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May 29, 2017

By Email

Hon. Jose Huizar, Chair
Hon. Committee Members
Planning and Land Use Management Committee of
The Los Angeles City Council
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Los Angeles CA 90012-3239
c/o City Clerk,
Clerk.CPS@lacity.org and CityClerk@lacity.org
City of Los Angeles
200 N. Spring Street Ste. 395
Los Angeles CA 90012-3239

Date: 5/30/17
Submitted in PLUM Committee
Council File No. 17-0537
Item No. 9
~~_____~~: Communication from
Appellant Representative

Re: Council File 17-0537; Request for Denial of Site Plan Review and CEQA Review for 12440 Venice Boulevard; DIR-2016-304-DB-SPR-1A; PLUM Agenda Tuesday May 30, 2017

Honorable Chair Huizar and Committee Members:

On behalf of the West Mar Vista Residents Association and the South Mar Vista Residents Association (the Associations), we hereby submit this supplemental support for their appeals of Site Plan Review, Density Bonus Compliance Review, and a Mitigated Negative Declaration for the project at 12440-12492 Venice Boulevard (the Project).

We ask you to recommend denial of the Project altogether on the grounds that it fails to meet the criteria for approval of Site Plan Review in Los Angeles Municipal Code (LAMC) section 16.05. Nothing, including state density bonus law, requires the City to review the Project further where it fails to meet the criteria of the City's Municipal Code.

The Project applicant proposes to construct a 62,652 square foot mixed use development consisting of 2,100 square feet of retail space, 77 residential units, and one level of at grade parking along with one subterranean parking level. The Project would be six stories tall with an additional mezzanine level, reaching a height of 83 feet.

As correctly stated in Councilmember Bonin's and Councilmember Ryu's motion asserting Charter section 245 jurisdiction over this project, which was adopted on May 19, 2017 (Motion), the City Planning Commission failed to condition the proposed

Project to mitigate impacts on the surrounding properties and communities as required to approve site plan review. The Project has significant architectural features and parking arrangements that increase the height and massing, and is incompatible with the pedestrian flow of the neighborhood. In addition to these issues identified in the Motion, as public comments have identified, the Project also creates unmitigated traffic and fire safety impacts, aesthetics, hazardous material, and wastewater impacts. If the Project is not immediately rejected altogether, all of these impacts should be addressed in an environmental impact report (EIR) prepared pursuant to the California Environmental Quality Act (CEQA) so they may be identified and mitigated.

We do not believe the Project can be approved on the basis of the current environmental review. However, if it is further considered, it should be on the basis of conditions requested by a Council District 11 (CD 11) representative at the Planning Commission hearing of the Project. These conditions included limiting ceiling heights, requiring all parking below grade, removing the lodges which create height but not living units, and limiting unit sizes so no unit exceeds the minimum size for the area. CD 11 has presented conditions which satisfy the mandatory requirements of SB 1818 but mitigate specific health and safety impacts and harmonize Site Plan Review and the City Affordable Housing Incentive Ordinance by not making one supreme over the other. These conditions, as well as others, must be added as mitigation measures during environmental review of the Project.

While we identify certain areas and issues in the summary below, we do not waive any objections previously made in prior appeals and other correspondence submitted to the City by the Associations. Additionally, we reserve the right to rely upon any comments made by other appellants or members of the public as provided in Public Resources Code section 21177.

A. The City's Site Plan Review Ordinance Requires Adequate Mitigation of Impacts for Proposed Projects That Meet Site Plan Review Criteria.

Even without reaching the requirements of CEQA, which are addressed below, the City has the authority and a duty independent of CEQA to analyze and mitigate significant environmental impacts because of the City's Site Plan Review Ordinance. (LAMC § 16.05.) As stated in the Motion asserting jurisdiction, "At over 60,000 square feet, effectively seven stories, and 83 feet tall, the proposed project is dramatically taller and larger than other building in the surrounding neighborhood, and would be one of the tallest on Venice Boulevard between the Pacific Ocean and Downtown Los Angeles."

