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VIA EMAIL

Etta Armstrong, Commission Executive Assistant
Central Area Planning Commission
apccentral@lacity.org

Re: Appeal of Eldercare Facility Permit at 843 S. Sherbourne Dr; ZA-2019-7715-ELD-1A

Dear Commissioners:

This office represents Appellant Cheryl Holstrom regarding the proposed demolition of an existing 12-unit multifamily residential building and the construction of a seven-story, 32,120-square foot Eldercare Facility with a total of 56 units (the "**Project**") located at 843-847 South Sherbourne Drive (the "**Project Site**"). On June 1, 2021, the Zoning Administrator ("**ZA**") issued a Letter of Determination (the "**LOD**") granting approvals for the Project including an Eldercare Facility Unified Permit as described below and finding the Project exempt from the California Environmental Quality Act. This letter incorporates by reference the arguments in the appeal and this office's letter to the Commission dated November 8, 2021. We respectfully request that the Project be denied as set forth in the initial appeal.

I. The Project Plans are Incomplete and Cannot Support the Required Findings

The height of the Project is central to the Appellant's contentions about the compatibility findings, yet the Commission does not even have an accurate and complete set of plans to render an informed decision. The LOD and the attached plans depict the Project as being 67 feet in height as measured by the Zoning Code, but this measurement fails to account for rooftop elevator shafts, stairwells and HVAC equipment which are permitted to exceed this 67-foot limit. The actual physical height of the building is never disclosed in the Plans, which conspicuously omit any rooftop equipment from elevation views (Sheets A3.01-02), or the LOD which fails to mention rooftop equipment in any description of the Project (pp. 8-10, 19-20). Rather, the only hint of the Project's actual height is Condition of Approval 8(d) which permits rooftop equipment to exceed the 67-foot height limit as permitted by LAMC Section 12.21.1. To understand the physical height of the building, members of the public would need to read not only the Project Description in the LOD, but also the conditions of approval *and* the underlying LAMC provision to understand that elevator shafts and stairways may exceed the height limit by 10 feet, while other equipment may exceed the height limit by five feet. The height exception for rooftop structures does not render these physical components non-existent or invisible to the community; they impact the physical environment as much as the rest of the building. The actual height of the building, after accounting for elevator shafts and stairwells, is unknown.

As a matter of law, a complete set of plans must include the height of roof structures. The Eldercare Facility Unified Permit procedures dictate that an application shall "include all information required by the instructions on the application and the guidelines adopted by the Director of Planning."[1] The applicable instructions require elevations depicting and dimensioning "height to the highest point of the roof and all roof structures[.]"[2] Recognizing that the physical height of a building is a fundamental data point essential to understanding a Project's scope and compliance with the Zoning Code, the Elevation Instructions mandate that inadequate plans "cannot be accepted."[3]

This error is fatal because the plans are incomplete as a matter of law, failing to comply with unambiguous and generally applicable law. Moreover, this error undermines the City's purported substantial evidence determining the Project to be compatible with the surrounding low-rise community. While the Project is repeatedly described as 67-feet in height, the actual brick-and-mortar structure would likely be 77 feet in height – a 15 percent increase in height without notice to the public. If the record fails to include an accurate description of the Project's actual height, City cannot possibly determine that height to be compatible with adjacent two-story developments.

II. <u>The ZA Erred by Finding Unnecessary Hardships</u>

A. <u>The ZA Erred by Using Commercially Competitive Profits as the Measure of Hardship</u>

The ZA erred in finding that "the strict application of the land use regulations on the subject property would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the zoning regulations." The word "hardship" means "severe suffering or privation."[4] This finding requires not only that the strict application of zoning regulations result in severe suffering or privation, but also that this severe suffering or privation is unnecessary and inconsistent with the purpose of the zoning regulations. An unnecessary hardship may not be self-imposed or created by the circumstances under the control of the applicant. Here, the applicant seeks relief from the Zoning Code including increased density, increased FAR, increased height, a reduced rear setback and tandem parking where not

[1] LAMC Section 14.3.1-C.
[2] Department of City Planning Elevation Instructions (CP-7817), available at: https://planning.lacity.org/odocument/e7b10ed3-6b4d-4929-80f8-769343418774/Elevation%20Instructions.pdf
[3] Id.
[4] Oxford English Dictionary, 2022. Available at: <https://www.lexico.com/en/definition/hardship>

permitted. The ZA reviewed a third-party analysis and concluded that the "requested deviations from the zoning regulations are necessary for the proposed facility to enable a physically viable eldercare facility."[5]

The ZA erred by using *commercially competitive profit rates* as the baseline for determining whether an *unnecessary hardship* would result from strict application of land use regulations. In particular, the February 18, 2021 letter from Hendrickson Consulting (the "Hendrickson Letter") analyzes Project "feasibility" based on a Yield To Cost (YTC) methodology. According to the Hendrickson Letter, "YTC is defined as the net operating income (NOI) at stabilization in current dollars divided by the project cost, including land, soft costs, contingencies, and financing." The Hendrickson Letter assumes that land costs are $5 million yet fails to provide any documentation of actual sales price or estimated financing costs to calculate the $5 million present value, even though this information is readily available to the Applicant. The City must "show its work" on how it arrived at the $5 million figure. Otherwise, there is no substantial evidence to make *any* hardship finding because the Applicant could be paying above market price for the land owned by persons related to the Applicant. In other words, the Applicant could feasibly inflate the cost of land to impose a hardship on itself, while also claiming that hardship requires relief from zoning regulations.

