Armando Bencomo <armando.bencomo@lacity.org>

Re: Public Comment Response to Applicant Letter of May 3, 2021 in Support of CEQA Exemption - Reasons Why Developer's Arguments are Incorrect - Council File Nos. 20-0603-S1 and 20-0603

1 message

Noel Weiss <noelweiss@ca.rr.com> Tue, May 4, 2021 at 1:08 PM
To: clerk.plumcommittee@lacity.org, Armando.Bencomo@lacity.org

Armando:

Please for the record, post this email to Council File Nos. 20-0603 and 20-0603-S1.

This is in response to the comments of the Developer's Attorney in his letter to PLUM dated May 3, 2021.

CPC Approval – September 17, 2020 – ***5806-5817 Lexington*** –The approval says "***17 DWELLING UNITS***"

LOS ANGELES CITY PLANNING COMMISSION
200 North Spring Street, Room 272, Los Angeles, California, 90012-4801, (213) 978-1300
www.planning.lacity.org

LETTER OF DETERMINATION

MAILING DATE: SEP 22 2020

Case No. DIR-2019-7067-TOC-1A Council District: 13 – O' Farrell
CEQA: ENV-2019-5389-CE
Plan Area: Hollywood

Project Site: 5806 – 5812 West Lexington Avenue

3. **Approved**, pursuant to Section 12.22 A.31 of the Los Angeles Municipal Code, a Transit Oriented Communities (TOC) Affordable Housing Incentive Program for a Tier 2 project with a total of 17 dwelling units, including two units reserved for Extremely Low Income (ELI) Household occupancy for a period of 55 years, along with the following three Additional Incentives:

Yet the Project *Conditions* reference for 17 "***residential units***". . . . See how they play with language! There is no such thing as a "Residential Unit"defined in the Zoning Law (LAMC Section 12.03), the TOC Law (Measure JJJ - LAMC 12.21A(31)), or the TOC Guidelines. "Residential Unit" is defined in the City's implementation of the State Density Bonus law (LAMC Section 12.22(A)(25)(b).. That definition includes a circumstance where the residential unit configuration includes "guest rooms." So by using the term "residential units" outside of the context of the intended use, the project "description" for CEQA purposes is rendered purposely vague. This is another reason why neither project is entitled to a CEQA exemption.

So is the project a "17 *Residential Unit*" development – or a 17 Unit ***Apartment*** Project. The use of the term "Residential Unit" is misleading, it is purposefully ambiguous, it is legally irrelevant, and it is wrong because it does not describe adequately or legally the nature of the proposed "use".

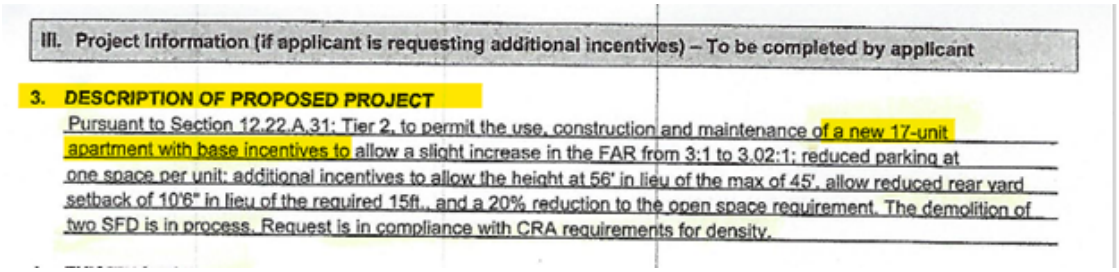
CONDITIONS OF APPROVAL

2. **Base Incentives.**

   a. **Residential Density**. The project shall be limited to a maximum density of 17 residential units, including On-site Restricted Affordable Units.

There is no category of use under the zoning law defined or identified as "residential units" or a "residential unit". This is purposely ambiguous and designed to hide the intended "Apartment House" use.

Meanwhile, "project" is described in TOC Referral Form as "***17-Unit Apartment***". . .



