

MASTER APPEAL FORM

City of Los Angeles—Department of City Planning

APPEAL TO THE: Los Angeles City Council
(DIRECTOR, AREA PLANNING COMMISSION, CITY PLANNING COMMISSION, CITY COUNCIL)

REGARDING CASE #: VTT-72500-SL-1A; ENV-2013-2877-REC1

PROJECT ADDRESS: 853-857 Hyperion Ave

FINAL DATE TO APPEAL: May 7th, 2015

- TYPE OF APPEAL:
1. ☐ Appeal by Applicant
 2. ☒ Appeal by a person, other than the applicant, claiming to be aggrieved
 3. ☐ Appeal by applicant or aggrieved person from a determination made by the Department of Building and Safety

APPELLANT INFORMATION – Please print clearly

Name: David Modern

- Are you filing for yourself or on behalf of another party, organization or company?

☐ Self

☒ Other: Hyperion Avenue Neighborhood Association

Address: 863 Hyperion Ave
Los Angeles, CA Zip: 90029

Telephone: 323-663-6062 E-mail: modhof@roadrunner.com

- Are you filing to support the original applicant's position?

☐ Yes

☒ No

REPRESENTATIVE INFORMATION

Name: _____

Address: _____

Zip: _____

Telephone: _____ E-mail: _____

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

JUSTIFICATION/REASON FOR APPEALING – Please provide on separate sheet.

Are you appealing the entire decision or parts of it?

☒ Entire

☐ Part

Your justification/reason must state:

- The reasons 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

ADDITIONAL INFORMATION/REQUIREMENTS

- Eight (8) copies of the following documents are required (1 original and 7 duplicates):
 - Master Appeal Form
 - Justification/Reason for Appealing document
 - Original Determination Letter
- Original applicants must provide the original receipt required to calculate 85% filing fee.
- Original applicants must pay mailing fees to BTC and submit copy of receipt.
- Applicants filing per 12.26 K "Appeals from Building Department Determinations" are considered original applicants and must provide notice per 12.26 K 7.
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the City (Area) Planning Commission must be filed within 10 days of the written determination of the Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (i.e. ZA, APC, CPC, etc...) makes a determination for a project that is not further appealable.

"If a nonelected decision-making body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decision-making body, if any."

—CA Public Resources Code § 21151 (c)

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

Appellant Signature: David Usher

Date: May 7, 2015

Planning Staff Use Only			
Amount	Reviewed and Accepted by	Date	
Receipt No.	Deemed Complete by	Date	
Determination Authority Notified		Original Receipt and BTC Receipt (if original applicant)	

ATTACHMENT TO APPEAL
VTT-72500-SL-1A; ENV-2013-2877-REC1

Appellants: The Hyperion Avenue Neighbors Association, representing homeowners, renters and residents of Hyperion Ave, Sanborn Ave, and adjoining streets.

The appeal is filed to the January 26, 2015 Letter of Determination (the "Decision") for Mitigated Negative Declaration ENV-2013-2877-MND-REC1 as the environmental clearance and Vesting Tentative Tract Map No. 72500-SL, 853-857 Hyperion Avenue, Los Angeles, CA 90029 that was adopted by the LA City Planning Department and thereafter by the East Los Angeles Area Planning Commission ("ELAPC") in the April 27, 2015 Letter of Determination. (For purposes of this Appeal, the proposed project that is the subject of the Agency Decision will hereinafter be referred to as the "Project" as submitted by the "Applicants".) The Hyperion Avenue Neighbors Association (the "Appellants") reserves the right to augment the appeal application in the future.

Project: A Vesting Tentative Tract Map of eight single family lots for the purposes of a small lot subdivision.

1. Appellants are aggrieved parties.

Appellants provided written and oral testimony to the Agency and ELAPC of the situation awareness and experience that only they possess, objecting to the Project as proposed. The Agency's Decision will negatively affect the Appellants because the Project fails to comply with applicable State and local ordinances and plans, including the City's General Plan, thereby permanently debasing the character, scale, and livability of the Hyperion Avenue and Sanborn Avenue neighborhood and surrounding community.

Additionally, the Agency's Decision negatively impacts Appellants by eroding long established, community consistent standards as they relate to side yards and setbacks, scale and massing, and neighborhood character.

