

Venice Neighborhood
Council
Post Office Box 550
Venice, CALIFORNIA 90294



**Land Use and
Planning Committee
November 18, 2009
STAFF REPORT
Submitted to VNC
Board of Officers
January 19, 2010**



Case Number: CASE # APCW - 2009-2142-SPE (Specific Plan Exception)

Address of Project: 709 South 5th Ave, Venice (between Indiana and Vernon)

SYNOPSIS:

This project violates the Venice Coastal Zone Specific Plan in height, density, second floor set backs and illegal curb cut. (VCZSP sections quoted below). Existing Fifth Avenue curb cuts also violate the Venice Land Use Plan, certified by the California Coastal Commission. Owner/developer has rented units in this building without a Certificate of Occupancy for several years. Appendix I to this agenda describes variances. Applicant volunteers to close curb cut on Fifth Avenue, and make all vehicle entrances from the alley.

~~LUPC MOTION: Challis Macpherson moves that VNC Board of Officers accept LUPC staff report and recommendation for action as follows:~~

~~That VNC Board of Officers NOT make any recommendation because making any recommendation to approve would violate the Venice Coastal Zone Specific Plan. LUPC vote 3-1-1~~

**VNC Board of Officers motion to deny as moved at regular board meeting
January 19, 2010: 709 Fifth Street, APCW 2009-2142 SPE:** Challis Macpherson, LUPC Chair, moves that the VNC Board of Officers accept the LUPC Staff Report recommending denial of the application as presented because it violates the Venice Coastal Zone Specific Plan with respect to height, density, second floor set backs and illegal curb cut.

[CM corrected the LUPC motion to delete 'denial of' and replace it with 'no recommendation be made on'.

CM/JM: Motion to adopt original motion to make no recommendation (no vote taken).

MS/IK: Motion to substitute affirmation of city's prior decision (no vote taken).

KW/CM: Motion to amend to deny the application: approved 12-2-1]

Size of Parcel: 5,670 sq ft, (42' X 135')

Size of Dwelling or Project: 2-story, 3-unit (2-bedrooms each unit) existing apartment building, , square footage in each unit: 1,922

Venice Subarea: Oakwood-Millwood-Southeast Venice

Permit Application Date: July 10, 2009
Received by VNC/LUPC: August 17, 2009
Neighborhood Meeting: November 15, 2009 (15 in attendance)

Applicant: Mark Baez
709 South Fifth Avenue, Venice, California
310-452-3894, mbaez@gte/met

Property Acquired: November 7, 1996

Representative: Ms. Alicia Bartley/ Mr. Fred Gaines
Contact Information: Gaines & Stacey LLP
16633 Ventura Blvd, #1220
Encino, California

Date before by LUPC: November 18, 2009
December 9, 2009

Date to be reviewed by VNC: January 19, 2010

**Date heard by
Hearing Officer, Kevin Jones:** December 15, 2009

**WLA Area Planning
Commission Dates:** February ??, 2010

REPORT

Project Description by Applicant on submitted LUPC Project Form Stating Requested Action by Venice Neighborhood Council:

An Exemption from the Venice Specific Plan. To Wit: to permit the continued use and maintenance of an existing apartment building [with no Certificate of Occupancy A.R.S.] having a height of 33 feet four inches instead of the maximum 25 feet which is otherwise permitted by the Venice Specific Plan (for a flat roof)"

[Staff note: Twenty-five feet for flat roof, 30 feet for varied roof is the maximum allowed under the Specific Plan, Refer to Appendix I describing variances.

Section of Venice Coastal Zone Specific Plan governing this particular site:

Page 18, Section G. 2 **DENSITY**, a (1) R2 Zone. A maximum of two dwelling units per lot shall be permitted on lots less than 5,000 square feet in area, one additional dwelling unit shall be permitted for each additional 2,000 square feet of lot area, provided that the dwelling unit is a Replacement Affordable Unit.

