

NORTH UNIVERSITY PARK COMMUNITY ASSOCIATION

2323 Scarff ZA-2021-6672-DB-CU-CCMP-HCA-1A / ENV-2021-6673-CE

LA City Planning Commission (CPC)

February 23,2023 / Item #7”

Excerpted minutes of private Tape-Recording / side A

STAFF REPORT (1.02)

Rafael Fontes & Power Point (1:02)

...10 dwelling units, one of which is reserved for Very Low-Income households within the University Park Historic Preservation Overlay Zone or HPOZ in Council District -1. The proposed building will be 4-storys, 40-feet 6-inches in height, over 1-level of at grade parking, the total proposed floor area for the residential development 52,767square feet...18 parking spaces....

...On August 25, 2022 the Zoning Administrator issued a Letter Of Determination which determined that the Project is Categorically Exempt from CEQA, approved a State Density Bonus Compliance Review with ON-Menu Incentives, a Conditional Use for the Neighborhood Stabilization Overlay, and a Certificate of Compatibility for the University Park HPOZ, and Approved the Architectural Plans.

As Part of the Approval the Project was found to be Exempt from CEQA pursuant to State CEQA Statute and Guidelines, Article 19 Section 15332 Class 32 Urban Infill Development. And there is No Substantial Evidence demonstrating that an Exception to a Categorical Exemption pursuant to State CEQA Statute and Guidelines applied.”

...the subject property is a level rectangular vacant parcel of land consisting of 2-lots... the site is zoned RD-2-1XL-0-HPOZ... a height limit of 30-feet

No additional communication has been provided by the Appellant to Planning Staff at the time of the preparation of the Staff Report nor this presentation, therefore the Staff Report and this Presentation addresses the Appeal-Points raised in the initial Appeal filling. ...we have paraphrased and summarized the Appeal Points into these 4-main categories.

The first being the State Density-bonus program. The second being the Conditional Use Permit. The third being the Categorical Exception. The fourth being the Certificate of Compatibility ...

...furthermore, the City of Los Angeles and the State Bonus Density legislation allow for a Density Bonus to be granted for a Non-Contributing property. The subject property is a vacant lot and was identified as a Non-Contributor in the University Park HPOZ Historic Resources Survey, it is also a Non-Contributor to the St. James Park Historic District...

...In response to appeal point-2 the Appellants have provided no evidence that the Project is over scale, other multifamily buildings of comparable size may be found in the neighborhood....one such building is located one block south on the corner of Portland Street and Adams Boulevard. It is 4-stories comprising 46,248 square feet of residential floor area, 38 units at 76 bedrooms ...

Staff notes that the Appellant has not submitted any substantial evidence that the Project will result in a significant environmental impact... it is designated a Non-Contributor and the Project has been designed to comply with the Residential Infill Guidelines of the Preservation Plan...

...a Certificate of Compatibility is required for new construction on vacant lots in the HPOZ and insures Compatibility of new construction with the Character of the Historic District... a public hearing is held, a recommendation from the HPOZ Board and the Cultural Heritage Commission's designee is made and the project is reviewed for conformance with Guidelines of the Preservation Plan by the Director of Planning or Zoning Administrator in this case.

It is important to note that these Guidelines are a path to a Compatible design but are not Prescriptive Objective Standards...

CPC QUESTION & STAFF REPLY (9:42)

Millman & Shannon

...CHC designee? ...I can answer that... so there a designee on behalf of the Cultural Heritage Commission that makes the recommendation, that staff person is Lambert Gissinger, he's a senior architect... That recommendation was that the project conforms with the Objective Guidelines of the Preservation Plan.

APPELLANT PRESENTATION (11:00)

Jeann Frost / 4-minutes +1

... This decision makes mockery of four decades of Planning. The CRA approved in 1979 and created the Urban Design Guidelines Program so that projects like this one before you would be modified before it gets to the approval stage. The University Park HPOZ Preservation Plan then follows the Urban Design Guidelines using many of the unique yardsticks with emphasis on what is prevailing. The South Community Plan revision further codified the bond with the community and downzoned the area to RD-2 so that developers would be more incentivized to have realistic development and harmful expectations in this unique historic area.

