North Wing Renovation, in lieu of the maximum height of 36 feet otherwise permitted by Section 12.21.1 of the LAMC;
 - b. A height of 36 feet, plus 10 feet to include the sunken North Garden (a total of 46 feet), with a roof slope of less than 25 percent, for the Multipurpose Facility in lieu of the height limit of 30 feet otherwise permitted by Section 12.21 fo the LAMC;
 - c. For projections and encroachments into yards for soccer goals, sports netting, bleachers and additional minor projections on the Project Site.
6. Approval of Site Plan Review for a project which results in an increase of 50,000 gross square feet or more of non-residential area, subject to the conditions of approval.
7. Adoption of the Findings.

In approving the Project, the Commission failed to address the questions and concerns raised by the Appellants and which are part of the record. Appellants incorporate by reference all of the comments and letters submitted into the record, including and without limitation copies of letters submitted by Thelma and Eric Waxman, Residential Neighbors of Archer, David Wright, Derek Watry, Tom Brohard, Brentwood Residents Coalition, Brentwood Hills Homeowners Association and other community groups and individuals.

A. Appellants are aggrieved by the decision

Residential Neighbors of Archer (RNA) is an unincorporated association of the residents in closest proximity to the Archer School for Girls, comprising many of the school's closest neighbors. Thelma and Eric Waxman live directly next to the School and share a western property line with Archer on Chaparal Street. Members of RNA, including the Waxmans, have been fully engaged in the approval process for the Archer Forward project ("Project") and in

discussions with the Archer School over the size and scope of the project and permitted activities. Approval of the project as it currently stands ignores critical concerns regarding the project's size and impacts on neighboring residents.

The Project's substantial expansion of the school's facilities and operations would fundamentally alter the character of the neighborhood. The size and scale of the Project will adversely affect or degrade adjacent properties because it places large-scale buildings on low-density residentially zoned lots on Chaparal Street that are inconsistent with the residential quality of the neighborhood. (The average house on Chaparal Street is 5,000 square feet, the average lot size is 19,000 square feet, there are no sidewalks and the street has only 21 homes on it. Compare this to the 19,000 square foot Performing Arts Center proposed to be built on a 22,000 square foot lot.)

In addition, the substantial increase in operations will negatively affect the quality of life of the residential neighborhood since most of the expanded use from current operations will occur at night and on the weekends. Under the approved Project the School will operate six days a week, up to 15 hours per day, and 12 months out of the year. Approval of the EIR and conditions of approval will harm the neighboring residents who will suffer the impacts of this expansion.

B. Basis for appeal

1. The City Planning Commission approved the Project without substantial evidence in the record to support any of the zoning findings.

Appellants appeal the decision because the City cannot make the required finding that "the project's location, size, height, operations and other significant features will be compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood, or the public health, welfare or safety." Nor can the City make the required Site Plan Review finding that "the project consists of an arrangement of buildings and structures (including height, bulk, and setbacks) . . . that is or will be compatible with existing and future development on adjacent properties and neighboring properties." The failure of the project to conform to zoning requirements is evidence that the project is incompatible with its surroundings, and thus it should not have been approved.

As required by City Charter, and in order to approve a CUP, the City must determine that the project is consistent with the City's General Plan. The Findings in support of the project's approval do not demonstrate consistency with the General Plan. The intrusion into the low density residentially zoned RE-11 area of the campus with two overly large institutional buildings does not comply with the Brentwood-Pacific Palisades Community Plan Program 1-1.2 that says that the project must "maintain the existing acreage of residential lands designated for single-family use." Nor does Archer's Project comply with the General Plan's Land Use Policy 3.2.4 that says it must "provide for the siting and design of new development that maintains the prevailing scale and character of the city's stable residential neighborhoods."