The Site Plan Review ordinance, contained in section 16.05 of the Los Angeles Municipal Code, provides:

In granting site plan approval, the Director may condition and/or modify the project, or select an alternative project, as he or she deems necessary to implement the general or specific plan and to mitigate significant adverse effects of the development project on the environment and surrounding areas.

(LAMC § 16.05.E.2). Section 16.05.E.4 requires that the Director prepare a negative declaration or environmental impact report pursuant to CEQA prior to approval. Site plan review is intended to “promote public safety and the general welfare by ensuring that development projects are properly related to their sites, surrounding properties, traffic circulation, sewers, other infrastructure and environmental setting; and to control or mitigate the development of projects which are likely to have a significant adverse effect on . . . surrounding properties by reason of inadequate site planning or improvements.” (LAMC § 16.05.A.)

Thus, the City is required by the LAMC to analyze and mitigate significant adverse effects of the project on the environment and surrounding areas, even if the Project were exempt from CEQA, which it is not. As discussed below the Project is not exempt from CEQA and indeed an EIR is required.

B. Adequate CEQA Review and Mitigation of Project Impacts is Required.

The Project may be denied completely without conducting any CEQA review at all. “A project is exempt from CEQA if: . . . The project will be rejected or disapproved by a public agency.” (CEQA Guidelines § 15061(b)(4); see also CEQA Guidelines § 15270 (a) .) Therefore, the City may reject the Project without conducting any further CEQA review. However, if the City considers approving some version of the Project, it must conduct adequate CEQA analysis.

1. Project Approval is Not Exempt From CEQA

While project rejection is exempt from CEQA, Project approval requires CEQA review. The Project applicant claims that the project is exempt from CEQA pursuant to Public Resources Code section 21155.1 for Sustainable Communities projects. This exemption is not applicable because of the various restrictions on the availability of this exemption.

As has been detailed by the Associations and other members of the public including Kathryn M. Schwertfeger, various criteria for application of the section 21155.1 exemption are not met. Among other reasons, the Project does not meet the criteria of proximity to a major transit stop. (Pub. Resources Code § 21155.1 (b) and 21064.3).

Since the Project applicant in a letter on May 25, 2017 has objected to the City's consideration of CEQA issues at the May 30, 2017 PLUM hearing, we do not further address this point here but reserve the right to address this issue in the future if necessary.

2. The Mitigated Negative Declaration Previously Prepared for the Project is Inadequate.

An EIR is required when there is substantial evidence to support a fair argument that a project may have a significant impact on the environment. CEQA requires an EIR whenever a project *may* have a significant adverse impact on the environment. (Pub. Res. Code § 21151.) “If there is substantial evidence of a significant environmental impact, evidence to the contrary does not dispense with the need for an EIR when it can still be ‘fairly argued’ that the project may have a significant impact.” (*Friends of AB@ Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1001.) “Section 21151 creates a low threshold requirement for initial preparation of an EIR and reflects a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted.” (*League for Protection of Oakland's Architectural and Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 905.) Thus, a Negative Declaration is appropriate only when there is not a fair argument that there may be adverse impacts. This is not the case here.

In the present case, the evidence is more than sufficient to meet this standard. This is a controversial Project for which extensive objections have been submitted by hundreds of neighbors in the surrounding area. As has been recently confirmed by the Court of Appeal:

“[T]he opinions and objections of neighbors can provide substantial evidence to support rejection of a proposed development.” (*Breneric Associates v. City of Del Mar* [(1998) 69 Cal.App.4th 166] at p. 177; *Harris v. City of Costa Mesa* (1994) 25 Cal.App.4th 963, 973.)

(*Kutzke v. City of San Diego* (Cal. Ct. App., May 17, 2017, No. D070288) 2017 WL 2263423, at p. 4.)