What is so sad is that with continuing willingness to attend Consultations with the HPOZ Board the Project could have achieved the Project that both conforms to the Preservation Plan and allows for density. Four Board Architects former and present offered solutions; Reduce the number of bedrooms that artificially inflate the volume. Eliminate the ground floor, the large recreation room destined, in our view, to be an ADU's in the future. Eliminate ground floor parking...hold the Appeal and send it back to the HPOZ Board... and the Cultural Heritage Commission. No Commissioner has seen this Project and entertain whether it comports... No one is against housing. What we cannot support is the deterioration of a National Register District and a Historic Preservation Overlay Zone to allow for a development that will help destroy it.

The record shows this in testimony by architects, planners, experts, community groups, community members, and the HPOZ Board. This Project goes against all the benchmarks that were created by Planning...The City adopted the NSO in recognition of the cumulative negative impacts of multi-bedroom student housing and its severe impacts... The Finding to support a Conditional Use under the NSO cannot be made...Other developers have met the challenge to develop a project that meets the requirements...the Oak-Norwood Learning Center, 29-units, 100% affordable, 2317 Scarff Street, adjacent, market rate, Washington View Apartments, 100% affordable at the Pierce Brother's Mortuary, HCM... Your Vote to support the Appeal is supported by the preponderance of evidence in the record. This Project does not meet the requirements of the Preservation Plan. If it does not, it has severe negative impacts on the District and it is not CEQA Exempt. The Commission has the authority tonight to deny the Bonus under SB-1818, when there are negative impacts to the National Register District and when there are un-investigated health and safety impacts. The facts support this Appeal...

APPLICANT PRESENTATION (17:04)

Charles Kim with shared screen / 5-minutes

...on land that has been vacant from what we understand to be nearly 20-years...from a fire that happened decades ago... What we're proposing is a building that's 20,996 square feet and using the State Density Bonus to get to the unit count of 10... The incentives that we're asking for under the State Bonus Density is just merely two; one for height to take it from 30 feet to 40 ½ feet, and open space, that is it... Parking that we're providing for is 18 spaces the requirement under AB-2345 is five...and now with the passage of AB-2907 it would be zero... but we think its responsible to have some parking on site.

We spent over a year with OHR. Starting with our first our first design review with Lambert. We started with contemporary, we ended up making seven material changes to the design to get to where we are now. Again, I want to emphasize that this is a Non-Contributing lot, I think that the requirements from a design perspective are not as stringent as if this was a Contributing lot...We know that we've made many more changes then the seven to a point where OHR is now, I believe, comfortable... (Screen-Map) We canvased the area, north of Adams, east of Hoover, west of Figueroa, and south of the 10. We literally went parcel by parcel by parcel, we are not the tallest building, we are not the widest building, we are not the largest building, we are not anywhere the most dense...

(Screen) I point you to this slide that is just on the Scarff Street as you can tell, even with four stories we've pinched down to 40 and a ½, there are taller structures just on the Street, there are wider structures just on the Street so please take that into consideration...When we talk about front yard setback, and thanks one of the gripes we've heard if you look at the Streetscape I think some of the commentary that we should have our front yard setback at 46-feet and that's the Prevailing. Well, it depends on how you count Prevailing. If you look at the just 4-parcels to the right, i.e. to the north, Yes they're at 46. But if you look at the entire block-face it is jagged, it is all over the place. We actually took a measurement of every single property on that street, counting both sides of the street the average is 35. We didn't have to go 35 feet, we believe but we went to 35 because we felt it was the thing to do. We have a 33 front yard setback and a 2-foot dedication... again we did that as kind-of-a gift to the HPOZ Board...Even the roof-top that we had on top of the building which we think is a good feature we ultimately excluded unilaterally, by ourselves because we had heard that some of the folks didn't like it...

PUBLIC TESTIMONY (22:59)

Jim Childs / 1 minute (24:00)

You know, the truth actually does matter. In the Planning process truth is usually found in the actual data. This Project is being proposed based on false data. These factual misrepresentations form the foundation from which this developer and their agents have been able to manipulate the administrative process... I have submitted extensive documentation on all the gross errors in their claims but to no avail...One of the things I have submitted for you all is the City's 1999 Myra Frank Historic Resources Survey that was done for this HPOZ...