III. Project Information (if applicant is requesting additional incentives) – To be completed by applicant

3. DESCRIPTION OF PROPOSED PROJECT

Pursuant to Section 12.22.A.31; Tier 2, to permit the use, construction and maintenance of a new 17-unit apartment with base incentives to allow a slight increase in the FAR from 3:1 to 3.02:1; reduced parking at one space per unit; additional incentives to allow the height at 56' in lieu of the max of 45', allow reduced rear yard setback of 10'6" in lieu of the required 15ft., and a 20% reduction to the open space requirement. The demolition of two SFD is in process. Request is in compliance with CRA requirements for density.

What is lacking here is an analysis of the proposed "***USE***". . . . Which is as an "*Apartment Hotel*". . .See Definition Below. .. It speaks in terms of "use" not just "design".

The applicants talk about "design". Actual "use" under the definitions counts equally as well.

The applicant does not deny that:

1. Use of term "Unit" is generic and meaningless;

2. The developer intends a co-living format – A business model where beds and rooms are to be rented out individually and exclusively in a ***"rent-by-the-bed"*** configuration where the renter has ***exclusive*** use of the bedroom and bed as his residence with co-equal use of the kitchen, living room, and other common-area facilities. . .That exclusive use – rent-by-the bed operational model creates an "Apartment Hotel" ***as used*** (forgetting the design). . . Nothing in the conditions prohibits this use. . . If they wanted 17 apartments, then they have to use them as Apartments. . That is not their intent. . and this fact is not disputed anywhere by applicant. .

3. Nor is it disputed that if it is used as a hotel, such use is a ***prohibited use*** under the zoning. . .

4. So if the developer wants the CEQA exemption, they have to promise to use these "units" as "*apartments"* and ***not*** as "*guest rooms*" located within each individual "apartment". . Something they are not willing to do and cannot do because their Wall Street investors and benefactors would go crazy. Use as an "Apartment Hotel" is the very reason they over-paid for these properties. . .Planning and the City should insist upon it. . Otherwise the system is being perverted and "gamed". . . by "designing" projects as "apartments" and then using the "apartments" as "Apartment Hotels". . . The developer does not deny this is its intent.

5. The developer's counsel does not deny the legal impact of the *Chun vs. Del Cid* case (2019) 34 Cal. App. 5th 806 where the court held renters of beds and bedrooms (exclusively) in a single-family home were protected by the rent control law because those individual beds and bedrooms, rented ***exclusively*** to tenants as their prime residence constituted "***guest rooms"*** under the zoning law (LAMC Section 12.03). . .because the occupants/bed-renters did ***not*** have co-equal rights to the use of the other bedrooms rented out exclusively to the other tenants in the house.

6. Relying on the "design" as controlling the outcome is legally incorrect because the definitions of "*guest room*" and "*apartment*" speak not just to "design", but to intended and actual "use". . . and if this developer gets a Certificate of Occupancy for "apartments", and uses them as "guest rooms" as per the Del Cid decision, then their Certificate of Occupancy will be rendered void and they will have to pay relocation to the tenants they have to evict. . . . to comply with the zoning law. This is reckless and it is stupid. . It is what bankrupted the developer of the Sunset/Gordon project. . . The only question is whether these developers think they can pull this scam off with whatever City Hall connections they possess. . . . They are not going to rent these 'units' as individual "apartments". . Who rents 5-6 bedroom traditional "apartments", as apartments anymore? It is just too expensive. . . The cost for a one-bedroom apt. approaches $2,000. . Making the cost of a 5-6 bedroom apartment $4K-$5K per month. . By renting "by the bed" at $1500 per month, they can get $7500-$9000 per month per "apartment". . . .

7. All for a measly 2 very low affordable units. . . . . By the way, the term "units" is not defined in the TOC guidelines either. . So by approving this project under TOC guidelines, you are violating the zoning law. . So no CEQA exemption is available on that basis either because the TOC guidelines, as applied here, violate the zoning law. . and Planning, via guidelines***, cannot amend the zoning laws. . Only the City Council can do that. . and the City Council has not done that***. None of this is disputed by the developer's counsel.