Since the Project applicant in a letter on May 25, 2017 has objected to the City's consideration of CEQA issues such as traffic, aesthetics, public safety, hazardous materials, wastewater, and others at the May 30, 2017 PLUM hearing, we do not further address these points here but reserve the right to address them in the future if necessary. For present purposes, we note that CEQA is not required for a project that the City denies. (CEQA Guidelines § 15061 (b)(4) and § 15270 (a) [“CEQA does not apply to projects which a public agency rejects or disapproves”].)

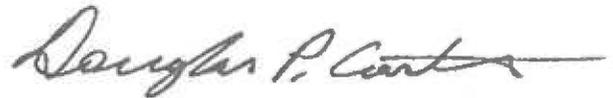
CONCLUSION.

The City should reject the Project because it does not meet the criteria for approval of Site Plan Review. If the City is to further consider approval of the Project, the City must require preparation of a legally adequate EIR. The Project should be remanded to the Planning Commission with directions to require preparation of an EIR. At the very least, the Planning Commission should reconsider the Project's various significant impacts and mitigation measure necessary to address those impacts.

Thank you for your consideration of these comments.

We request pursuant to Public Resources Code section 21092.2 copies of any notices related to this Project, especially any Notice of Determination regarding the potential approval, be sent to the undersigned in a prompt manner.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas P. Carstens", with a long horizontal flourish extending to the right.

Douglas P. Carstens

The Poster-Child for Transit-Oriented Development

- Includes affordable housing
- By-right zoning with no variances nor off-menu requests
- Existing C2-1 zoning. Unlimited Height District
- Using only ONE of the THREE incentives afforded under the law
- Removes no existing housing units nor trees.
- Steps from a TOC w 2 major busways, making it a Tier III TOC
- LADOT calculates a *reduction* on traffic impact
- Class II Highway
- Pedestrian-oriented design to activate area
- Articulated, multifaceted facade

Date: 05/30/2017
Submitted in PLUM Committee
Council File No: 17-0537
Item No. 9
Deputy: Comm. from Public
Applicant Rep

Designed to Meet City's Guidelines



77 units plus 2,100 sf retail at grade

5 stories of residential over podium, so 6 stories

1 DB on-menu incentive 3.0:1 FAR

Articulated design with high end, varied finishes, balconies

77 parking spaces = 1 per unit, though code allows for 53 spaces

First privately funded project to provide local artist preference units

New City & State Laws Dictate

- SB 743
 - Streamlining for “Transit Oriented Infill Projects”
 - “Visual resources, *aesthetic character*, shade and shadow, light and glare, and scenic vistas or any other aesthetic impact as defined in the City’s CEQA Threshold Guide shall not be considered”

- AB 744 “prohibit a city from imposing a parking ratio.... in excess of 0.5 spaces per bedroom...”

- Measure JJJ TOC - Municipal code now calls for DOUBLE the density bonus, or *99 units at the site, and a 3.5:1 FAR*.

So What CAN We Discuss Today?

Fixed Parameters + Laws of Physics

Density bonus under SB 1818

- City code requires we MUST maximize the unit count for a density bonus
 - So base unit count =53, which yields 77 (now 79) units
- Must fit into $\pm 63,000$ sf.
 - Why 63,000 sf? Because one incentive we're using under state law 3:1 FAR.
 - Want mixed use, so some commercial $\pm 2,100$ sf
- And a minimum of 53 parking spaces.

At its most basic, we must fit 63,000 sf of building into a cube with fixed parameters

