

ORIGINAL



APPLICATIONS:

APPEAL APPLICATION

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

1. APPELLANT BODY/CASE INFORMATION

Appellant Body:

- Area Planning Commission, City Planning Commission, City Council, Director of Planning

Regarding Case Number: ENV-2017-4873-CE

Project Address: 5627 Fernwood Avenue

Final Date to Appeal: NONE - CEQA appeal

- Type of Appeal: Appeal by Applicant/Owner, Appeal by a person, other than the Applicant/Owner, claiming to be aggrieved, Appeal from a determination made by the Department of Building and Safety

2. APPELLANT INFORMATION

Appellant's name (print): Doug Haines

Company:

Mailing Address: P.O. Box 93596

City: Los Angeles, State: California, Zip: 90093

Telephone: (310) 281-7625

E-mail:

- Is the appeal being filed on your behalf or on behalf of another party, organization or company?

- Self, Other: La Mirada Avenue Neighborhood Association of Hollywood

- Is the appeal being filed to support the original applicant's position? Yes, No

3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Robert Silverstein

Company: The Silverstein Law Firm

Mailing Address: 215 N. Marengo Ave., 3rd Floor

City: Pasadena, State: CA, Zip: 91101

Telephone: (626) 449-4200

E-mail:

4. JUSTIFICATION/REASON FOR APPEAL

Is the entire decision, or only parts of it being appealed? Entire Part **CEQA**
 Are specific conditions of approval being appealed? Yes No

If Yes, list the condition number(s) here: _____

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- The reason 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

5. APPLICANT'S AFFIDAVIT

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

Appellant Signature: _____

Date: 6-7-2018

6. FILING REQUIREMENTS/ADDITIONAL INFORMATION

- Eight (8) sets of the following documents are required for each appeal filed (1 original and 7 duplicates):
 - Appeal Application (form CP-7769)
 - Justification/Reason for Appeal
 - Copies of Original Determination Letter
- A Filing Fee must be paid at the time of filing the appeal per LAMC Section 19.01 B.
 - Original applicants must provide a copy of the original application receipt(s) (required to calculate their 85% appeal filing fee).
- All appeals require noticing per the applicable LAMC section(s). Original Applicants must provide noticing per the LAMC, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of the receipt.
- Appellants filing an appeal from a determination made by the Department of Building and Safety per LAMC 12.26 K are considered Original Applicants and must provide noticing per LAMC 12.26 K.7, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of receipt.
- A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.
- Appeals of Density Bonus cases can only be filed by adjacent owners or tenants (must have documentation).
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (ZA, APC, CPC, etc.) makes a determination for a project that is not further appealable. [CA Public Resources Code ' 21151 (c)].

This Section for City Planning Staff Use Only		
Base Fee: \$ 8900	Reviewed & Accepted by (DSC Planner): E. Maceda	Date: 6/8/18
Receipt No: 0103900 838	Deemed Complete by (Project Planner):	Date:
<input checked="" type="checkbox"/> Determination authority notified		<input type="checkbox"/> Original receipt and BTC receipt (if original applicant)

June 6, 2018

Doug Haines
La Mirada Ave. Neighborhood Assn.
P.O. Box 93596
Los Angeles, CA 90093

Los Angeles City Council
c/o Los Angeles City Clerk
Los Angeles City Hall
200 N. Spring Street, Room 360
Los Angeles, CA 90012

CEQA APPEAL OF CASE No.: ENV-2017-4873-CE; 5627 W Fernwood Ave., Hollywood.

PLUM Chair Huizar and Honorable Council members:

Our community is forced to file this appeal due to the applicant's lack of responsibility in managing its supportive housing facilities.

Public Resources Code Section 21151(c) of the California Environmental Quality Act (CEQA) permits an aggrieved party to appeal the approval of a Categorical Exemption (CE) by a non-elected, decision-making body to that agency's elected, decision-making body.

In this case, the City Planning Commission (a non-elected, decision-making body) on May 10, 2018 sustained the Director of Planning's decision to approve a 60-unit, 74-foot-tall Transit Oriented Communities (TOC) permanent supportive housing development proposed for 5627 W. Fernwood Ave. As part of its approval, the Commission issued a May 25, 2018 determination letter stating that the project is exempt from CEQA, and that there is "*no substantial evidence than an exception to a categorical exemption pursuant to CEQA Guidelines, Section 15300.2 applies.*"

The Commission's determination is wrong. The courts have mandated that categorical exemptions be construed strictly, shall not be unreasonably expanded beyond their terms, and may not be used where there is substantial evidence that there are unusual circumstances (including future activities) resulting in (or which might reasonably result in) significant impacts which threaten the environment. McQueen v. Mid-Peninsula Regional Open Space (1988) 202 Cal.App.3d 1136.