Laura Meyers / 1 minute (25:21)

The problem with this Project is not only the false statements made by the applicant but also the Office of Historic Resources refused after multiple requests to provide in writing any of its guidance that it, you know, on its decision making or whatever it said to the Zoning Administrator, and he admitted in public sessions that they had multiple conversations rather than a written evaluation of the Preservation Plan. I have attended all the public hearings and heard the evaluations of the former architects and

present Board members and past presidents, this does not meet the objective standards of the Preservation Plan specifically for, Prevailing setback, which was imposed on the development right next door, a multi-family which the Board approved...

Roland Souza / 1 minute (27:47)

Looking at the picture that the developer shows of the impact that this Project has on the houses, the four houses north of the Project. The setback is very visible to anybody looking at those photos and how much it violates the idea of a, why do we have setbacks if they can be so blatantly ignored. This is a building that has 10-units... 4 & 5 bedrooms in each of them, student housing with a total of 45 bedrooms with 90-students and the parking is out into that alley that was built in the Victorian period... This really needs to be evaluated in terms of safety, in terms of impacts on a historic Nation Register community...

Jon Tieuel for NANDC Neighborhood Council / 3 minutes (29:15)

First of all, our Board met on April 17, 2022. By a unanimous vote of 14 to 0 we voted to support the University Park H.P.O.Z. Board recommendation to deny the DB, CU and CCMP for this Project as the Project does not conform to the HPOZ Preservation Plan. As a matter of fact, Chair of the HPOZ Board, David Raposa actually said he had never had so many complaints about one project since sitting on the Board. This is not a project that the neighborhood wants is not a project the owners on the street want... your talking about 90 people in this building... it also runs into safety issues also...

Cathy Estrada / 1-minute (30:07)

This Project is an Infill and fails to comply with the University park Preservation Plan and the preservation Plan states "that Infill development be compatible in terms of; massing, materials, scale, siting, roof forms, set back, lot coverage and pattern of doors and windows and the patterns of development in order to preserve the area's character defining features and most importantly each project should respond to its surrounding context and help to create a seamless transition from building type to building type and it is important that multifamily development preserve the appearance of the traditional lot use pattern of the District". This Project failed in every area of the Preservation Plan and in no way shape or form belongs in it. To say that it does can only be done by false statements and distorted misinterpretations, it does not comply, it is not compatible. There have been successful Infill projects in University Park.

Helene Rotolo CD1 (32:07)

This Project, the Determination Letter, and the Appeal predates our time in office... there are also concerns raised by the community that the Councilmember shares... we are encouraged by the many meetings Orion took with the Office of Historic Resources to integrate design elements that are reflective of the surrounding community... the built environment has impacts that last many lifetimes and productive dialogue should be a priority to insure that projects meet the needs of all stake holders...the 45-bedrooms and bathrooms within a 10-unit apartment, the Councilmember has substantial concerns about potential for overcrowding within this building particularly when students are prioritized...

The U.S. Census defines an overcrowded unit as one occupied by 1.01 persons or more per room, that excludes bathrooms and kitchens. Units with more than per room than 1.5 persons are considered considerably overcrowded. It is of grave importance the new developments within the City

benefiting from Bonus Density and other public benefits do not contribute to our intensified overcrowding problem within the City.

L.A. County is one of the most overcrowded counties in the nation with 11% of households being overcrowded, and Pico-Union...is the most overcrowded in L.A. County where 40% of households have more than one occupant per-room. Considering that Pico-Union and the USC neighborhood are directly adjacent to each other and that this Project is catering to students, our office requires that overcrowding be prevented as part of the Conditions for this development Project.

We are also concerned about the inability of the Neighborhood Stabilization Ordinance to effectively mitigate the disparate impacts of the production of student housing within the inner-core of this neighborhood. The NSO's intention was to divert high-density housing both in units and room numbers to the Figueroa Corridor... our office expects that long standing community members are not displaced in favor of speculative housing meant for short term stays... many projects approved in the City, over the past few years have done little to serve the needs of the existing residents and instead prioritized, incentivized, in a wealthier demographic displacing brown and black community members... we would be encouraged if the applicant took additional time with the HPOZ Board to fine-tune the building design to better apply the Preservation Plan...

