

Applicant Copy
 Office: Downtown
 Application Invoice No: 76942

City of Los Angeles
 Department of City Planning



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6800176942



City Planning Request

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Receipt Number:101221ABF-32C4F339-11A6-4552-8738-167525EFF290, Amount:\$109.47, Paid Date:12/10/2021

Applicant: LUNA & GLUSHON - KROPP, KRISTINA (818-9078755)
Representative:
Project Address: 10812 W ASHTON AVE & 10822 W WILSHIRE BLVD, 90024

NOTES:

VTT-82107-2A			
Item	Fee	%	Charged Fee
Appeal by Aggrieved Parties Other than the Original Applicant *	\$89.00	100%	\$89.00
Case Total			\$89.00

Item	Charged Fee
*Fees Subject to Surcharges	\$89.00
Fees Not Subject to Surcharges	\$0.00
Plan & Land Use Fees Total	\$89.00
Expediting Fee	\$0.00
Development Services Center Surcharge (3%)	\$2.67
City Planning Systems Development Surcharge (6%)	\$5.34
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Council District: 5
 Plan Area: Westwood
 Processed by CHAN, JASON on 12/10/2021

Signature: _____

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APPLICATIONS:

APPEAL APPLICATION

Instructions and Checklist

Related Code Section: Refer to the City Planning case determination to identify the Zone Code section for the entitlement and the appeal procedure.

Purpose: This application is for the appeal of Department of City Planning determinations authorized by the Los Angeles Municipal Code (LAMC).

A. APPELLATE BODY/CASE INFORMATION

1. APPELLATE BODY

- Area Planning Commission City Planning Commission City Council Director of Planning
- Zoning Administrator

Regarding Case Number: VTT-82107

Project Address: 10822 West Wilshire Boulevard and 10812 West Ashton Avenue

Final Date to Appeal: December 13, 2021

2. APPELLANT

- Appellant Identity:** (check all that apply)
- Representative Property Owner
 - Applicant Operator of the Use/Site

Person, other than the Applicant, Owner or Operator claiming to be aggrieved
Westwood Neighbors for Sensible Growth, Kay Waldman (President)

Person affected by the determination made by the **Department of Building and Safety**

- Representative Owner Aggrieved Party
- Applicant Operator

3. APPELLANT INFORMATION

Appellant's Name: Kay Waldman (President)

Company/Organization: Westwood Neighbors for Sensible Growth

Mailing Address: 16255 Ventura Blvd., Suite 950

City: Encino State: CA Zip: 91436

Telephone: 310-883-5518 E-mail: kay.wnsg@gmail.com

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

- Self Other: Westwood Neighbors for Sensible Growth

b. Is the appeal being filed to support the original applicant's position? Yes No

4. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Kristina Kropp

Company: Luna & Glushon

Mailing Address: 16255 Ventura Blvd. Ste. 950

City: Encino State: CA Zip: 91436

Telephone: 818-907-8755 E-mail: kkropp@lunaglushon.com

5. JUSTIFICATION/REASON FOR APPEAL

a. Is the entire decision, or only parts of it being appealed? Entire Part

b. Are specific conditions of approval being appealed? Yes No

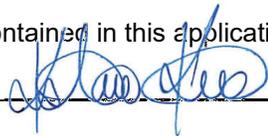
If Yes, list the condition number(s) here: _____

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

6. APPLICANT'S AFFIDAVIT

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

Appellant Signature: 

Date: December 10, 2021

GENERAL APPEAL FILING REQUIREMENTS

B. ALL CASES REQUIRE THE FOLLOWING ITEMS - SEE THE ADDITIONAL INSTRUCTIONS FOR SPECIFIC CASE TYPES

1. Appeal Documents

a. **Three (3) sets** - The following documents are required for each appeal filed (1 original and 2 duplicates) Each case being appealed is required to provide three (3) sets of the listed documents.

- Appeal Application (form CP-7769)
- Justification/Reason for Appeal
- Copies of Original Determination Letter

b. Electronic Copy

Provide an electronic copy of your appeal documents on a flash drive (planning staff will upload materials during filing and return the flash drive to you) or a CD (which will remain in the file). The following items must be saved as individual PDFs and labeled accordingly (e.g. "Appeal Form.pdf", "Justification/Reason Statement.pdf", or "Original Determination Letter.pdf" etc.). No file should exceed 9.8 MB in size.

c. Appeal Fee

- Original Applicant - A fee equal to 85% of the original application fee, provide a copy of the original application receipt(s) to calculate the fee per LAMC Section 19.01B 1.
- Aggrieved Party - The fee charged shall be in accordance with the LAMC Section 19.01B 1.

d. Notice Requirement

- Mailing List - All appeals require noticing per the applicable LAMC section(s). Original Applicants must provide noticing per the LAMC
- Mailing Fee - The appeal notice mailing fee is paid by the project applicant, payment is made to the City Planning's mailing contractor (BTC), a copy of the receipt must be submitted as proof of payment.