In the case of the proposed project, substantial evidence has been placed into the record showing that facilities operated by applicant People Assisting the Homeless (PATH) place a significant burden on public resources, especially police and fire department paramedic services.

As noted by public speakers during the Commission's May 10 hearing, and in written objections entered into the record, the use of a categorical exemption is improper.

I. Background and Objections

The project site is currently occupied by a two-level, 9,885 sq. ft. former office building constructed in 1981. The lot measures 14,301 sq. ft. In 2005, PATH received approval of a variance to convert the office building into a 65-bed homeless shelter in lieu of the 30 beds otherwise permitted. However, the variance came with severe security restrictions designed to prevent the shelter from impacting the surrounding community (see **Exhibit 1**).

These conditions included requiring that intake and residential check-in took place off-site at PATH's main facility at Beverly and Madison; that residents would then be transported in PATH vans to the facility on Fernwood Ave., where they were required to remain on-site; that during the day residents were transported to other facilities and would be immediately disqualified if they loitered in front of the facility or in the surrounding neighborhood; and that there would be 24-hour security.

None of these conditions were followed. Instead, PATH allowed residents of its facility to come and go as they pleased. As noted in a letter from security officer Craig Cox that was submitted to the Commission at its hearing, "*I frequently observed residents of the PATH Hollywood Center loitering in the area, drinking, panhandling, gambling, urinating in public and other lewd behaviors, and using illegal drugs. Staff at the PATH Hollywood facility would attempt to appease our complaints regarding their lack of control of their residents, but no effective security measures were ever undertaken by PATH to remedy the situation.*" (See **Exhibit 2**).

Concern regarding PATH's ability to control its residents is not a new issue for our community. In 2005, our neighborhood association attended the January 6, 2005 public hearing for the variance request allowing more than double the permitted number of beds at the Fernwood Ave. shelter. La Mirada submitted two letters outlining the community's concerns. La Mirada's concerns were shared by the President of the Assistance League of Southern California, which operated a school for young children adjacent to the shelter. As noted in a letter submitted by La Mirada to the file and included in the Determination Letter:

"In PATH's application, they state that all activities at their facility would take place within the shelter out of sight of the surrounding neighborhood. We question the ability of PATH to completely control the residents of this facility, especially considering the transitory nature of their clientele. Although the Covenant House runs a much larger facility than PATH, it operates within strict guidelines governing the youths whom it serves. Those using the PATH facility are adults, however, who are unlikely to tolerate regulations designed for both their benefit and the benefit of the surrounding community. We question the ability of PATH to confine and control 65 adults within the stated 8,000 sq. ft. of living space, and we ask that the Zoning Administration seriously consider this factor when reviewing the variance request." (See **Exhibit 3**).

The site is located in LAPD Crime Reporting District 668. As an example, RD 668 had a total of 609 Part I and Part II crimes and arrests in 2014, compared to the citywide average of 163 Part I and Part II crimes and arrests, and the high crime reporting district average of 196 Part I and Part II crimes and arrests for the same period. In other words, RD 668 had a 2014 crime rate 380% greater than the citywide average. Many of the Part I and Part II crimes and arrests were for alcohol and drug activity. (See **Exhibit 4**).

The 2014 high crime rate for the project site reflects problems with PATH’s operation of its Fernwood Ave. shelter, and is particularly troubling since citywide reporting districts were showing a significant reduction in crime since 2010.

RD 668 had a total of 475 Part I and Part II crimes and arrests in the year 2010, with a high level of narcotics arrests and public drunkenness, and the highest number of gambling arrests. Los Angeles’ 1,135 Reporting Districts reported 266,457 offenses and arrests for 2010, an average of 235 crimes and arrests per Reporting District. The Reporting District therefore had a 2010 crime rate just over 200% above the citywide average, and therefore nearly doubled by 2014 (see **Exhibit 5**).

