

DOCUMENTS FROM APPELLANTS

**Supplement to Appeal to PLUM/City Council
Re: Application of De Novo Review to Appeal Issues**

**Council File 26-0975
Council File 26-0975-S1**

Supplement to Appeal to City Council Re: Application of De Novo Review to Appeal Issues

Appellants submit this supplement to clarify how the issues raised in the appeal should be evaluated under the applicable de novo standard of review.

The original appeal identified numerous errors in the Zoning Administrator's determination. The appeal was handled by the ZA, and considered for almost the entire hearing, under the error/abuse-of-discretion framework, until the City Attorney stated towards the end of the meeting that the standard of review should be de novo and not error/abuse-of-discretion. It must be noted that under de novo review, the reviewing body is not limited to deciding whether the Zoning Administrator committed reversible error. Thus, the Council must now independently evaluate the whole project and the whole record and determine whether the required findings can be made.

The record and appeal issues therefore carry even greater significance under de novo review as the entire record and all findings and appeal issues must be carefully reviewed with fresh eyes.

1. Neighborhood height, character, mass, and scale

Under an error/abuse-of-discretion framework, appellants provided evidence that the Zoning Administrator erred by relying on a materially flawed community character analysis, including inaccurate height data and selective comparison to larger or pre-Coastal Act multifamily structures.

Under de novo review, the Council must independently determine whether the project is visually compatible with the actual character, mass, and scale of the surrounding neighborhood as required under Coastal Act Section 30251.

The Council cannot make that finding based on a record containing materially unreliable height and character data. The approved project is not merely a 21-foot structure below the applicable 26-foot height limit. It is a 3,523-square-foot residential development, not counting the two-car garage and one-car carport, behind a 763-square-foot Historic-Cultural Monument. The Council must decide whether that scale, mass and placement are actually compatible with the smaller surrounding homes, bungalow court, historic café, and coastal setting.

2. Compatibility with Walker's Café as a Historic-Cultural Monument

Under an error/abuse-of-discretion framework, appellants provided evidence that the Zoning Administrator erred in treating preservation of the café building as sufficient to satisfy historic preservation requirements.

Under de novo review, the Council must independently determine whether the entire project – including the new single-family residence, ADU, roof decks, perimeter walls, gates, and constrained rear patio – is compatible with Walker's Café as a Historic-Cultural Monument.

The required finding cannot be made merely because the café façade, neon sign, or exterior materials are preserved. Walker's is not just a small historic building; it is a historic restaurant and

visitor-serving coastal use. Preserving it requires preserving the functional setting that allows it to operate.

3. Functional viability of the café

Under an error/abuse-of-discretion framework, appellants provided evidence that the Zoning Administrator failed to adequately address whether the project leaves sufficient space for Walker's Café to function.

Under de novo review, the Council must independently determine whether the project, as proposed, supports or undermines the long-term operation of the café.

The record shows that the residential component dominates the site and leaves only narrow residual space for dining, circulation, deliveries, refrigeration, storage, trash handling, service movement, and future adaptation. If the project is justified as restoring and preserving Walker's Café, the Council cannot ignore the issue of whether the site plan leaves Walker's enough functional space to survive.

4. First-responder access, emergency movement, and site circulation

Under an error/abuse-of-discretion framework, appellants provided evidence that the Zoning Administrator failed to make adequate findings regarding emergency access and circulation.

Under de novo review, the Council must independently determine whether the approved site design safely accommodates patrons, staff, service activity, deliveries, evacuation, and first-responder access.

The issue is not whether a 10-foot passageway is wider than a minimum Building Code corridor width. The issue is whether rear patio patrons, tables, chairs, service activity, deliveries, emergency response, walls, gates, and a large residential structure can all safely and functionally coexist in the same constrained space behind the café. In an emergency, patrons may move, but tables, chairs, six-foot block walls, and gated access points remain physical constraints on both evacuation and first-responder access.

5. The residential component's dominance over the protected use

Under an error/abuse-of-discretion framework, appellants provided evidence that the Zoning Administrator erred by evaluating the café and residential components in a piecemeal manner.