Public Comment Closed

Sergio Ibarra, staff response (36:41)

...The Project does provide ground floor parking, but it is buffered by a lobby and it is accessible at the rear of the property to an alley-way... In regards to the Prevailing set back by the Preservation Plan there is actually a wide range of setbacks along the street ranging from 2-to-26 feet with the average being 37 feet and the Project providing a 35-foot setback...

Commissioner Millman (37:28)

...We have three separate entitlements before us today; the Density Bonus entitlement, the Conditional Use entitlement which is tied to the NSO in this area, and the Certificate of Compliance with the HPOZ... a lot of what we're talking about is how state regulation and local regulation are in conflict with each other. In the legal system state-law trumps local-law... we heard a lot argument back-and-forth about the 55-foot height which is discussed within the HPOZ, and we have a Density Bonus, which is a state program that allows this applicant to avail themselves of the 35-foot in height increase... in this case does it matter whether it complies...the Findings that we need to make to Deny that entitlement are fairly narrow...when I say matter I mean legally...

Lisa Webber staff (37:28)

... I certainly would concur with your statement President Millman that state law does trump in this case. Which is why the Zoning Administrator was able to make the Findings in support of the Density Bonus... My question for staff, is this within a ½ -mile of a major transit stop?

NOTE: the following speakers fail to clearly identify themselves in an exchange of questions and responses.

Shannon Ryan staff 39:07

...Yes, I believe it is...ZIMAS is showing that it qualifies for reduce parking under AB2118...

...so if we have a state law that allows for reduced parking but we have an NSO that requires a Conditional Use permit in order to affirm that it provides enough parking...How does the state law and are ability to require it interface with each other?...

Donna Wong City Attorney (41:38)

In a general manner state law would take precedence... If the Applicant was able to seek the parking variation for the reduction through state law they would be able to do so regardless of our efforts...

...It is important to note that the ZA decision was made in 2021 prior the passage of AB-2097 coming into effect on January 01 of this calendar year...

That means that 2097 would not apply to this Project or that the CUP is moot?...

...Certainly the Applicant could come back and take advantage of AB-2097 in the future. I think again that the matter has already been approved and is on Appeal before you, we would be reluctant to change the Approval at this time...

Commissioner Millman (42:28)

The CUP for Compliance with the NSO is that based on objective standards so we grant that CUP or is there discretion in that CUP Finding, can you speak to that...

Rafael Fontes staff

...The CUP does allow discretion by the ZA to determine whether there is a parking impact in the neighborhood and whether there is an impact, a general impact to the neighborhoods. There's 3-Findings that have to be made; in terms of the parking the Density Bonus reduced parking was accounted for in making those Findings...

Commissioner Millman (44:00)

I do want to uplift what Helene said from the Council office because every thing she said was the absolutely true as far as the issues we are seeing in the neighborhood and overcrowding, and displacement and gentrification, and neighborhood preservation, and my concern here is that we don't have the discretion and cannot make the necessary Findings. I certainly cannot make the Findings on the Density Bonus, in the wake of having a Housing Accountability Act with more teeth we have to find specific and measurable impacts.

So if we wanted to make the conclusion on the Applicants (Appellants) sake, that there is a significant impact on Historic-Cultural Monuments and National Register properties within the Historic District we would need a report from a professional that showed specific and measurable impacts to specific properties within the District, like exactly what is causing the impacts, what the impact is in which properties we are impacting, or whether it is impacting the whole, and we don't have that specific and measurable fair argument information or data to make that Finding under the Density Bonus

With the Certificate of Compliance, I think where I'm struggling is the language is so twitchy, how are we defining Compatible? There aren't specific measurements to tell us this is compatible, and this is not. Are we working with the Prevailing setback, three-to-the-left, and three- to-the-right, are we doing the whole street, are we doing one side of the street, are we doing one-block, are we doing 10-blocks... Ken if you can speak to how that usually happens, That's where a huge matter of contention in this case seems to be is how we are determining what this Prevailing setback is and who gets to determine it.