We Must Fit 63,000 sf Into a Cube

Blend of unit sizes for broader tenant base
± 700 sf avg

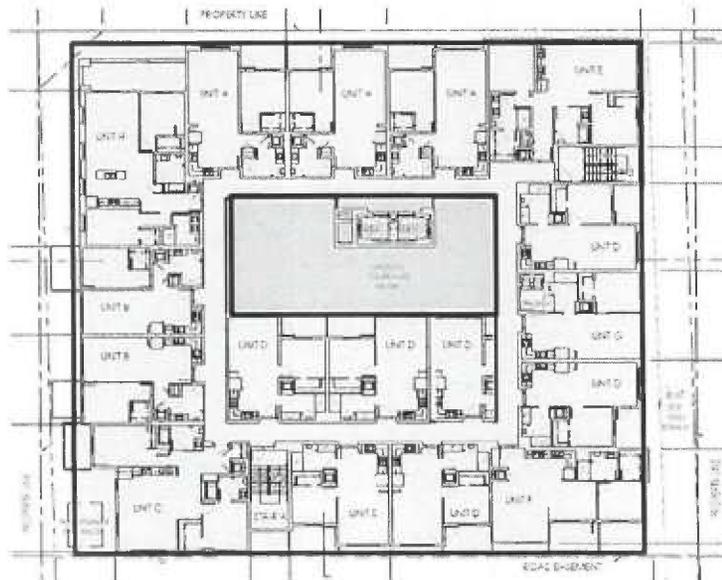
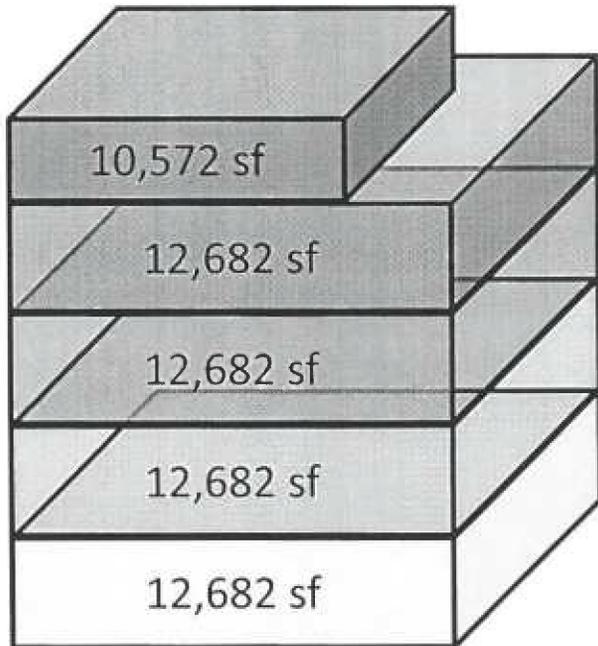
$700 \text{ sf} * 79 \text{ unit} = 55,300 \text{ sf}$

Plus Hallways, lobby, bicycle, elevators
approx. 11% load = 61,300 sf

Avg floorplan = 16 units

Loaded SF = 12,682 sf per floor

A ± 21,000 sf lot can fit 12,682 residential sf per floor



How many floors are required to fit
61,300 of residential?