SPECIFIC CASE TYPES - APPEAL FILING INFORMATION

C. DENSITY BONUS / TRANSIT ORIENTED COMMUNITIES (TOC)

1. Density Bonus/TOC

Appeal procedures for Density Bonus/TOC per LAMC Section 12.22.A 25 (g) f.

NOTE:

- Density Bonus/TOC cases, only the *on menu or additional incentives* items can be appealed.
- Appeals of Density Bonus/TOC cases can only be filed by adjacent owners or tenants (must have documentation), and always only appealable to the Citywide Planning Commission.

- Provide documentation to confirm adjacent owner or tenant status, i.e., a lease agreement, rent receipt, utility bill, property tax bill, ZIMAS, drivers license, bill statement etc.

D. WAIVER OF DEDICATION AND OR IMPROVEMENT

Appeal procedure for Waiver of Dedication or Improvement per LAMC Section 12.37 I.

NOTE:

- Waivers for By-Right Projects, can only be appealed by the owner.
- When a Waiver is on appeal and is part of a master land use application request or subdivider's statement for a project, the applicant may appeal pursuant to the procedures that governs the entitlement.

E. TENTATIVE TRACT/VESTING

1. Tentative Tract/Vesting - Appeal procedure for Tentative Tract / Vesting application per LAMC Section 17.54 A.

NOTE: 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.

- Provide a copy of the written determination letter from Commission.

F. BUILDING AND SAFETY DETERMINATION

- 1.** Appeal of the Department of Building and Safety determination, per LAMC 12.26 K 1, an appellant is considered the **Original Applicant** and must provide noticing and pay mailing fees.

a. Appeal Fee

- Original Applicant - The fee charged shall be in accordance with LAMC Section 19.01B 2, as stated in the Building and Safety determination letter, plus all surcharges. (the fee specified in Table 4-A, Section 98.0403.2 of the City of Los Angeles Building Code)

b. Notice Requirement

- Mailing Fee - The applicant must pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of receipt as proof of payment.

- 2.** Appeal of the Director of City Planning determination per LAMC Section 12.26 K 6, an applicant or any other aggrieved person may file an appeal, and is appealable to the Area Planning Commission or Citywide Planning Commission as noted in the determination.

a. Appeal Fee

- Original Applicant - The fee charged shall be in accordance with the LAMC Section 19.01 B 1 a.

b. Notice Requirement

- Mailing List - The appeal notification requirements per LAMC Section 12.26 K 7 apply.
- Mailing Fees - The appeal notice mailing fee is made to City Planning's mailing contractor (BTC), a copy of receipt must be submitted as proof of payment.

G. NUISANCE ABATEMENT

1. Nuisance Abatement - Appeal procedure for Nuisance Abatement per LAMC Section 12.27.1 C 4

NOTE:

- Nuisance Abatement is only appealable to the City Council.

a. Appeal Fee

Aggrieved Party the fee charged shall be in accordance with the LAMC Section 19.01 B 1.

2. Plan Approval/Compliance Review

Appeal procedure for Nuisance Abatement Plan Approval/Compliance Review per LAMC Section 12.27.1 C 4.

a. Appeal Fee

Compliance Review - The fee charged shall be in accordance with the LAMC Section 19.01 B.

Modification - The fee shall be in accordance with the LAMC Section 19.01 B.

NOTES

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.

***Please note** that the appellate body must act on your appeal within a time period specified in the Section(s) of the Los Angeles Municipal Code (LAMC) pertaining to the type of appeal being filed. The Department of City Planning will make its best efforts to have appeals scheduled prior to the appellate body's last day to act in order to provide due process to the appellant. If the appellate body is unable to come to a consensus or is unable to hear and consider the appeal prior to the last day to act, the appeal is automatically deemed denied, and the original decision will stand. The last day to act as defined in the LAMC may only be extended if formally agreed upon by the applicant.*

This Section for City Planning Staff Use Only		
Base Fee:	Reviewed & Accepted by (DSC Planner):	Date:
Receipt No:	Deemed Complete by (Project Planner):	Date:
<input type="checkbox"/> Determination authority notified		<input type="checkbox"/> Original receipt and BTC receipt (if original applicant)

ATTACHMENT TO APPEAL

VTT-82107

ENV-2019-5735-SCEA

Appellants: Westwood Neighbors for Sensible Growth (“WNSG”); Kay Waldman (President). WNSG is a large group of single and multi-family residents surrounding the proposed Project and would be most immediately impacted thereby.