Recording-Tape Side-B

Ken Bernstein (46:00)

I'm joined by Shannon...Under state again you are looking at the Objective guidelines of the Preservation Plan those that are more fixed and quantifiable and was alluded by some of the conversations by the Appellant but again, under the state Housing Accountability Act... we are looking at that accountability in that manner... Shannon do you want to add anything to that discussion?

Shannon

So the issue I see here is that we have community members who have worked very hard on the HPOZ, making rules that they feel are going to control, then we have changes to the state law that suddenly make aspects of their Preservation Plan impossible to implement. So I guess my recommendation would be that, to the extent possible, OHR work with these HPOZ's...to revise, or, at the very least educate, the HPOZ Boards about what the impacts of state law are because I can totally understand, I mean it's clearly we sense it, but I understand the frustration of an HPOZ Board who went through all these machinations to get this Plan in place that are now being told that we actually can't comply with this point, this point, this point, this point and now these Projects can move forward, not saying whether its right or wrong that they do move forward but that level of frustration is real and I think education and perhaps application of the Plans is in order.

Ken Berstein

... We have done some City-wide training with our HPOZ Board's about this intersection between state law and our Preservation Plan. We are also hamstrung additionally by state law in our ability to revise Preservation Plans and apply the Guidelines to the review of housing from the same provisions that really preclude us from making those types of revisions. So, we can't consider the adoption of new Objective Standards and that's a direction I think we're hoping to move in, you know moving forward. We also did a bit of similar training specifically for another one of our near-by HPOZ's Boards on this very point because they're seeing a number of projects coming into play...

Commissioner Millman

...Now I will stop talking, I apologize to my colleagues for taking so much time....Helen Leon, then Dana, then Karen

Commissioner Helen Leong (50:23)

...I wanted to find out a little bit more about the suggestions made by Helene of District-1 about overcrowding...I have recalled in the past that it's hard to enforce and could the Planning Department speak a little bit more to that potential concern and are there any conditions we might add that address the future accountability?

Lisa Webber

...I take a crack at that... it's a very difficult conversation to have and I'm not exactly clear on how we might look at this through the lens of land-use or zoning, in terms of the number of persons per-room, per-unit. I know there are a total of 10 units and about half of them are 4-bedrooms and half of those are 5-bedrooms...I don't know if Applicants would wish to speak to how they intend to lease out these units and tenancy management of the Building.

Charles Kim / Applicant

...I don't think if we gotten that far but again our view is always been that we don't discriminate when it comes to tenancy. So trying to impose a impose a two-for-one or say 1 ½ -for-one but that would take, say we had 1-bedrooms, are you saying that only one person can live there? No couples could live there. That to me is kind of a strange rule to try and put in place. I know that we had some 2-bedrooms with a family of six living in there... We take tenant's applications as they come in... we don't look at density per se...

Lisa Webber

I would add though, If you had this confrontation before at prior City Commission Meetings with regards to what is a family, and how is family defined, and really local government is really precluded from defining what a family is. We have dealt with this in other cases... just the reality that some of these elements are not within purview of the Commission's planning policy...

Shannon Ryan

...I do want to caution the Commission when this item come to this group, this body back in December, we are hitting are five-meeting limit, for the Housing Accountability Act. At this point in time this Case has been heard by the HPOZ, its been heard by our Zoning Administrator who rendered the initial decision of the Case and the meeting that were having here today is the third City Planning Commission which brings us to the fifth hearing so we're really precluded from any type of continuance from this meeting today.

Dana Perlman (56:29)

...To say that this is a Bonus Density case of 10 units I think is really a mis-labeling, one this takes it look to me like a dorm that's being requested... I'm not sure how these Findings for a Conditional Use permit could be made and when I go and look at the Conditional Use Findings that the ZA found they don't seem tied into state law as controls, seems to me these Findings have to stand on their own... Donna can you correct me if I'm wrong...Does Density Bonus completely trump the CUP and there's no need for it if once this checks the box for State Bonus Density law?