Here are the definitions of "Apartment". . . "Apartment House". . . . "Apartment Hotel". . . "Dwelling Unit" and "Guest House" under the Zoning Code (LAMC Section 12.03):

LAMC SECTION 12.03 (Definitions)

APARTMENT. Same as dwelling unit. **(Added by Ord. No. 107,884, Eff. 9/23/56.)**

APARTMENT HOTEL. A residential building designed ***or*** used for both ***two*** or more ***dwelling units*** ***and*** ***six*** or more ***guest rooms*** or ***suites of rooms.*** **(Amended by Ord. No. 107,884, Eff. 9/23/56.)**

APARTMENT HOUSE. A ***residential building*** designed ***or*** used for ***three*** or more ***dwelling units*** or a combination of three or more dwelling units and not more than ***five*** ***guest rooms*** or ***suites*** of rooms. **(Amended by Ord. No. 107,884, Eff. 9/23/56.)**

DWELLING UNIT. A group of ***two*** or more ***rooms***, one of which is a kitchen, ***designed*** for occupancy by ***one family*** for living and sleeping purposes. **(Amended by Ord. No. 107,884, Eff. 9/23/56.)**

GUEST ROOM. Any habitable room except a kitchen, designed ***or*** used for occupancy by one or more persons ***and not in a dwelling unit***. **(Added by Ord. No. 107,884, Eff. 9/23/56.)**

SEC. 12.22. EXCEPTIONS.

A. Use. . . . . .

25. Affordable Housing Incentives - Density Bonus. (Amended by Ord. No. 179,681, Eff. 4/15/08.)

(a) **Purpose.** The purpose of this subdivision is to establish procedures for implementing State Density Bonus requirements, as set forth in California Government Code Sections 65915-65918, and to increase the production of affordable housing, consistent with City policies.

(b) **Definitions.** Notwithstanding any provision of this Code to the contrary, the following definitions shall apply to this subdivision:

Residential Unit - ***a dwelling unit*** or ***joint living and work quarters;*** a mobilehome, as defined in California Health and Safety Code Section 18008; a mobile home lot in a mobilehome park, as defined in California Health and Safety Code Section 18214; ***or a Guest Room*** or Efficiency Dwelling Unit ***in a Residential Hotel.***

Here is the relevant quote from the *Del Cid* case referenced above at page 817 where the key factor the Court notes in whether the rented room in the house is a "guest room" is the factor of "exclusive occupancy" by the tenant/renter to the exclusion of all others renting or occupying the home:

Given this undisputed evidence, we conclude that the Property as currently configured and occupied does not qualify for the exemption for a "Dwelling, one-family": within the plain meaning of relevant definitions of section 12.03, it is ***not*** a "***detached dwelling containing only one dwelling unit***." That is, it is not a single "group of two or more rooms, one of which is a

kitchen, ***designed for occupancy by one family for living and sleeping purposes***." (§ 12.03, italics added.) The term "***family***" is defined as ***"[o]ne or more persons living together in a dwelling unit," meaning that they must live together in the group of two or more rooms, one of which is a kitchen, that forms the dwelling unit***. (*Ibid.*) Moreover, besides living in that group of rooms, ***those persons also must have "common access to, and common use of all living***, kitchen, and eating ***areas*** within" that group of rooms. (*Ibid.*, italics added.) Thus, to be designed for occupancy by one family, the group of nine bedrooms, at least two bathrooms, and the kitchen contained in the Property must be designed to give the tenants common access to and use of not simply the kitchen, ***but also all living areas***. Here, ***the tenants do not have common access to and use of all living areas that form the purported dwelling unit, because (as the trial court found) the tenant of each of the four bedrooms being rented has exclusive use of and access to that room.*** Thus, the tenants do not comprise one family within the meaning of section 12.03, and the Property (whatever its original design) no longer has a design for occupancy by one family, and is not occupied by one family.

With Lexington 1, the language is equally as purposefully ambiguous. . . . The talk in terms of a "multi-family "dwelling". . .with 21 "units". . Again, type of "unit" is not spelled out. . and "unit" is not a legally defined term. This misdescription of the intended use of the project means that the CEQA protocol has been misused and misapplied. No CEQA exemption for either project is permissible or lawful. For this reason, the appeals to the CEQA exemption in both projects must be granted.

Here is 5817-5823 (Lexington 1):

NOTE: THE "***PROJECT***" IS DESCRIBED AS A "***21-UNIT MULTI-FAMILY DWELLING***" - This description is purposely vague and therefore inaccurate because the developer intends on using the project as an "Apartment Hotel" containing 78 "guest rooms"and 4 "apartments".