Page 19, Section G. 3, a, **HEIGHT**, Venice Coastal Development Projects with a flat roof shall not exceed a maximum height of 25 feet. Venice Coastal Development Projects with a varied roofline shall not exceed a maximum height of 30 feet, provided that any portion of the roof that exceeds 25 feet is set back from the required front yard at least one foot in depth for every foot in height above 25 feet.

Page 10, Section G. 3, a, **ACCESS**, Driveways and vehicular access to Venice Coastal Development Projects shall be provided from alleyways, unless the Department of Transportation determines that it is not Feasible.

Section of Venice Local Land Use Plan relative to vehicular access as certified by the California Coastal Commission June 14, 2001 states:

1. Land Use Plan Policies and Implementation Strategies; Policy II. A. 9.

Protection of Public Parking, d. "Curb Cuts. In order to protect on-street parking opportunities, curb cuts shall not be permitted where vehicular access can be provided from an alley.

Summary of Arguments Against this Project/Issue:

This project violates the VCZSP on several levels. It sets a precedence for other buildings that the community will not tolerate. City in error for allowing this to be built. Tenants in building and paying rent without a Certificate of Occupancy for this building with City of Los Angeles. It was reported to a LUPC member that owner/manager Mark Baez has split each of the 3 units into 2 each and now rents out 6 units in a building zoned for 2.

Summary of Arguments For this Project/Issue : (as per public comment and LUPC deliberations November 18, 2009) It is a "Green" building, solar panels, pleasant to live there.

NOTE: Inspection of site November 15, 2009 at the Neighborhood Meeting revealed that there is sufficient access from the alley for vehicular entry onto the site and that the roof is flat. Attending stakeholders were not allowed access to any of the units, so could not verify their number.

DRAFT MOTION SUBMITTED BY STAFF (NOTE: LUPC moved NOT to recommend – see first page re VNC Board action 1-19-2010)

WHEREAS: The Venice Coastal Zone Specific Plan (VCZSP) is easily available to all at either the web site for the City of Los Angeles Planning Department (<http://cityplanning.lacity.org/complan/specplan/pdf/VenCoastal.pdf>) or on Venice Neighborhood Council web site (<http://www.venicenc.org/>);

WHEREAS: The structure at 709 South Fifth Avenue, Venice, California, 90291, was constructed, maintained and is in clear violation of the VCZSP as follows;

1. In accordance with submitted plans, and site visit November 15, 2009, the 32' flat roof (as measured from center line of Fifth Avenue), number of dwelling units and Fifth Avenue curb cuts are in clear violation of the VCZSP which states:

Page 19, Section G. 3, a, **HEIGHT**, Venice Coastal Development Projects with a flat roof shall not exceed a maximum height of 25 feet. Venice Coastal Development Projects with a varied roofline shall not exceed a maximum height of 30 feet, provided that any portion of the roof that exceeds 25 feet is set back from the required front yard at least one foot in depth for every foot in height above 25 feet.

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Page 10, Section G. 3. a, **ACCESS**, Driveways and vehicular access to Venice Coastal Development Projects shall be provided from alleyways, unless the Department of Transportation determines that it is not Feasible.

WHEREAS: VENICE LAND USE POLICIES, as certified by the California Coastal Commission June 14, 2001 states:

1. Land Use Plan Policies and Implementation Strategies; Policy II. A. 9.

Protection of Public Parking, d. "Curb Cuts. In order to protect on-street parking opportunities, curb cuts shall not be permitted where vehicular access can be provided from an alley.