Donna Wong / (59.44)

...The state law that you are referring to is not the Bonus Density law it would be the Housing Accountability Act under Government Code 65589.5. In that statute there's a provision that indicates that if a development complies with objective standards that were in effect, then in order to disapprove or reduce the density of a project the decision maker needs to make specific findings to support its' proposal to disapprove of the density of the project, those are the Findings I believe that City planner Rafael Ibara earlier explained to the Commission, these are the specific adverse impacts Findings.

Dana Perlman

...OK, it doesn't seem to me, what I see in the ZA Report Findings that are there... we are asked to consider in this instance an Appellant Finding to that there were errors there I'm trying to understand that. It seems to me that the Conditional Use Findings that start on page 21, of the ZA Report... going to the central language: the Project promotes well planned housing , meets the needs of the community, address impacts... I am struggling with that... I don't see this as a straight-up Density Bonus Case...

Donna Wong

...If Commission staff could specify whether-or-not the Project meets the full objective standards that are currently proposed...aside from those requested for waivers as incentive under the Density Bonus Act... There appears to be a request for additional information or clarification as to how that Accountability Act would apply here to the Conditional Use Permit and the Bonus Density, that whole intersection. Under the Housing Accountability Act if a project applies its Objective Standards and there is a proposal to reduce to the Density to approve the project, then (it) needs the specific impact standards are triggered, so standard deviation the threshold question is whether the Project complies with Objective Standards, obviously providing exception for any development standard deviations that

might have been obtained through the Density Bonus Standard such as additional density, or height as an incentive or waiver...

Commissioner Millman (60:06)

Lisa, can I slip in here I think I understand...So we have the Density Bonus, the necessity of the Conditional Use is that any project that has 1-or-more units with 5-or-more bedrooms needs the Conditional Use. It's not that it needs the Conditional Use in order to have 5-bedrooms in these units, it's that it needs the Conditional Use to show compatibility...and it's not going to degrade the neighborhood, and there are certain Findings. One is that it enhances the built environment and provides a service that is essential to the community, another is that the location sight and operations and features are compatible with and don't adversely affect the or degrade adjacent properties, the neighborhood or the public health and welfare, another is that it provides additional on-site Large scale parking, another is that there is no detrimental of concentration of large scale campus serving housing with-in 1,000 feet of the Project, another is that it conforms to the applicable Historic Preservation Overlay Zone or Specific Plan, so those are the Findings we had to make and what the Appeal is asking us to do is say that the Findings that the ZA made were in error or an abuse of discretion...

So we have a Certificate of Compatibility, right, so unless we're finding that the Certificate of Compatibility was issued incorrectly I don't see how we could approve the Certificate of Compatibility and then say deny the Conditional Use by saying that it doesn't conform to the Historic Preservation Overlay Zone.

There are Findings about whether there is an over concentration of large scale campus serving housing within 1,000 feet, it says; there are numerous other developments that have been recently been completed with similar intended uses however most of these developments have been constructed beyond the HPOZ area, with only a couple in the HPOZ area and within the 1,000 ft radius and therefore based on those facts, the Finding that there is no detrimental concentration...

...the question is with the Housing Accountability Act does that have to be an objective standard, does it have to meet the specific measurable or does it get to be a swishy a Conditional Use Finding? and that's for Donna.... Leave me rephrase that... If we were to deny the Conditional Use Finding would that say, OK you can build this Project, but you'll have to come back and it has to have fewer than 4-bedrooms per-unit or would that be saying no. That would be essentially denying the Project. That's where I think we're caught is what does denial of the Conditional Use permit do? So, if we were to say, OK we're moving forward with the Density Bonus and moving forward with the Compatibility Certificate but we're somehow denying the Conditional Use what does that mean for the Project and how does that interact with the Housing Accountability Act?

Donna Wong

... One of the questions you're asking is there a limit on bedrooms, or a maximum number of bedrooms that are allowed on a 10-unit buildable development or is there something that prevents them from doing it. Am I understanding the question?

Commissioner Millman

The question is if the Conditional Use permit is denied what impact does this have on the entitlements, does that deem the project denied?