Answer = 4.8 floors of residential

Let's Talk About Height

Project is really 5 stories over podium

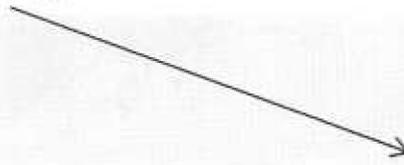
Mezzanines



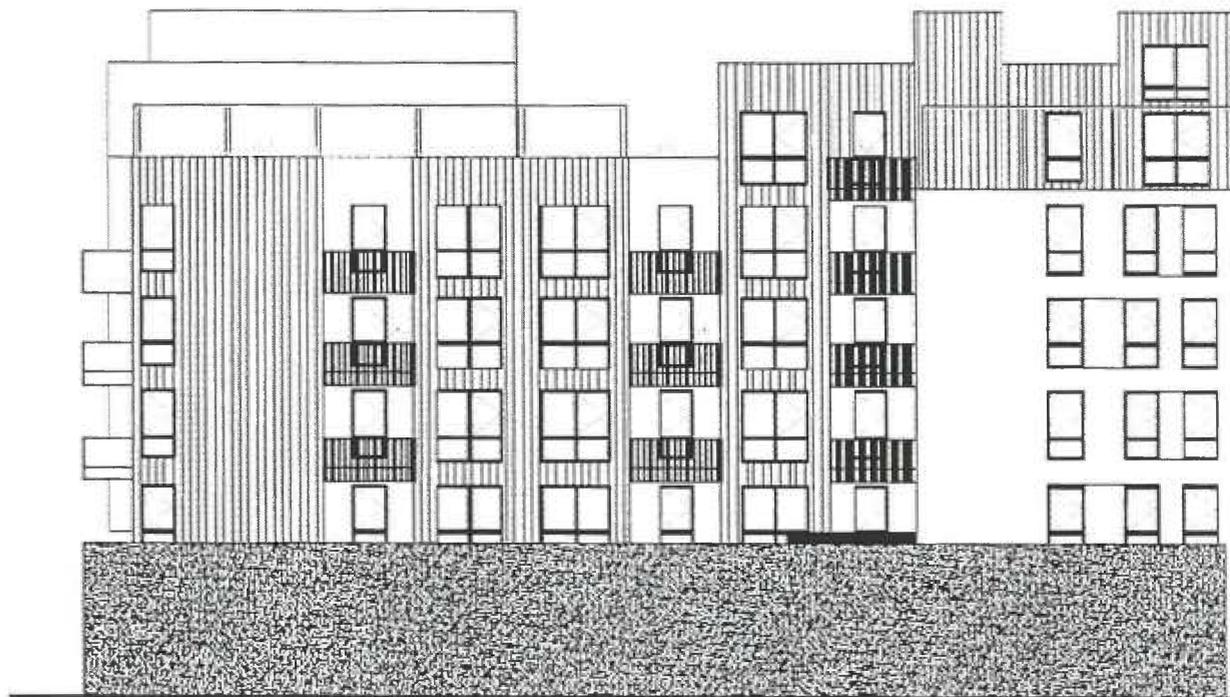
Let's Talk About Height

Project is really 5 stories over podium

Mezzanines



Let's Talk About Height



60' to the roofdeck
and loft story.

71' including top
floor units, plus a
mezzanine

60'

49'

38'

27'

16'

It's No Coincidence Similar New Projects



Neighboring Project

10801 Venice Blvd.

6 stories over podium

Recent Projects in the Neighborhood



Neighboring Project

10601 Washington

7 stories (6 over podium)