WHEREAS: The Board of Officers of the Venice Neighborhood Council are duly elected officials of the City of Los Angeles and sworn to support and maintain the laws of the City of Los Angeles and the State of California including but not limited to the Los Angeles Municipal Code which includes the Venice Coastal Zone Specific Plan as Ordinance 175,693 effective January 19, 2004 which replaced Ordinance 172,897 enacted in 1999;

THEREBY RECOMMEND that Case APCW 2009-2142 SPE be denied the requested variance, and that the structure at 709 South Fifth Avenue, Venice, California, 90291 be made compliant with the VCZSP, within (...set time limit here....) to wit:

- 1 Seven feet be taken off the top, or the structure lowered to 25 feet;
- 2 If the structure is converted to a varied roof line, 30 feet in height, that there be legal set backs, "... that any portion of the roof that exceeds 25 feet is set back from the required front yard at least one foot in depth for every foot in height above 25 feet."
- 3 Present curb cut be removed, and vehicle entry be from the alley in accordance with VCZSP Section G. 3. a, **ACCESS**, and the Venice Land Use Plan, Policy II, A. 9.
- 4 Number of dwelling units be reduced to two, as per VCZSP as noted above.

Motion to postpone until December 9, 2009 when applicant will produce "wet" stamped (3"X4" blue ink stamp with complete city department signoff) plans constituting final approval by LA City officials, copy of hardship finding by LADOT authorizing placing vehicle entry via curb cut in Fifth Avenue instead of from alley, copy of survey, inspector's statement after inspecting building this year.

Motion to postpone made by: Matthew Geller

Seconded by: Kelly Li

Roll call vote 5 FOR, 2 AGAINST, motion to postpone passed.

APPENDIX I

VARIANCES AND SPECIFIC PLAN EXCEPTIONS

Court Decisions

In *Orinda Assn. v. Board of Supervisors of Contra Costa County*, the California Appeals Court ruled that a building height variance could not be granted, regardless of the alleged benefits of the project, absent a finding detailing the special circumstances that justified its issuance. In its decision, the court majority said, "Thus, data focusing on the qualities of the property and Project for which the variance is sought, the desirability of the proposed development, the attractiveness of its design, the benefits to the community, or the

economic difficulties of developing the property in conformance with the zoning regulations, lack legal significance and are simply irrelevant to the controlling issue of whether strict application of zoning rules would prevent the would-be developer from utilizing his or her property to the same extent as other property owners in the same zoning district." (The Contra Costa County conditions for granting variances were virtually identical to those in the L.A. City Charter)

Sec. 562, Los Angeles City Charter

The Area Planning Commission may permit an exception from a specific plan if it makes all the following findings:

- (a) That the strict application of the regulations of the specific plan to the subject property would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the specific plan;
 - (b) That there are exceptional circumstances or conditions applicable to the subject property involved or to the intended use or development of the subject property that do not apply generally to other property in the specific plan area;
 - (c) That an exception from the specific plan is necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other property within the specific plan area in the same zone and vicinity but which, because of special circumstances and practical difficulties or unnecessary hardships is denied to the property in question;
 - (d) That the granting of an exception will not be detrimental to the public welfare or injurious to the property or improvements adjacent to or in the vicinity of the subject property; and
 - (e) That the granting of an exception will be consistent with the principles, intent and goals of the specific plan and any applicable element of the general plan.
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Los Angeles Municipal Code,
Chapter I, General Provisions & Zoning.
Article 2, Sec. 12.27, Variances

D. Findings for Approval. The decision of the Zoning Administrator shall be supported by written findings of fact based upon evidence taken, written or oral statements and documents presented, which may include photographs, maps and plans, together with the results of any staff investigations.

Consistent with Charter Section 562, **NO** variance may be granted unless the Zoning Administrator finds all of the following:

1. That the strict application of the provisions of the zoning ordinance would result in practical difficulties or unnecessary hardships inconsistent with the general purposes and intent of the zoning regulations;

2. That there are special circumstances applicable to the subject property such as size, shape, topography, location or surroundings that do not apply generally to other property in the same zone and vicinity;

3. That the variance is necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other property in the same zone and vicinity but which, because of the special circumstances and practical difficulties or unnecessary hardships, is denied to the property in question

4. That the granting of the variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in the same zone or vicinity in which the property is located; and

5. That the granting of the exception is consistent with the principles, intent and goals of the Specific Plan.