RD 668 is surrounded by Reporting Districts 648, 657, 659, 669, 667, and 677. In 2014, while RD 668 had 609 Part I and Part II crimes, the surrounding Reporting Districts had less than half that total. Note chart below showing significantly lower crime rates in the surrounding districts:

Reporting District	Part I Crimes	Part II Crimes	Total crimes 2014
648	147	171	318
657	87	182	269
659	94	145	239
667	82	173	255
668	156	453	609
669	106	137	243
677	62	144	206

PATH closed its Fernwood Ave. shelter in early 2016. Subsequently, RD 668 showed a 25% decrease in reported crimes from those reported in 2014 -- despite other reporting districts in the area holding steady or experiencing increases in crime, and the citywide average increasing by an overall 9% from 2014. The closure of the PATH facility had a direct impact on the district’s reported crimes (see **Exhibit 6**).

Reporting District	Part I Crimes	Part II Crimes	Total crimes 2016
648	220	157	377
657	115	141	256
659	104	191	295
667	90	82	172
668	194	265	459
669	117	142	259
677	74	127	201

In 2010, as a result of complaints from neighbors regarding PATH’s residents loitering and drinking in the neighborhood, a meeting was arranged with the Assistance League and the LAPD Senior Lead Officer. At this meeting, representatives of PATH acknowledged that they were not enforcing the Zoning Administrator’s Conditions of Approval, and stated they immediately would do so. Instead, nothing happened.

Subsequently, the Public Safety Committee of the East Hollywood Neighborhood Council placed the matter on its August 12, 2010 agenda (see **Exhibit 7**). At this meeting, Andrew Conner of PATH stated to the committee that “only an idiot” would have agreed to the conditions of approval, since there is no way to control adults in a homeless shelter.

In December of 2011, PATH opened a 70-unit Permanent Supportive Housing facility at 1726 N. Gower St. called “Villas at Gower.” This facility has integrated case management services, and is similar in scale to the project proposed for 5627 Fernwood Ave.

The result was an immediate and significant increase in crime in the immediate area surrounding the Gower Street facility, which is in LAPD Reporting District 637.

Reporting District 637 extends from the 101 Freeway to the east and north, Vine Street to the west, and Hollywood Blvd. to the south. In 2003, RD 637 had a total of 389 Part I and Part II crimes and arrests. At the same time, the reporting district to the south of RD 637, Reporting District 647, had 753 total crimes (see **Exhibit 8**). Reporting District 647 extends from Hollywood Blvd. to the north, Sunset Blvd. to the south, the 101 Freeway to the east, and Vine Street to the west. Reporting District 647 is a mirror image of RD 637.

By 2006, RD 637 had a total of 375 Part I and Part II crimes and arrests, while RD 647 had a total of 1,052 crimes and arrests (see **Exhibit 9**).

Yet by 2014, two years after completion of the PATH supportive housing facility, RD 637 reported a total of 595 crimes, while RD 647 had 872. In 2016, RD 637 had 749 reported crimes and arrests while RD 647 had 665. Note comparison in chart below:

Reporting District	2003	2006	2014	2016
637 (PATH Gower St.)	389	375	595	749
647	753	1,052	872	665

In reviewing the LAPD Calls for Service totals for the Villas at Gower, security officer Craig Cox notes in his May 10, 2018 letter to the City Planning Commission:

“These calls for LAPD assistance involved a high level of violent assaults and trespass suspects, indicating a lack of security to protect residents. Many of these calls were considered ‘Code 3,’ meaning that they were life threatening, with officers responding with lights and sirens on. There were also a number of calls of attempted suicide, which is a frequent component of mental illness and high substance abuse. What’s particularly concerning regarding the calls for assistance for Villas at Gower is that this facility is not an intake center but is instead permanent supportive housing combined with integrated case management services. This model, which is proposed for PATH’s facility at 5627 W. Fernwood Ave., should never experience such a high level of violent behavior.”

A review of the LAPD Calls for Service at PATH’s other facilities in Los Angeles shows similar criminal activity (see **Exhibit 10**).

PATH is providing no security at its Fernwood 60-unit supportive housing facility. Instead, a sign will be posted on the site with a telephone number and email address in the event that residents create problems in the area. PATH is required to respond to such complaints “within 24 hours.”