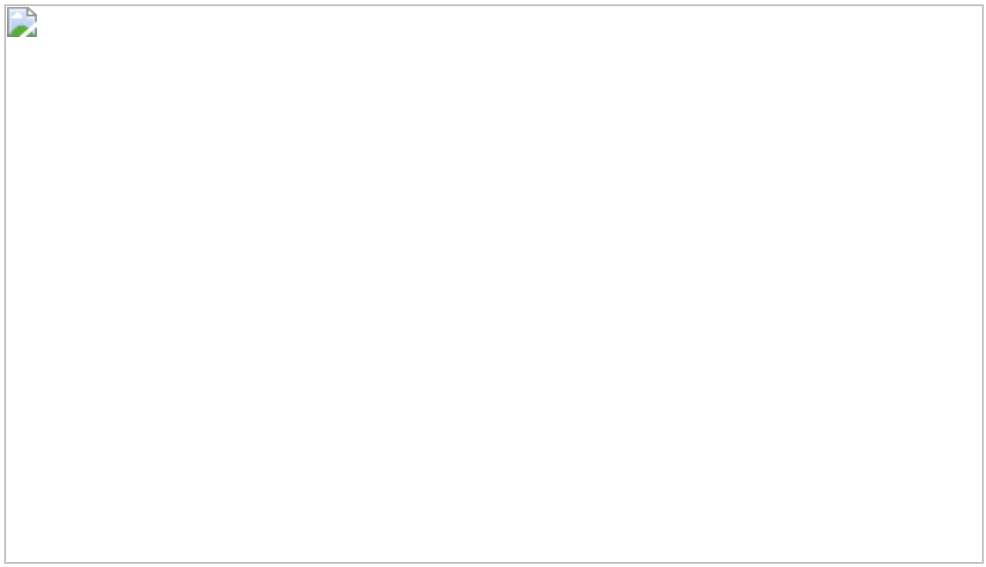
The Director's Determination approved "***21 Dwelling Units***". . .Meaning the use is limited to an "apartment" use. . . The developer intends on renting each bedroom out separately and exclusively to individual tenants. . This is the definition of a "guest room". . . . So the approval does not match the intended "use" and there is no express limitation on the proposed "use". . . This is error. . The applicant's lawyer in his letter does not deny the fact that the developer intends to "rent-by-the-bed". . Such a use is inconsistent with the zoning; the TOC guidelines cannot lawfully operate to amend the zoning code to permit such a use in an R-3 zone. . . Because the project, in its design and intended "use" is misdescribed, or inaccurately described, the is no factual or legal basis for granting a CEQA "in-fill" exemption.

Here are the conditions of approval. . .Back to "dwelling units" limited to 21.. . .The proposed ***use*** where 78 beds are going to be individually rented out exclusively to non-family individuals or groups as their primary residence is inconsistent with this grant. . . If the developer wants a CEQA exemption, the developer has to agree that the proposed "use" will be as "apartments" and not as an "Apartment Hotel". . . Something the developer cannot and will not do because his Wall Street investors expect to make a killing gaming the system by pretending the "use" is as "apartments" when the real intended use is as an "apartment hotel".

The developer's attorney speaks in terms of "design", but never mentions "use" and does not dispute the Appellants' contention that the real intention here is to "rent-by-the-bed" and use the building as an "Apartment Hotel".

CONDITIONS OF APPROVAL

2. **Residential Density.** The project shall be limited to a maximum density of 21 dwelling units including Density Bonus Units.



1. PROJECT DESCRIPTION

A. Briefly describe the entire project and any related entitlements (e.g. Tentative Tract, Conditional Use, Zone Change, etc.). The description must include all phases and plans for future expansion.

A 17-unit apartment; pursuant to TOC Guidelines, Tier 2 with Base incentives for FAR and reduced parking; additional incentives to allow the height, rear yard setback reduction and 20% reduction to the open space. Please see Attachment A.