Rafael Fontes or Sergio Ibarra

Without the CUP The project would not be able to move forward at all, and besides if it were to have to go back to the ZA for that approval it would have already maximized the amendment.

Dana Perlman (60:08)

...I have a difficult time with the CUP conditions and some conformance with any plans. I don't see the justification for that and what I was trying to understand was, given the Accountability Act whether that and Density Bonus really do away with the need to even consider the CUP and force our hand. It sounds to me from your answer that these are separate items that all need to be approved for this project to move forward. So if I, for example, have a difficulty with finding that the CUP was properly approved by the ZA, then I would have to vote for the Appeal and not have the Project move forward, that's what I'm hearing... again if this was a standard Density Bonus case it would be much more straight forward... but the inclusion of the Conditional Use Permit and the Findings that need to be made to go along with that I have a problem with that... with the General Plan I would make a finding that.. I would support the Appeal and find that the Conditional Use Findings are made by the ZA 1-through-8. I don't think those were properly found, all of them, I'm not cherry picking out... its not just the General Plan but also the Specific Plan...

Karen Mack (60:11)

...I always have a problem when we have such vehement community opposition to a project. I feel we have a real equity issue around the HPOZ, because, I can't remember who said it but it terms of the HPOZ really having a report that documents, how this Project does not fit in with the Guidelines, having the community having to come up with that it just real challenging for the community... the City in some ways reliant, to enforce on the HPOZ. There is not the capacity in the City to really police whether development complies... again my point is within the system its challenging to really apply any of this without the support of the community and challenging for the community to really participate in a meaningful way because of the inequity in the system...that being said I'm really in support of the community... This is a very sophisticated group of community members in terms of their understanding of the work they done in establishing a HPOZ so if there is a way.... within our legal jurisdiction, I want to support the Appeal.

Millman

... one other thing, that fact guided my thinking on this...can you talk about what existed on this parcel, the structure that burned down 20-years ago ,what was it?

Shannon (60:15)

There had been a men's dormitory on the site and prior to that many, many, decades ago there was a small cottage, a single family home

Milman

OK but in recent history it had been a men's dorm. So that housing was in the HPOZ in a use that existed.... Helen, yes I wanted to a clarifying question; Commissioner Perlman could you go into a little more detail about your concerns of the Conditional Use 1-through-8

Dana Perlman

My concern is... then I looked at the Conditional Use Permit and a Conditional Use requires Findings, that it will enhance the neighborhood and be essential and beneficial to the community, its compatible with the community, and will not have adverse effect and further degrade the surrounding neighborhood, that it conforms with the General Plan and the Specific Plan including the NSO... I'm concerned again that this 10-unit complex is really housing for 50+people, and the density that's a concern. To me, legally, I have a problem with Findings that the ZA made...

Committee President Milman

The only thing I would add is that if we deny the Project they can come back and do the same Project with 4-bedrooms per-unit and don't need the CUP and it will get built. But we can take a vote and see where the chips fall.

Donna Wong City Attorney (60:17)

Just so the Commissioners know if there is a proposal to disapprove the Project the Commission should make a finding on the Housing Accountability Act. Under the Housing Accountability Act under Section F4 it states that; The purposes of this Section is the Housing Development Project.. shall be deemed consistent and compliant with LA conformity with an applicable plan and Program Policy Ordinance standard requirement... If there is substantial evidence that would allow reasonable questions to conclude that the is consistent compliant or conformity. Straight from the HHA.

Under the Housing Accountability Act, the way Housing Accountability Act looks at Findings like we have in the CUP especially the Findings there are not based on some sort of calculation but are Objective Standards. The way the Housing Accountability Act looks at a project as being consistent or compliant if there is substantial evidence in the record that would allow a reasonable person to conclude that the Housing Development is consistent with the Standard. So if there is evidence in the record that would allow a reasonable person to conclude that, a court will typically go with that even though there may be evidence to the contrary.

Millman

I don't really know what that means Donna... So are you saying that the standard finding that we have to make for example; if its going to degrade adjacent properties or is not in compliance with, you know doesn't meet the objective of the Specific Plan, we have to do like those specific measurable things?