Recent Projects in the Neighborhood

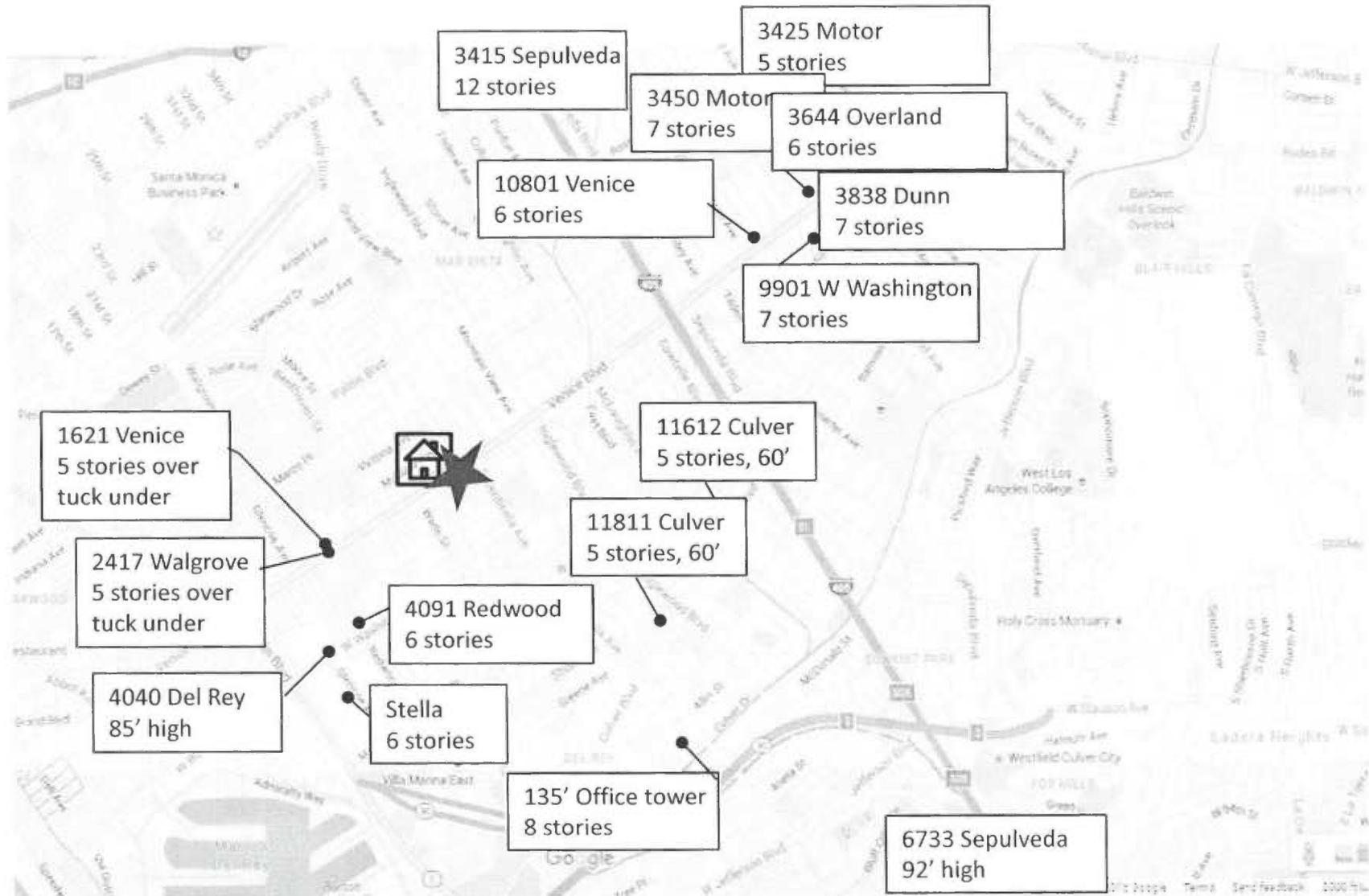


Neighboring Project

Del Rey Stella Expansion

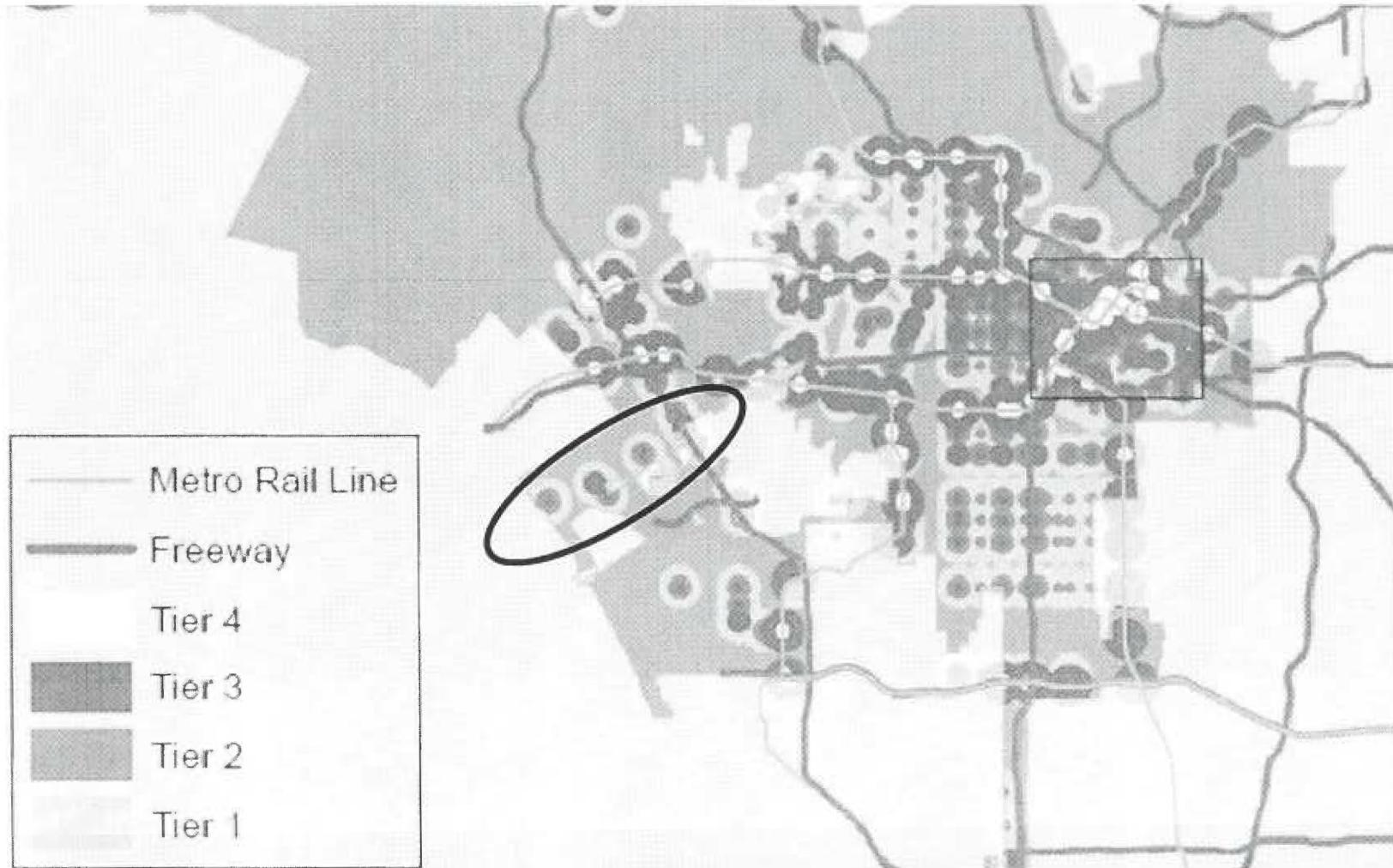
5 stories over podium

Height in Line with Nearby Developments

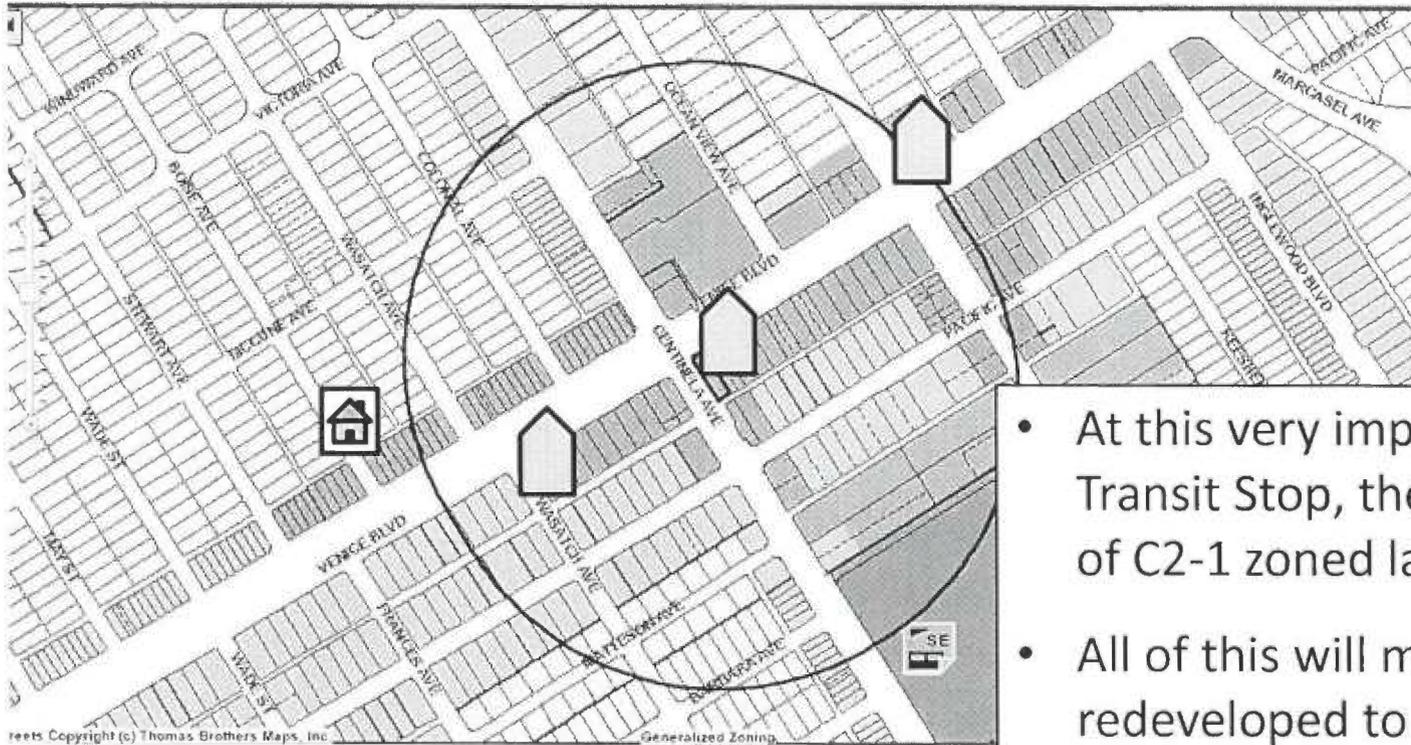


 = Councilmember's personal residence

One of Only 4 Tier III TOCs on Westside



SPR: “Is or Will Be Compatible with Existing and Future Development”



- At this very important Tier III Transit Stop, there are 10.87 acres of C2-1 zoned land.
- All of this will most likely be redeveloped to accommodate nearly 2,000 units by-right.
- All of unlimited height.

Developments underway right now

 = Planned developments of six stories high

Mitigation Measures Discussed