Project: 12-story, 176,580 square foot 176-unit eldercare facility at 10822 West Wilshire Boulevard and 10812 West Ashton Avenue.

The City Planning Commission erred and abused its discretion in denying Appellants’ appeal and approving the Tract Map for the Project based on the following:

1. **The Findings for a Tract Map Cannot be Made with Substantial Supporting Evidence**
 - i. The Project is Not Consistent with the General Plan, Westwood Community Plan, or the Wilshire Westwood Scenic Corridor Specific Plan.

The Westwood Community Plan sets forth the following issues currently existing in the Community Plan area:

- Need to maintain the low-density character of single-family neighborhoods and avoid encroachment into adjacent neighborhoods from other uses, commercial off-street parking, or spill-over traffic.
- Lack of transition in scale, density and character of multiple housing and commercial uses adjacent to single family homes.

It further sets forth the following goals and objectives:

- Preserving and enhancing the positive characteristics of existing residential neighborhoods while providing a variety of compatible housing opportunities.
- Preserving and enhancing the positive characteristics of existing uses which provide the foundation for community identity, such as scale, height, bulk, setbacks and appearance.
- Protect existing single family residential neighborhoods from new out-of-scale development and other incompatible uses.

- Protect the quality of residential environment and promote the maintenance and enhancement of the visual and aesthetic environment of the community.
- Promote neighborhood preservation, particularly in multi-family neighborhoods.
- To preserve and enhance the varied and distinct residential character and integrity of existing residential neighborhoods.

Furthermore, the Wilshire Westwood Scenic Corridor Specific Plan (“Specific Plan”), which was specially amended recognizing that the then-existing zoning along the Scenic Corridor could result in a solid wall of high-rise buildings with very little useable or publicly visible open space and severe shadow impacts, sets forth the following:

- Confirms that the trend and intensity of development which has occurred and is continuing to occur on Wilshire results in a concomitant increase in traffic.
- Confirms that the purpose of the development standards established in the Plan is to minimize traffic and parking problems along Wilshire Boulevard, enhance the aesthetic qualities of the Specific Plan area, encourage more open space, reduce the impact of high-density residential development and reduce the impact of shadows caused by high-rise buildings within and adjacent to the Specific Plan Area.
- Requires that a proposed Project over six stories or 75 feet in height shall make every effort to minimize the Shadows caused by the Project on residential lots adjacent to the Wilshire-Westwood Scenic Corridor and to maximize air and light between buildings.

The Project, as proposed, fails to comply with all of these Community and Specific Plan requirements. The Project fails to maintain and preserve the low-density character of single-family neighborhood behind it and the multi-family neighborhood immediately next door, lacks transition of scale, and is the definition of out-of-scale development (seeking a laundry list of deviations from Code) adjacent to single family uses. It is the very type of Project, contributing to “a solid wall of high-rise buildings” on Wilshire Boulevard, that the Specific Plan was amended to avoid. It utterly fails to minimize the shadows caused on residential lots adjacent to the Wilshire-Westwood Scenic Corridor and to maximize air and light between buildings.

ii. The Design of the Subdivision and Proposed Improvements are Likely to Cause Substantial Environmental Damage.

As discussed below, a Sustainable Communities Environmental Assessment (“SCEA”) is not appropriate, as a matter of the California Environmental Quality Act (“CEQA”). Accordingly, this finding cannot be made with substantial supporting evidence.

2. The City Has Failed to Comply with CEQA

i. The Project does not Qualify As a Transit Priority Project (“TPP”), and therefore may not Utilize a SCEA

In accordance with law, the SCEA (see p. 3.0-1) provides: SB 375 allows the City of Los Angeles, acting as lead agency, to prepare a SCEA as the environmental CEQA clearance for TPP’s that are consistent with SCAG’s RTP/SCS.

Here, the problem is that the Project does not qualify as a TPP, and, therefore, the City cannot utilize a SCEA for CEQA compliance purposes.

Public Resources Code § 21155(b) defines a TPP as a development project that contains at least 50 percent residential use, provides a minimum density of at least 20 units per acre, and is located within one-half mile of a major transit stop or transit corridor.

A qualifying residential project for purposes of TPP status is defined in Public Resources Code § 21159.25 as follows:

“Residential or mixed-use housing project” means a project consisting of multifamily residential uses only or a mix of multifamily residential and nonresidential uses, with at least two-thirds of the square footage of the development designated for residential use.