Donna Wong

Generally speaking, under the Housing Accountability Act objective standards are appropriate standards to disapprove Projects, but if there is evidence in the record that the Project is compliant with more subjective standards, generally that substantial evidence will support the Project if there is a traditional challenge.

Millman

If we want to say that it degrades adjacent properties and is not compliant with the Specific Plan we have to supply specific evidence for that.

Donna Wong (60:26)

In the past decision makers were provided a lot of discretion to use subjective standards to approve or disapprove projects. Under Housing Accountability Act much of that discretion has been constrained so that your ability to deny a Project is base on subjective standards or in a scenario you have made specific impact findings, in instances where the is information that would support a Finding of consistency ,compatibility, of compliance and there is substantial evidence in the record to support that, that will support the Project, even if there happens to be other evidence supporting a finding of non-compliance, again another way to say it in simpler terms is that it function as a tie-breaker which favors the developer.

Shannon

To put it another way I think what Donna is saying is that we have a ZA who made findings and in support of their Findings and the Housing Accountability Act would give deference to those Findings that have been made.

Millman

Because that would be the evidence in the record what a reasonable person could conclude is what I'm hearing Donna say

Donna

Correct. So in the past the decision makers frequently have been able to look at both pools of evidence and make a choice share there aware there's evidence on both sides that the distinction.. in that scenario Housing Accountability Act indicates that if there is evidence which supports the Project the Project is going to be deemed consistent and compliant.

Millman

Do we have a motion?

Perlman (60:00)

I will make a motion to: Grant the Appeal and Deny staff recommendations.

Mack

Second

Millman

Ok we have a motion and a second. Celia, will you please call for the vote.

Celia

Commissioner Pearlman Yes

Commissioner Mack Yes

Commissioner Hornstock No

Commissioner Leung No

Commissioner Choe No

Commissioner Milman No

The Motion Fails 2-4

Millman

Donna, before I make a counter motion will you remind us the penalty is to the City of Los Angeles if a violation of the Housing Accountability Act were found in a court of law... per unit

Donna Wong

Under the Housing Accountability Act we would be subject to attorney fees for the prevailing party which varies greatly from case-to-case...trial-case range from \$250,00 to \$500,000 depending on the complexity and for the fines and penalties under the statute it is \$10,000 per unit with a 5-time multiplier... \$50,000 per unit.

Commissioner Leong (60:28)

I wanted to share a little bit about my no vote... I think overall I find that if I were to deny it there could be a loss that would be hard for the City to defend... if we were to choose between rejecting a project that could result in a law suit or actually having that would add more housing that doesn't have direct displacement I am more pro-that.

Perlman (60:30)

I appreciate the question to the City Attorney about possible exposure. I also wanted to point out the City's indemnification...If this was a Density Bonus case that was straight forward I wouldn't have any problems with approving the Project but the Conditional Use element of which is separate findings and separate determinations...I agree they look pretty standard plopped in their...I read briefs for a living and I can see the difference... I don't see anything factual there, I don't see any foundation for it...

Karen Mack (60:32)

President Millman when you talked about voting no and said that they would build four units, say more about what you

President Milman

So the reason for the Conditional Use is that any project in this area that has one unit or more with 5-bedrooms or more has to get a Condition Use Permit. All they have to do is take a bedroom out of each of the units and come back and not get the Conditional Use. I see Lisa shaking her head so I got that wrong

Lisa Webber

I want to invite our senior City planner Michele to speak to this issue because it's not specific bedrooms it's all habitable rooms, and habitable rooms can be living rooms, dining rooms, kitchen.

Michael

The requirement is five-rooms or more so in his case the Project supplies 45-bedrooms and at least 10-habitable rooms that include the kitchen. So they would have to reduce the habitable rooms to four per-unit.

Millman

I'm going to make a motion that we approve staff recommended action on this item. Second by Hornstock

Celia

Commissioner Pearlman	No
Commissioner Mack	No
Commissioner Hornstock	Yes
Commissioner Leung	Yes
Commissioner Choe	Yes
Commissioner Milman	Yes

The Motion Fails 4-2