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December 2, 2021

Los Angeles City Council
c/o Office of the City Clerk
City Hall, Room 395
Los Angeles, California 90012

Attention: PLUM Committee

Dear Honorable Members:

APPEAL OF ENVIRONMENTAL CASE NO. ENV-2020-2165-CE, 825-837 SOUTH HOLT AVENUE; CF 21-0593-S1

On February 9, 2021, the Zoning Administrator approved entitlements (Case No. ZA-2020-2164-ELD-SPR) pursuant to Los Angeles Municipal Code (LAMC) Sections 14.3.1 and 16.05 for an Eldercare Unified Facility Permit and Site Plan Review for the demolition of three duplex dwellings and the construction, use, and maintenance of a new 80-guest room Eldercare Facility with Dementia Case Housing in the [Q]R3-1-O Zone. The determination was appealed to the Central Area Planning Commission, who, at its meeting on April 27, 2021, denied the appeal, modified the conditions of approval, and approved the requested entitlements.

On June 9, 2021, City Council exercised their authority pursuant to City Charter Section 245 (Council File No. 21-0593) and asserted jurisdiction over the appeal determination, and on June 15, 2021, the Planning and Land Use Committee recommended that the matter be remanded back to the Central Area Planning Commission for further consideration; on June 29, 2021, City Council adopted that recommendation. The Central Area Planning Commission, at its August 10, 2021, meeting denied the appeal and approved the requested entitlements along with a modified project (Case No. ZA-2020-2164-ELD-SPR-1A).

On September 9, 2021, an appeal was filed against the adopted California Environmental Quality Act (CEQA) Categorical Exemption, Case No. ENV-2020-2165-CE.

APPEAL SUMMARY

The appellant makes four general arguments against the validity of the CEQA Categorical Exemption, a Class 32 (Infill Development), adopted by the decision-makers for this project:

- 1 Project is not consistent with applicable general plan designation and all applicable general plan policies as well as with the applicable zoning designations and regulations.**

- Pursuant to CEQA Section 15332(a), the appellant argues that because the project required seven deviations from the development regulations of the Zoning Code, it therefore cannot be found to be consistent with the applicable general plan designation and all applicable general plan policies as well as with the applicable zoning designations and regulations.

On December 30, 2006, Ordinance No. 178,063 became effective, amending the Zoning Code with the regulations for implementing Eldercare Facility Unified Permit (LAMC Section 14.3.1).

LAMC Section 14.3.1B states:

The Zoning Administrator, as the initial decision maker, may, upon application, permit an Eldercare Facility to be located on a lot or lots in the A1 through R3 Zones, or in the RAS3, R4, RAS4, R5, and all C Zones, when an Eldercare Facility does not meet the use, area, or height provisions of the respective zone contained in this chapter, or the requirements of any specific plan, supplemental use district, "T" classification, "Q" condition, "D" limitation, or Citywide regulation adopted or imposed by City action. In order to approve the project, the Zoning Administrator shall ensure that it is in conformance with the provisions of this section.

As indicated above, the Zoning Code confers the decision-maker with the authority to approve an Eldercare Facility even if it does not meet the use, area, or height requirements of the zone or Citywide regulation adopted or imposed by City action. Both the initial decision-maker and appellate body found that the project, along with the requested deviations, is in substantial conformance with the purposes, intent and provisions of the General Plan, applicable community plan, and with any applicable specific plan. Finding to this effect were adopted as part of their written determinations.

The appellant also argues that approval of seven deviations to enable this project is harmful to the environment, though the appellant does not state what harms are alleged as a result.

2 The project site has value as habitat for endangered, rare, or threatened species – the project will impact identified protected trees located in the public right-of-way.

- Pursuant to CEQA Section 15332(c), the appellant argues that the Categorical Exemption is invalid because the project will endanger three California (Western) Sycamore (*Platanus racemose*) trees located within the adjacent public right-of-way.

The applicant submitted a Tree Report, dated March 11, 2020, which identified three Western Sycamore trees located in the parkway within the public right-of-way, along the property frontage. The arborist who prepared the report states that removal of the sidewalk will cause damage the health of the trees.