Furthermore, allowing the Project Applicants to deviate from the Los Angeles General Plan, the Silver Lake Echo Park Elysian Valley Community Plan, the California Environmental Quality Act and long-established design precedents only invites future landowners to request (and receive) additional exceptions and variances (calculations, aesthetics, neighborhood character, open space, etc.) from existing ordinances and plans, further eroding the community character and quality of life. However slight the exception may be perceived, a slippery slope is created.

For these and the following reasons, the Appellants are aggrieved parties for purposes of the instant appeal.

2. The Subdivision Map Act requires the Agency to find the proposed map to be consistent with the City of Los Angeles General Plan and the Silver Lake Echo Park Elysian Valley Community Plan. (Gov't Code § 66473.5)

"Support efforts of active neighborhood groups to preserve and rehabilitate local neighborhoods and strengthen neighborhood character and identity." (p. I-7)

"Enhancing quality of life and preserving neighborhood character are priorities of the Plan, based on input from community stakeholders." (p. III-1)

"Preserving and enhancing the positive characteristics of existing residential neighborhoods while providing a variety of housing opportunities with compatible new housing." (p. III-1)

"Preserving and enhancing the positive characteristics of existing development, such as scale, height, bulk, setbacks and appearance, and uses which together provide the foundation for community identity." (p. III-1)

"Where appropriate and possible, traditional courtyard-style, multiple family housing developments that incorporate open space, provide a friendly environment for pedestrians, and de-emphasize in their design vehicular access and parking are encouraged." (p. III-1)

"Where feasible, Multiple Family Residential development of five or more units should be designed around a landscaped focal point or courtyard to serve as an amenity for residents." (p. V-7)

"Require use-able open space for outdoor activities, especially for children." (p. V-8)

Objective 1-1: Achieve and maintain a housing supply sufficient to meet the diverse economic and socioeconomic

needs of current and projected population. (p. III-2)

Policy 1-1.1: Maintain an adequate supply and distribution of multiple family, low income and special needs housing opportunities in the Community Plan Area. (p. III-2)

Policy 1-1.2: Improve the quality of existing single family & multiple family housing throughout the Plan Area. III-3

Policy 1-1.6: Promote the preservation of existing single and multiple family neighborhoods. (p. III-4)

3. The Project does not comply with the Small Lot Subdivision Guidelines.

- a. The Project is not context sensitive. [Guidelines, p. 1]
- b. The Design is not compatible with the existing neighborhood. [Guidelines, p. 6]
- c. The Developer has not considered the design elements of the 8 homes and how they will enhance the overall neighborhood character. [Guidelines, p. 8]
- d. The characteristics of the Project do not relate to the surrounding built form, respecting the overall neighborhood character and existing topography. [Guidelines, p. 9]
- e. The Project is not compatible with the existing neighborhood. [Guidelines, p. 9]
- f. The Project does not take into account the neighborhood context for existing front yard setbacks. [p. 10]
- g. The Project's building heights are not constructed with a building to height ratio of 1-4. [Guidelines, p. 17]
- h. The Project is not appropriately designed to and scaled to transition from the single-family properties surrounding it. [Guidelines, p. 24]
- i. The Project does not minimize the number of windows and balconies overlooking neighboring interior private yards and windows. [Guidelines, p. 24]

4. The Mitigated Negative Declaration Is Legally Deficient and Fails to Fully Evaluate Several Potential Significant Impacts.

California Law supports the strong presumption in favor of requiring preparation of an Environmental Impact Report (EIR) based on the "Fair Argument" where, as here, the record contains substantial evidence that a project may have a significant impact on the environment. *Laurel Heights Improvement Association v. Regents of University of California* (1993) 6 Cal.4th, 112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75.

The "Fair Argument" standard is a comparatively low threshold standard and reflects the strong public policy interest for resolving doubts in favor of a thorough environmental review. Where based on observation, the opinions of area residents are relevant to impacts such as aesthetics and traffic and constitute substantial evidence in support of a "Fair Argument" for an EIR. *Ocean View Estates Homeowners Association, Inc. v. Montecito Water District* (2004) 116 Cal.App.4th 396, 402; *Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 355-356; *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322.

The Failure of the Agency to Support its Findings by Substantial Evidence Constitutes an Abuse of Discretion and a Failure to Proceed in a Manner Required by Law. The Appellants are aggrieved by the Agency failing to require a full Environmental Impact Report (EIR).