The Commission abused its discretion in adopting the new conditions of approval for the Project because it did not consider the previously approved conditions for the site, which were imposed in 1998 to meet the necessary findings and to mitigate the significant environmental

impacts of the School's commencement of operations on the site. Therefore, the Finding in the Determination Letter (p. F-7), "With the approval of a new CUP and the other concurrent entitlement requests, the School would continue to be subject to numerous stringent conditions of approval, which would ensure that the School's operation and its facilities would remain compatible with the residences in the vicinity of the campus" cannot be made since the majority of the conditions from the original approval have been removed without evidence that they are no longer necessary. For example, in 1998 the City found that the appropriate size and use of the School were met with a physical footprint that did not include the Chaparal or Barrington Parcels and allowed one gym of 12,000 square feet, a Main Building (which includes the North Wing), 109 parking spaces, hours of operation Monday through Friday 7:00am to 6:00pm for instruction, 38 Special Events, and no rental or outside use of the facilities. Given that Archer has not proposed to increase enrollment, Archer has not provided substantial evidence to support the need to demolish two residences and expand the campus with over 50,000 square feet of non-residential area, construct two gyms (39,000 sq ft) instead of the allowed one (12,000 sq ft), double the number of Special Events, extend hours of operation to include every Saturday 9am to 6pm as well as Monday through Friday from 7:00am to 10:00pm, and the rental of the facilities for filming as well as outside uses such as summer school.

The Commission ignored the evidence that the new CUP shows no due regard for the neighbors or neighborhood and the Commission erred in adopting the conditions of approval. At the very least, the changes proposed by Councilmember Bonin in his April 22, 2015 letter to the Commission, as well as those identified below, must be made to the conditions of approval to begin to satisfy the finding that the Project is compatible with the neighborhood.

Weeknight use

- a. All organized outdoor activity in outdoor spaces shall end at 6pm (includes Court of Leaders, Arts Plaza)
- b. Underground passageway in the parking garage shall be used for access to buildings for all activity after 6pm weekdays, all day Saturday and Sunday.

Saturday use

- c. No use of athletic field for athletic practice or games on Saturdays and Sundays;
- d. Saturday use shall be allowed only from 10:00am to 4:00pm for Customary School Activities (maximum of 50 people); use shall occur only inside buildings accessed by underground passageway and use of outdoor pathways for transitioning only.
- e. A gate shall be installed in the North Garden to limit access from the underground parking garage on weekends to campus level buildings via elevators and internal stairways only.

Athletic Events

- f. Athletic competitions may not start after 6:00pm.

- Enrollment (annual report distributed to show compliance with enrollment)
 - Neighborhood Traffic (annual reports of traffic monitor observations to demonstrate compliance with conditions to prevent cars from using adjacent residential streets for drop off, parking or cut through traffic)
 - Transportation Management Program (annual traffic counts and audits of all aspects of transportation management program, including trip reduction plan, peak hour trip caps, parking reservation system, and dissemination of rules and regulations regarding School transportation)
 - Special Events (annual counts of attendance and vehicle trips to campus to demonstrate compliance with maximum attendance numbers and peak hour trip caps)
- t. Plan Approvals shall occur at the very least every other year during construction and then every three years after the first full year of operations after construction to review level of compliance with the conditions.

2. The proposed increase in floor area on the Archer Campus exceeds the permissible floor area under the Zoning Code.

The City misapplied the governing provisions regarding floor area on RE-zoned properties, utilizing an interpretation of the ordinances that entirely disregards the text of the applicable provisions. The primary issue is the floor area of the two new structures located on the RE-11 zoned parcels on the northern half of the site, and most particularly the size of the Performing Arts Center. While educational institutions are a permitted conditional use on RE-zoned properties, the municipal code contains no exemption from the generally applicable height and floor area restrictions for the residential zone in which the school use is constructed. The code limits floor area in buildings on the RE zoned properties to 35 percent of the lot size, with a possible increase of an additional 20 percent of the permitted total size if certain design principles are met. (LAMC § 12.07.01 C.) The Findings rely upon a memo from the Department of Building and Safety that purportedly contends that this limitation is inapplicable, because the provision refers to "residential floor area," and Archer is not constructing any residential uses. The Findings rely on a "standard FAR of 3:1" to conclude that the structures conform to the code's floor area limitations. This interpretation ignores the plain text of multiple provisions in the zoning code, substituting for that text a presumption that the use of the term "residential floor area" is intended to refer only to residences. The code makes abundantly clear that this interpretation – while perhaps superficially appealing – is entirely incorrect, and is thus entitled to no deference by the Planning Commission or by a judicial officer reviewing the City's decision on this project.