Ordinance No. 177,404, effective on April 23, 2006, amended the LAMC with Section 46.00, which contains the city's Protected Tree and Shrub regulations, wherein the Western Sycamore is identified as a protected tree. While this species is protected under local ordinance, it is not considered an endangered, rare, or threatened species. All projects which impact or propose to remove locally protected trees are subject to the regulations of LAMC Section 46.00, which includes obtaining a permit from the

Department of Public Works, Bureau of Street Services, Urban Forestry Division, and replacement.

The appellant does not otherwise allege that the project site has value as habitat for endangered, rare, or threatened species.

The appellant also alleges that reliance upon the findings of the Tree Report exceeded the 6-month validity stated within the report itself. However, the determinations did not rely upon the report as they pertained to the health, retention, removal, or replacement of the trees, but only on their species identification, quantity, and location in relationship to the project; these are not qualities or parameters that are likely to change within the period of time between the report's preparation and the issuance of the determination.

3 Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

- Pursuant to CEQA Section 15300.2(b), the appellant alleges that the Categorical Exemption is invalid because there are cumulative impacts resulting from this project and those associated with another Eldercare Facility approved at 842-847 South Sherbourne Drive (Case No. ZA-2019-7715-ELD). Further, that the impacts associated with a 3-lot development are greater than those of a 1- or 2-lot development.

Though the appellant alleges cumulative impacts associated with the development of the two Eldercare facilities, no specific environmental impact is articulated as a result of the alleged cumulative effects of the two projects.

Both the instant project and the project located at 842-847 South Sherbourne Drive adopted CEQA Section 15332, Class 32 (Infill Development Projects), categorical exemptions for their environmental clearance.

4 Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

- Pursuant to CEQA Section 15300.2(c), the appellant alleges that the adopted Categorical Exemption is invalid because the project's impacts on the identified protected trees, the approval of the zoning regulation deviations, and the project's likelihood of intercepting ground water during excavation, and the development over three lots constitute unusual circumstances as compared to the conditions of the immediate vicinity, which result in significant effects on the environment.

The appellant identifies no environmental impacts as a result of potential tree impacts and removals, the granted deviations, the interception of groundwater, or the span of the project across three lots.

The project is located within an urban and built-up environment and within a jurisdiction having local regulations pertaining to street trees, development, excavations, and de-watering. None of the circumstances alleged by the applicant are unusual either in scope or location.

As previously stated, impacts to locally protected trees that are not considered endangered, rare, or threatened do not rise to the level of an environmental impact for increased scrutiny under CEQA. Further, there is no evidence to show that these trees provide a habitat for other endangered, rare, or threatened species that would be impacted by removal of these trees. Project adjacency to locally protected trees within the public right-of-way is not an unusual circumstance within the City or this neighborhood.

The granted deviations to increase guest room density, permitted floor area ratio, and building height; to deviate from required building articulations; reductions in the required side and front yard setbacks; and a waiver of long-term bicycle requirements, were pursuant to the process and procedures of LAMC Section 14.3.1. Eldercare facilities are not uncommon throughout the City, and they frequently require consideration of deviations from developmental regulations of the Zoning Code. Proposed facilities may span multiple lots and/or exceed the total area represented by three lots spanned by the current project.

The project proposes two subterranean levels, and in doing so, may intercept the existing groundwater. Encountering groundwater over the course of excavation activities is not an unusual circumstance for construction within the City. The Department of Building and Safety, in conjunction with the Los Angeles Department of Water and Power, have regulations which address how construction is to proceed in these cases.

In all of these cases, the appellant alleges impacts resulting from these circumstances that result in one or more significant environmental impacts, but does not articulate what those impacts could be, only that further environmental analysis should be conducted.


As articulated above, the adopted CEQA Class 32 Categorical Exemption meets the requirements for its class and does not result in an exception which would invalidate its use for the project.

Recommendation

The Department of City Planning recommends that the appeal be denied, and that based on the whole of the administrative record, find that the Project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Section 15332, Class 32 (In-Fill Development Projects), and that there is no substantial evidence demonstrating that any exceptions contained in Section 15300.2 of the State CEQA Guidelines regarding location, cumulative impacts, significant effects or unusual circumstances, scenic highways, or hazardous waste sites, or historical resources applies.

Sincerely,

VINCENT P. BERTONI, AICP
Director of Planning



Jonathan A. Hershey, AICP
Associate Zoning Administrator

VPB:JAH