- If you simply chop off a floor, you lose 12,682 of FAR which we cannot make up elsewhere. Ergo, City would be failing to issue DB on-menu incentive. Violates SB 1818
- If you reduce the size of all units to 400 sf, FAR would be cut by nearly 50%. Ergo, City would be failing to issue DB on-menu incentive. Violates SB 1818
- If you place units on the ground floor, you still don't recover enough to remove the top floor. Plus, you just have fewer parking spaces. City can't require more than 53 spaces, or one level of parking. Violates AB 744

Public Feedback: What Can/Cannot be Granted

Meeting	Request	Outcome
March 2016 meeting with CD 11	The unit count be lowered; Applicant not utilize Density Bonus; Height of the Project limited to 45'	Not allowable requests
July 2017 Present project to Neighborhood PLUM	Votes are split 33 in support, 35 in opposition. Split room between renters and homeowners. Feedback is regarding height and increasing parking.	In response, height is reduced and two more parking spaces added.
July 15 2016, Meet with CD 11	The applicant double the parking, despite project having 50% more than required.	Not allowable request
October 2016 LA Planning posts the MND for the project.	No comments are received.	
Nov, 2016, Site Plan Review hearing	42 letters of support rec'd by Planning, 67 in Opposition. Of opposition, 65% related to parking/traffic	ZA approves the MND and SPR.
April 2017 City Planning Commission hears appeal on project.	77 more letters of support rec'd. CD 11 requests all units be no larger than minimum habitable unit (400 sf) and ceilings be no higher than the minimum per code.	CPC votes unanimously to deny the appeal & approve project current design.