After calculating the Project's YTC, the report identified the "YTC goal" which the Project would need to achieve to be financially feasible. The Hendrickson Letter states that its cap rates were based on "averages as reported in the CBRE Senior Housing & Care Investor Survey" yielding a 6 percent cap rate for the Project and a 7 percent YTC hurdle after adding a one percent buffer for risk, resulting in a 7 percent YTC hurdle rate. According to the Hendrickson Letter, developments with a YTC meeting or exceeding 7 percent are financially feasible while those below 7 percent are infeasible.

By the ZA's methodology, therefore, developments not achieving a 7 percent YTC would result in an unnecessary hardship because they achieve less-than-desired financial returns. This logic is completely untethered to any conception of "severe suffering" required to establish a hardship. If the Project proceeded with less than a 7 percent YTC, each party involved – the current owner of the Property, the developer, the capital investors, and the bank – would not only keep their initial investment but make substantial returns after accounting for inflation. In a transparent demonstration of this farcical interpretation, City argues that a six-story alternative to the Project would achieve slightly less than 7 percent YTC and would therefore suffer a hardship. No reasonable person would find a "hardship" in a YTC marginally below the average for comparable Class A senior residential developments. And given the significant volatility in

[5] LOD at p. 19.

cap rates – which regularly fluctuate 0.25 percent year to year – the *magnitude* of the shortcoming in YTC is negligible.[6]

Crucially, even the *by-right* Eldercare Facility would achieve a YTC of 3.1 percent. With no relief whatsoever, the development of an Eldercare Facility would result in a *positive financial return*. This conclusion undermines the ZA's unsubstantiated speculation in the LOD that zoning-compliant development would be "impractical and infeasible" due to the "unique design requirements and building characteristics of an Eldercare Facility[.]" In fact, such a development would result in profit even after accounting for inflation.

Fundamentally, the ZA erred by mistaking *sub-optimal* profits for a *hardship*. Even if the Applicant would enjoy only a sub-optimal YTC from developing a six-story alternative or developing a zoning-compliant Project, this would not result in such a deprivation that it could reasonably constitute a hardship.

B. The ZA Erred in Granting Relief for a Self-Induced Hardship

The ZA further erred because the purported hardship – being unable to raise sufficient capital from private investors to pursue the Project – is self-induced by the Applicant, which insists on pursuing only developments with the highest economic returns. Even if the Applicant cannot force other parties to accept sub-optimal (if still significantly profitable) yields, the Applicant can control its own investments. By demanding less profit for itself, or by investing greater capital up-front, the Applicant could allow development of the Project even when yields are less than 7 percent. Rather, the ZA accepted the implied rationale of the Hendrickson Consulting report that *all parties involved* – including the Applicant – must receive above-average returns or else the Project would be infeasible.

C. The ZA Failed to Demonstrate Why Any Hardship Was "Unnecessary"

The LOD fails to articulate why any purported hardship would be unnecessary or inconsistent with the general purpose of the zoning regulations. In fact, the LOD fails to identify any purported purpose of the zoning regulations. This alone constitutes an abuse of discretion as the ZA failed to address an essential component of the required findings.

D. The ZA Failed to Identify a Hardship for the Rear Yard Assuming Other Relief

The ZA failed to substantiate that strict application of the rear yard regulations would result in a hardship. Here, Condition 8(e) provides relief from the 15-foot rear yard requirement of the R3 Zone. However, the LOD fails to demonstrate that compliance with the strict application of the 15-foot rear yard requirement would result in a hardship, *assuming the Project is otherwise granted density, height, FAR and parking relief*. Rather, the LOD constructs a straw

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[6] The 2020 CBRE U.S. Seniors Housing & Care Investor Survey is available at: <http://cbre.vo.llnwd.net/grgservices/secure/H2%202020_US%20Seniors%20Housing%20_%20Care%20Investor.pdf?e=1642553438&h=a1b0199d47bcbfae4936249d54f87849>

person argument by considering only whether strict application of *all land use regulations* would result in a hardship.

The LOD states the relief "would allow adequate space for amenities in the basement where the kitchen, dining room and restrooms are located and the ground floor where lobby, office, reception area, living room and library are located."[7] However, this does not bridge the analytical gap between the evidence and the finding. Why it is not feasible to redesign the building and simply build more subterranean parking? Fundamentally, the construction of subterranean parking is a typical circumstance of dense residential buildings. The Hendrickson Consulting report does not include an analysis of the Yield to Cost for a Project complying with the rear yard. Ratifying a naked request for more profit, the LOD has no credible foundation to conclude the rear yard would result in a YTC below 7 percent and thereby impose a hardship.