LAPD Hollywood Division had 314 officers to cover an area of 17.2 square miles. The National Association of City Managers and Police Dept. standard is 4 sworn officers per 1,000 residents, which means that just the Hollywood population of 198,000 citizens requires 792 officers, or 478 more officers than the entire division has, and which doesn't even factor in the ten million tourists who visit Hollywood every year.

The project site is within close proximity to the Children's Learning Center, the Theatre for Children, and Covenant House, a facility for homeless youths. The determination letter for the Second Home proposed development at 1370 N. St. Andrews Place notes 18 sensitive uses within 1,000 feet, including the Holy Transfiguration Russian Orthodox Church, three other churches, two parks, two preschools, a high school, a middle school, and an elementary school (see **Exhibit 11**). The project site is adjacent to multi-unit apartment buildings on Fernwood Avenue.

The major premise behind the establishment of the California Environmental Quality Act of 1970 was to require public agencies to give serious and proper consideration to activities which affect the quality of our environment, to find feasible alternatives in order to prevent damage to the environment, and to provide needed information to the public. Public Resources Code § 21061.

A strong presumption in favor of requiring preparation of an Environmental Impact Report is built into CEQA. This is reflected in what is known as the "fair argument" standard, under which an agency must prepare an EIR whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. Laurel Heights Improvement Association v. Regents of the University of California (1993) 6 Cal.4th 1112, 1123; No Oil, Inc. v. City of Los Angeles (1974) 13 Cal.3d 68, 75.

Under CEQA and CEQA Guidelines, if a project may cause a significant effect on the environment, the lead agency must prepare an EIR. Pub. Res. Code §§ 21100, 21151. A project "may" have a significant effect on the environment if there is a "reasonable probability" that it will result in a significant impact. No Oil, Inc. v. City of Los Angeles, supra, 13 Cal.3d at 83 n. 16. If any aspect of the project may result in a significant impact on the environment, an EIR must be prepared even if the overall effect of the project is beneficial. CEQA Guidelines § 15063(b)(1).

This standard sets a "low threshold" for requiring preparation of an EIR. Citizen Action To Serve All Students v. Thornley (1990) 222 Cal.App.3d 748, 754. If substantial evidence supports a "fair argument" that a project may have a significant environmental effect, the lead agency must prepare an EIR even if it is also presented with other substantial evidence indicating that the project will have no significant effect. No Oil, Inc. v. City of Los Angeles, supra; Brentwood Association for no Drilling, Inc. v. City of Los Angeles (1982) 134 Cal.App.3d 491.

The CEQA Guidelines at 14 Cal. Code Regs. § 15384(a) define "substantial evidence" as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached..." Under Pub. Res. Code §§ 21080(e), 21082.2(c), and CEQA Guidelines §§ 15064(f)(5) and 15384, facts, reasonable assumptions predicated on facts, and expert opinions supported by facts can constitute substantial evidence.

“Under the fair argument approach, *any* substantial evidence supporting a fair argument that a project may have a significant environment effect would trigger the preparation of an EIR.” Communities for a Better Environment v. California Resources Agency (2002) 103 Cal.App4th 98, 113 (italics in original).

Communities for a Better Environment is also significant because it clarifies that agency “thresholds of significance” are not necessarily the threshold that may be used in determining the existence of a “significant” impact. A significant impact may occur even if the particular impact does not trigger or exceed an agency’s arbitrarily set threshold of significance. *Id.* at 114.

An agency must prepare an EIR whenever it can be fairly argued on the basis of substantial evidence that a project may have a significant environmental impact. If there is substantial evidence both for and against preparing an EIR, the agency must prepare the EIR.

“The EIR has been aptly described as the heart of CEQA. Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR protects not only the environment but also informed self-government. [T]he ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA. The error is prejudicial if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process.” Napa Citizens for Honest Government v. Napa County Board of Supervisors (2001) 91 Cal.App.4th 342, 355-356 (italics in original).

The Project’s Categorical Exemption is inappropriate. PATH’s projects create a significant impact on Public Resources due to PATH’s failure to consider any means to mitigate those impacts. Substantial evidence clearly shows that proper environmental review is required.

Our community has been dealing with PATH for over a decade. During that period they have repeatedly ignored neighbor’s complaints and operated in an irresponsible manner. Proper CEQA review is required to protect us.

Thank you,

Two handwritten signatures in black ink. The first signature is on the left and the second is on the right, both appearing to be cursive and somewhat stylized.