By statutory definition, the term "residential floor area" applies to all construction on certain residentially zoned properties, and not just to "residences" constructed on such lots. The code defines "Residential Floor Area" as "the area in square feet confined within the exterior walls of a Building or Accessory Building on a Lot in an RA, RE, RS, or R I Zone."

(LAMC, § 12.03.) The code defines "Building" as "[a]ny structure having a roof supported by columns or walls, for the housing, shelter or enclosure of persons, animals, chattels or property of any kind." (Ibid.) The statutory language does not in any way support the interpretation that the "residential floor area" limitations apply only to residences, but rather makes clear that the limitations apply in residential zones.

There are sound policy reasons why the limitations on floor area should apply to all buildings on RE-zoned lots, and not only to residences. The purposes of the floor area limitations in the zoning code are to limit the bulk and scale of buildings in neighborhoods zoned RE (or similar). These limitations are for the protection of the neighbors, to preserve the visual character of the neighborhoods and keep the residential scale intact. Those concerns apply with equal force to any development in the neighborhood. Indeed, when the City Council extended these limitations beyond the two-year period originally called for in 2008, the Motion noted the need to protect neighborhoods from "out-of scale development." There was no specific nexus to development of residences. For a person residing in a neighboring property, too big is too big, whether or not it is a house or a state-of-the-art performing arts center. The evidence in the record is clear: Archer's buildings would occupy significantly greater portions of their lots than do any of the nearby residences.

The proposed Performing Arts Center is an obvious example. The proposed Performing Arts Center is located entirely on the 22,492.5 square feet RE-11 zoned parcel currently occupied by a single-family residence. Assuming Archer's designs qualified for the 20 percent bonus, under the code's floor area limitations the maximum size building that could be constructed on that parcel is 9,446.85 square feet. The proposed Performing Arts Center is 19,025 square feet, two-thirds *greater* than what is legally permitted. For perspective, the single-family residence that is currently on the site is 4,224 square feet and has a floor area ratio of 19 percent. The floor area ratio of the proposed Performing Arts Center is 85 percent.

All of the new construction on the Archer site is oversized. The Findings attempt to rely upon an entirely unsupported site-wide averaging to further justify the overly large structures. The Archer property consists of eight separate legal parcels, six containing the current school operations and two currently used as residences. The Findings calculate the entire site area and a supposed total permissible floor area under the 3:1 FAR, and conclude that the school's building program uses only 21 percent of the permissible floor area. This approach is not permitted in the municipal code. Indeed, the code allows for floor area averaging across parcels in only four extremely specific situations, not one of which is even arguably applicable here. (See LAMC §§ 12.22.A.25.f [incentive for construction of affordable housing]; 12.22.A.26.f [adaptive reuse projects]; 12.24.W.19 [unified developments in C or M zones]; 12.24.X.1 [adaptive reuse in C zones].) Because the Findings rely solely on the average floor area across all the lots, there is no information to correctly calculate whether the structures satisfy the appropriate floor area limitations for the individual parcels on which they are proposed to be constructed. The City's Findings for the CUP and Site Plan Review are based on determinations that are neither supported by the law nor by the evidence in the records before the City. Not only are the Findings unsupported, but the entire project is reliant upon a misreading of the municipal code to support its massive scale.

3. The Applicant did not obtain approval for parcel map or lot line adjustments from the advisory agency; therefore, the City Planning Commission should not have heard the case until the lot line adjustment was considered.