E. The ZA Erred by Relying on Inaccurate Descriptions of Project Relief

The ZA's rationale misstates the extent of the Project relief to justify the hardship finding. The LOD states that "the total increase in FAR from 3.0:1 to 4.5:1 constitutes a 33% increase in FAR"[8] – a fundamental arithmetical error that understates the extent of the FAR increase. In fact, an increase from 3.0:1 to 4.5 to 1 is an increase of 1.5:1 FAR from a base of 3.0:1, which is a ***fifty percent increase***. The ZA notes that "a substantial portion of the facility's floor area (37%) is devoted to these common areas" and concludes therefore that "the extra FAR is almost totally for the common areas of the project."[9] However, this conclusion is based on a faulty assumption about the Project's FAR.

F. The ZA Erred by Granting Excessive Relief

The ZA granted relief far in excess of what was necessary to overcome hardships. Here, the applicant's own financial analysis demonstrates that the relief is far beyond what is necessary to overcome unnecessary hardships, identifying a 7 percent "hurdle rate" consisting of a 6 percent cap rate and 1 percent profit.[10] The proposed project results in a yield of 8.4 percent, yielding a 2.4 percent profit – far beyond the mere 1 percent profit sufficient to justify development. ***Assuming the truth of everything in the applicant's financial analysis***, the applicant could achieve a financially viable profit by removing the entire seventh story of the building as described in this Office's prior correspondence.

III. The ZA Erred by Finding that the Project is Compatible with the Surrounding Neighborhood Based on Incomplete, Inaccurate and Irrelevant Information

The ZA erred in finding "that the project's location, size, height, operations and other significant features shall be compatible with and shall not adversely affect or further degrade adjacent properties, the surrounding neighborhood, or the public health, welfare, and safety."

[7] LOD p. 19.
[8] LOD p. 16.
[9] LOD p. 16.
[10] LOD p. 17.

The ZA correctly notes that buildings on Sherbourne Drive on the subject block "are generally two-stories in height with one three-story and one four-story building[.]"[11] and recognizes that the tallest nearby buildings are four stories, with only a single five-story structure in the vicinity.[12] The LOD fails to recognize this five story building is in fact two blocks east of the Project Site with virtually every intervening structure reaching only two or three stories. Despite noting only a single five story building in the area, the LOD inexplicably states that "newer developments in the area are being built up to five stories in height."[13] There is no evidentiary support for this statement, nor is it relevant to the finding which addresses compatibility with the *existing neighborhood*. Furthermore, the LOD states that "[a]ll of the properties in the area area eligible for a TOC incentive for 67 feet in height in lieu of the Code permitted 45 feet,"[14] which further lacks relevance to the compatibility finding. The ZA erred by concluding the Project was compatible with the existing neighborhood based on theoretical future developments which are not even identified in the LOD.

The seven-story Project is not rendered compatible with the adjacent low-rise community merely because it provides a compliant front yard and an upper-level stepback imperceptible from much of the adjacent community. The Project is two stories greater in height – ***forty percent more* --** than the current tallest building in the vicinity, a five-story apartment at 907 South Le Doux Road two blocks east and one block south of the Project. The Project is three stories greater in height – ***seventy five percent more*** – than the four-story buildings to the west on Bedford Street. Given that the Project objectively measures 40-75 percent greater in height than the tallest existing buildings in the neighborhood, the ZA had no factual basis to conclude that "it would not substantially contrast with the character of the area in general, which includes buildings of a variety of heights." Furthermore, the Project's scale is incompatible with the surrounding neighborhood because it combines two lots, resulting in a mass more than twice as large as nearby four-story buildings occupying only a single lot.[15]

IV. The ZA Erred by Finding that the Project is Compatible with the Scale and Character of Adjacent Properties and the Surrounding Neighborhood

The ZA erred in finding "that the project provides for an arrangement of uses, buildings, structures, open spaces and other improvements that are compatible with the scale and character of the adjacent properties and surrounding neighborhood." As discussed above, the ZA abused its discretion by finding that the Project was compatible with the low-rise scale of the surrounding neighborhood. The adjacent properties on Sherbourne Drive are developed with two-story structures and the height differential between the seven-story Project and two-story adjacent development would be stark. Although the neighborhood consists of a range of building heights from two to four stories, with only a few existing and proposed five-story developments

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[11] LOD p. 19.
[12] LOD p. 20.
[13] LOD p. 20.
[14] LOD p. 20.
[15] For example, 820 S. Sherbourne Avenue, 819 S. Holt Avenue and 836 S. Bedford Street.

– the seven-story Project would contrast severely with the surrounding neighborhood. Therefore, the ZA erred in finding that the Project's scale was compatible with adjacent developments.

V. <u>The Class 32 Categorical Exemption is Improper</u>

The Project is not eligible for the Class 32 Categorical Exemption. The Project will result in significant noise, traffic and air quality impacts. The Project is not consistent with applicable zoning regulations because it requests five deviations from the Zoning Code. Furthermore, unusual circumstances preclude the use of the Class 32 Categorical Exemption.

I may be contacted at 310-982-1760 or at jamie.hall@channellawgroup.com if you have any questions, comments or concerns.

Sincerely,

Jamie T. Hall