Undoubtedly, here, the Project is not comprised of “multifamily residential uses” only. Furthermore, evidence has been submitted that the Project does not qualify because its non-residential uses (not fully repeated herein but incorporated by reference) exceed the thresholds provided in Public Resources Code § § 21159.25 and 21155(b).

Instead of discussing such evidence, or any evidence for that matter, regarding the proposed residential and non-residential uses at the Project, the Initial Study in the SCEA for the Project makes the unsupported assumption that the zoning of the Project site necessarily renders this a residential Project. That assumption is not only unsupported, but also incorrect. Indeed, an Eldercare Facility, as proposed, is not even a “by right” use on this residentially zoned site. Therefore, the concept that this Project is necessarily a residential use is incorrect and unsupported. The Zoning Administrator will note that this issue has been litigated and Courts have rejected efforts to use the zoning to characterize the nature of a proposed land use differently from its actual functionality. *Concerned Dublin Citizens v. City of Dublin* (2013) 214 Cal.App.4th 1310.

In response to this criticism, the City further asserts that the term “eldercare facility” is defined in the LAMC as a residential use. But the problem is

that there is no substantial evidence to support the finding here that the uses proposed will actually be residential. Again, the City cannot rely on the underlying zoning or the Zoning Code itself to characterize the nature of a proposed land use differently from its actual functionality. *Concerned Dublin Citizens, supra*.

Simply stated, the proposed operations of the Project before the City render it more akin to a commercial, rather than a residential use: the 24-hour care and outside assistance, provided scale of the proposed food service (resembles more closely a hotel or a hospital than a multi-family residential use), guest services, numbers of employees plus the nature of the work they will provide, proposed childcare facility, worship facilities and related functionalities, etc. By proposing the SCEA, the City is failing to adequately recognize the functionality of the proposed Project.

Furthermore, a TPP is, on its face, meant to be for purposes of building residential uses near transit for the purpose of encouraging public transit use. But, based on the transportation profile of the consumers of the Project – pre-school children, Alzheimer patients and the elderly, the Project is unlikely to generate any or any appreciable amount of transit use. Accordingly, it fails as a TPP based upon the legislative history of the SB 375, as well as the law’s plain language.

ii. The Project is not Consistent with the General Land Use Designation, Density, Building Intensity and Applicable Policies Specified in the RTP/SCS Prepared by SCAG

The Project specifically seeks a laundry list of discretionary entitlements and deviations from the Los Angeles Municipal Code, including the Zoning Code. Accordingly, it is not consistent with the general use designation, density, building intensity, and applicable policies specified for the Project area in the RTP/SCS prepared by SCAG.

Notably, the SCEA’s Initial Study fails to actually examine land use conflicts posed by the Project and its deviations. In the context of “land use and planning,” in order to be legally adequate, a CEQA document must identify and discuss, as part of its substantive disclosure requirements, inconsistencies between the Project and applicable general plans and regional plans. The SCEA fails to adequately do so. Instead, the SCEA Initial Study states that the Project does not seek any adjustments or an exception but rather seeks approval from the Zoning Administrator under the Eldercare Facility zoning law of a 12-story and 153-foot building. The SCEA Initial Study then concludes that with these approvals, there will be no “conflict.” Such unsupported conclusion not only plays fast and loose with not only the scope of the requested entitlements, but also fails to provide clear information as required under CEQA.

iii. The Project Description is Inadequate

The Project Description contained within the SCEA provide a superficial description of the Project which omits material facts that relate to whether the Project has the potential for significant environmental impacts. The stated number of dwelling units is misleading, the total resident capacity not provided, and the description of services provided at the Center vaguely set forth. Statistics regarding ambulatory needs and capacity are missing. The SCEA also lacks a complete project setting.

iv. The Discussion of Transportation Impacts is Unsupported by Substantial Evidence

Rather than evidence, the SCEA provides assumptions and speculation regarding transportation impacts from the Project, and in particular with regard to the elderly served by the Project as well “pass-by trips.” The SCEA repeatedly claims a “reduction” in trips but fails to substantiate this claim with evidence. Indeed, the evidence is to the contrary.

Moreover, the SCEA fails to identify the methodology used to determine transportation impacts. Although it states that a “custom” methodology was used, no such customization is scrutinized and in other parts of the SCEA directly contradicted by traditional transportation methodology.

Finally, the SCEA’s finding of no impact with regard to whether the project would substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment) is completely devoid of any, let alone substantial, evidence. Based on the SCEA’s own Project Trip Generation, Table 7-1, the expanded day care center will generate 457 daily trips, an increase of 417 trips over existing on Ashton Avenue, a small residential street which intersects with Malcom Avenue, another small residential street. The SCEA fails to even mention, let alone analyze or mitigate the impacts of such incompatible uses.

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