- a. A "Fair Argument" exists that the Project will significantly affect the following:

Aesthetics (visual character, light); Air Quality (construction, operational); Biological Resources (tree removal); Geology and Soils (construction, seismic, flood control); Greenhouse Gas Emissions; Hazards and Hazardous Materials; Land Use; Noise (construction, operational); Public Services (fire protection, schools); Recreation (parks); Traffic/Transportation (curve/driveway); Utilities (water, solid waste)

- b. A "Fair Argument" exists that the Project will significantly affect Traffic/Transportation.

Hyperion Ave is a substandard street yet serves as a major connector between Sunset Blvd and Temple St, Melrose Ave, Beverly Blvd. The Subject Property is located on a hillside just south of a blind S curve with a long history of accidents, some of them fatal. MND Section XVI. Transportation/Traffic d. asks "Substantially increase hazards due to a design feature (eg., sharp curves or dangerous intersections)?" The Agency has determined that adding a driveway serving 18 cars in this location presents a less than significant impact without providing findings or evidence. Hyperion

Ave is currently classified as a Local Street.

The Environmental Impact Report State Clearinghouse No.2002041009, City of LA EIR No. 2005-2158(EIR), CPC No. 97-0043(CPU) completed as part of the Hollywood Community Plan, states: "Hyperion Avenue is a Secondary Highway in the Plan Area with two lanes in each direction as well as time restricted and metered parking lanes on both sides of the street from Glendale Boulevard to Fountain Avenue where it transitions into a Collector street." Had the Agency required an EIR, the EIR would have determined that Hyperion Ave functions as Collector street, is outdated in its classification, and therefore requires greater dedications and improvements. The Appellants and the public are aggrieved by the lack of a EIR and the potential public safety consequences.

For these reasons, Council Member Mitch O'Farrell filed a motion to down-zone this section of Hyperion Ave. It would be prudent to allow the City Planning Department to follow through with the down-zoning before allowing development to proceed that would only exacerbate the already dangerous conditions and thus compromise public safety.

c. A "Fair Argument" exists that the Project will significantly affect Land Use.

The Agency has failed to conform to the General and the Community Plan "Policy 1-1.1 Maintain an adequate supply and distribution of multiple family, low income and special needs housing opportunities in the Community Plan Area" (p. III-2) by allowing land zoned for multiple dwellings to be developed with single family homes. The Agency consequently has erred and abused its discretion by increasing the availability of single-family homes at the expense of reducing the availability of apartments and condominiums; affecting the overall mix of housing opportunities in the City of Los Angeles. The Agency is thereby discriminating against and pushing out multiple family, low income and special needs residents.

6. The Most Basic Mandate of CEQA is violated by not requiring the Developer to specify a stable, accurate, and finite Project description before approving the Vesting Tentative Tract.

According to the Determination, the Department of Building and Safety requires "a minimum 20ft. Common access clear to sky for frontage and egress/ingress purposes all the way to the public street" and to revise the map to show compliance or obtain approval from the Department of City Planning to allow for a reduced common access. Therefore the map is not yet stable, accurate or final but has been approved.

LAMC SEC. 17.52. PARCEL MAP – AUTHORITY OF ADVISORY AGENCY.

A. Disapproval Of Maps.

1. No preliminary Parcel Map shall be approved which violates or would result in a violation of, or fails to comply with, the Subdivision Map Act or any other applicable law of this City or State. (Amended by Ord. No. 130,871, Eff. 9/20/65.)

The Appellants and the public are being denied due process by not having the opportunity to provide testimony at a public hearing on a stable, accurate, and finite Project description.

7. The Project violates the LAMC, e.g. Sections 12.03, 12.10, 12.21 G, 17.05 F, 18.05 C.

The Project seeks to build town-homes that are not fee simple and therefore subject to LAMC requirements in multiple residential dwelling zones.

Ordinance 171,753 amends LAMC Section 12.21 G to read: Open Space Requirement for Six or More Residential Units. Purpose: It is the purpose of this subsection to establish reasonable and uniform regulations to provide usable open space as a means to fulfill the following objectives: afford occupants of multiple residential dwelling units opportunities for outdoor living and recreation; provide safer play areas for children as an alternative to the surrounding streets, parking areas, and alleys; improve the aesthetic quality of multiple residential dwelling units by providing relief to the massing of buildings through the use of landscape materials and reduced lot coverage; and provide a more desirable living environment for occupants of multiple residential dwelling units by increasing natural light and ventilation, improving pedestrian circulation and providing access to on-site recreation facilities.

The Project private street, parkway/sidewalk, pedestrian walkways, and side-yard setbacks do not meet LAMC requirements.