The proposed project fails to seek approval for the lot line adjustment that it will need for the Barrington Parcel. The Municipal Code requires that in the case where a project needs a lot line adjustment to be approved by the Advisory Agency, that such approval must be obtained first, so that appeals of the lot line approval can be heard by the City Planning Commission at the same time as the remainder of the necessary approvals are considered by that body. (See LAMC 12.36.C.5.) The decisions on the project will not be made consistent with the approach set forth in section 12.36 of the Municipal Code if Archer is allowed to defer its application for a lot line adjustment to some future date, after the City Planning Commission has already made its decisions on the majority of the project's approvals. Archer must be required to obtain the lot line adjustment before any further proceedings can take place with respect to the proposed project. Archer improperly deferred seeking the lot line adjustment until after the expansion project. As a result, the Commission was presented with a project application that did not include the lot line adjustment application. That segmenting of the project violates both the City's Multiple Approvals Ordinance and CEQA's anti-piecemealing requirement. Section 12.36.B of the Municipal Code provides that "[a]pplicants shall file applications at the same time for all approvals reasonably related to complete the project." As the statutory term "shall" indicates, this coordination of all project-related approvals is mandatory—the City has no discretion to ignore the requirement. See *In re Luis B.*, 142 Cal.App.4th 1117, 1123 (2006) (holding that "use of the mandatory language 'shall' indicates a legislative intent to impose a mandatory duty; no discretion is granted"). The ordinance assures (among other things) that municipal decision-makers consider the impacts of all related discretionary-approval applications and craft conditions necessary to eliminate or reduce the environmental impacts.

4. No justification is given for the granting of overriding considerations.

There is nothing in the Statement of Overriding Considerations that expressly finds a need to use the athletic field 10 Saturdays per year – particularly in light of the fact that Archer has not used the field on Saturdays in more than 15 years at its current site. CEQA requires that agencies impose feasible mitigation measures to eliminate significant impacts to the environment. There is no justification in the EIR for the failure to fully mitigate the operational noise of the facilities by eliminating all Saturday use of the athletic fields. The CEQA Findings do not demonstrate that it is not feasible to eliminate the impact of operational noise by entirely eliminating Saturday field use. The Statement of Overriding Considerations is entirely focused upon reasons to construct the project in general. The Statement does not contain any specific reasons that noise impacts should be imposed upon the neighbors for the life of the project specifically from Saturday field use.

5. The Applicant did not conduct a full and proper analysis of the impacts from a three year expedited construction schedule, which was not released to the public until 10 days before the Commission hearing.

The EIR fails to discuss an adequate range of alternatives, relies upon an overly prescriptive list of project objectives to justify rejection of otherwise viable alternatives, and fails to adequately analyze the impacts of the proposed expansion project. Errata #2 was released on April 13, just ten days before the Commission hearing. Errata #2 reveals the potential environmental impacts of compressing the project's construction from a six year period (analyzed in the EIR) to a three-year time frame. Errata #2 contends that the impacts of the compressed construction are identical to those identified in the EIR because the EIR analyzed a number of impacts as a "worst-case" scenario that would not be exceeded even under the compressed schedule. However, one thing that has to change as a result of the compressed schedule is the location of the temporary classroom village, to be established in trailers on a portion of the school site where construction activity is not ongoing. The EIR analyzed the noise impacts of placing the trailers approximately seventy feet from the nearest residences toward the western edge of the property. The revised proposal relocates those trailers to the two residential properties on Chaparal and Barrington, immediately adjacent to single family homes. The trailers housing reportedly 300 students and staff appear to be as little as 15 feet from the walls of the homes. This is a significant difference from the placement of the original proposal, and has ramifications for the noise impacts of the proposed project. Errata #2 presents no calculation of the potential noise impacts of the revised location of the classroom village.

As acoustics expert Derek Watry determined, using the same assumptions as Archer regarding the number of students and the volume of their voices, the noise impact on a neighboring property could be as high as 58 to 71 dBA. Under the EIR's threshold of significance, a noise impact 10 dBA above the lowest ambient noise level is significant. According to the EIR, the baseline ambient noise at the property nearest the temporary classroom village is 51 dBA. Given the range of 58 to 71 dBA, Mr. Watry concludes that it is highly probable that the 10 dBA threshold would be exceeded when the classroom village is in use. This is a significant impact that was not disclosed during the preparation of the EIR.

The statutes, CEQA Guidelines, and case law are clear: an EIR must be recirculated if new information is added to the EIR after the draft EIR has been circulated, and that new information shows that "a new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented." (Guidelines section 15088.5.) The revisions to the construction phase have created a new significant noise impact requiring recirculation of at least the relevant portions of the EIR for adequate public review and comment

Conclusion

The City Council should reverse the decision of the City Planning Commission and impose further restrictions and limitations on the Project as well as the Conditions of Approval because of the inadequacy of the EIR documents as well as the incomplete findings necessary for the Commission's approval of the Conditions of Approval.