This is false. . . . The intended use is to rent out each bedroom separately and exclusively under a "co-living" business model where exclusive use of bedrooms will be granted, along with non-exclusive use of the common areas (kitchen, living room, some bathrooms, etc.). While this is permissible in a Commercial zone, and in an R-4 or R-5 zone, it is not permissible in an R-3 zone. The developer does not deny this. . .

The appropriate planning protocol is for the developer to procure a zoning change, coupled with an application for a conditional use permit.

Here is the relevant provision from LAMC Section 12.24. . . Note the reference to "Apartment Hotels" and where they are permitted.. .in "C" zones and in "R-4"or "R-5" zones.

SEC. 12.24. CONDITIONAL USE PERMITS AND OTHER SIMILAR QUASI-JUDICIAL APPROVALS.

(Amended by Ord. No. 173,268, Eff. 7/1/00, Oper. 7/1/00.)

T. Vesting Conditional Use Applications.

3. **Procedures.**

(a) **Filing and Processing an Application.** ***A vesting conditional use permit application shall be filed on the same form and have the same contents, accompanying data and reports and shall be processed in the same manner as set forth in Subsections B through Q for a conditional use permit except as provided below.*** The application shall specify that the case is for a vesting conditional use permit. If any rules, regulations or ordinances in force at the time of filing require any additional approvals (such as a variance or coastal development permit), the complete application for these additional approvals shall be filed prior to or simultaneously with the vesting conditional use permit to be processed pursuant to Section 12.36. In all vesting conditional use permit cases, a site plan and a rendering of the architectural plan of the building envelope shall be submitted with the application. The plans and renderings shall show the proposed project's height, design, size and square footage, number of units, the location of buildings, driveways, internal vehicular circulation patterns, loading areas and docks, location of landscaped areas, walls and fences, pedestrian and vehicular entrances, location of public rights-of-way and any other information deemed necessary by the Director of Planning.

(b) **(Amended by Ord. No. 173,492, Eff. 10/10/00.)** Vesting conditional use permits may be filed for ***the following conditional uses*** under the authority of the City Planning Commission, Area Planning Commission, and Zoning

Administrator as described in Subsections U, V and W:

Hotels and apartment hotels, in the CR, C1, C1.5, C2, C4 and C5 Zones if within 500 feet of any A or R Zone or in the M1, M2, or M3 Zones when more than half of the lot is in a C Zone; ***hotels and motels in the R4 or R5 Zones***

. . . .

W. Authority of the Zoning Administrator for Conditional Uses/Initial Decision. The following uses and activities may be permitted in any zone, unless restricted to certain zones or locations, if approved by the Zoning Administrator as the initial decision-maker or the Area Planning Commission as the appellate body. The procedures for reviewing applications for these uses shall be those in Subsections B through Q in addition to those set out below. **(First Para. Amended by Ord. No. 173,992, Eff. 7/6/01.)**

24. Hotels. (Amended by Ord. No. 185,931, Eff. 7/1/19.)

(a) Hotels (including motels), ***apartment hotels***, or hostels in the CR, C1, C1.5, C2, C4, and C5 Zones when any portion of a structure proposed to be used as a hotel (including a motel), apartment hotel, or hostel is located within 500 feet of any A or R Zone.

The proposed Lexington 1 and Lexington 2 projects, as contemplated in its use, are ***not*** CEQA Exempt.. . . . Nothing in the developer's presentation supports a contrary conclusion because they do not deny what their intended use will be. . . as per their business model. . .

Lexington 1 - An residential building intended for use as 78 "guest rooms"and 4"apartments";

Lexington 2 - A residential building intended for use as 95 "guest rooms".

Noel Weiss
(310) 822-0239

Here is 5817-5823 (Lexington 1):

NOTE: THE "***PROJECT***" IS DESCRIBED AS A "***21-UNIT MULTI-FAMILY DWELLING***"

The proposed project includes the demolition of the two (2) existing single-family structures with associated accessory structures and the construction, use and maintenance of a five-story, 56-foot tall, 21-unit multi-family dwelling. The building will be constructed with four (4) residential levels over one (1) at-grade parking level. The project will provide a total of 29 automobile parking spaces.

The Director's Determination approved "***21 Dwelling Units***". . .

CONDITIONS OF APPROVAL

2. **Residential Density.** The project shall be limited to a maximum density of 21 dwelling units including Density Bonus Units.