Under de novo review, the Council must independently evaluate the project as a whole.

The central question is not whether a single-family dwelling and ADU are legally allowed on the property. Appellants do not oppose reasonable residential development. The question is whether this particular residential structure, at this size and location, overwhelms the protected historic and visitor-serving use. The Council cannot make the required findings unless the residential component is reduced and reconfigured so that Walker's Café remains the functional centerpiece of the site.

6. Charter 245 conditions must be enforceable, not aspirational

Separate from the Zoning Administrator's determination, the Council Office has advised that the purpose of the Charter 245 motion is to allow City Council to consider additional conditions of approval to help preserve Walker's Café's long-term operation, historic function, and cultural integrity.

Appellants support that objective. However, under de novo review, the Council must determine whether the proposed conditions are specific and enforceable enough to support the required findings.

A condition stating that the owner shall "strive" to operate the café, or may later propose minor modifications to address deliveries, service, and patron circulation, is not sufficient. Such language acknowledges the problem but does not solve it. Conditions must be mandatory, specific, enforceable, and tied to the required findings. At minimum, they should require continued operation of Walker's as a public restaurant, preservation of functional café space, adequate delivery and waste-handling access, safe patron and emergency circulation, and substantial café restoration progress before the residential component receives permits or occupancy.

See separate accompanying document with our proposed conditions.

7. CEQA and "small structures"

Under an error/abuse-of-discretion framework, appellants provided evidence that the Zoning Administrator erred in relying on categorical exemptions without adequately considering the whole project and its unusual historic/coastal context.

Under de novo review, the Council must independently determine whether the CEQA clearance is adequate for the project as a whole.

The Class 3 "small structures" label does not answer the compatibility question. Whatever "small structures" may mean in the abstract for CEQA purposes, this project is not small in relation to Walker's Café, not small in relation to the functional space Walker's needs, and not small in relation to the surrounding neighborhood character, mass, and scale. A categorical exemption label does not provide for important Coastal Act or historic preservation findings.

8. Economic feasibility is not a substitute for required findings

Under an error/abuse-of-discretion framework, appellants provided evidence that the Zoning Administrator gave undue weight to the applicant's claim that the residential project was needed to support the café.

Under de novo review, the Council must independently determine whether economic feasibility claims may be used to justify this specific project design.

The applicant's desire for economic return does not override Coastal Act compatibility, historic preservation, CEQA, safety, circulation, or variance findings. Appellants support a reasonable-sized single-family residence and ADU that provide economic value to the applicant. But the Council must determine whether the currently proposed residential footprint is necessary, compatible, and lawful — not merely whether the project might be more profitable as proposed.

9. The remedy is modification, not rejection of Walker's Café

Under an error/abuse-of-discretion framework, given the number of errors identified the appeal could be misunderstood as asking the City to deny the project entirely.

Under de novo review, the Council should independently fashion an appropriate remedy/revised proposal.

Appellants are not asking the City to prevent Walker's Café from reopening, nor are we asking the City to prohibit residential development on the property. Appellants are asking the Council to modify the project so that the residential structure is substantially reduced in footprint, mass and scale, the café is given adequate functional space, incompatible roof-deck and wall impacts are eliminated or reduced, and there are enforceable conditions to ensure that Walker's remains a public, visitor-serving historic restaurant.

10. Requested de novo determination

Because review is de novo, the Council must independently evaluate the whole project and determine whether the required findings can be made for the project as proposed.

Appellants request that the Council modify the approval, as outlined in the additional conditions that we have provided in conjunction with this document, to:

1. Reduce the residential footprint and scale;
2. Preserve adequate functional space for Walker's Café operations;
3. Ensure safe circulation and emergency access;
4. Eliminate or substantially reduce incompatible roof deck, wall, and gate impacts;
5. Require Walker's Café to remain a public restaurant open to the general public;
6. Require substantial progress on café restoration before permits or occupancy for the rear residential development;
7. Impose enforceable conditions that run with the land; and
8. Ensure that any final approval is based on independent findings under the Coastal Act, historic preservation standards, CEQA, and applicable variance requirements.