



## DEPARTMENT OF CITY PLANNING RECOMMENDATION REPORT



### West Los Angeles Area Planning Commission

**Date:** June 6, 2007  
**Time:** After 4:30 p.m.  
**Place:** Henry Medina West Los Angeles Parking  
Enforcement Facility  
11214 W. Exposition Boulevard  
2<sup>nd</sup> Floor Roll Call Room  
Los Angeles, CA. 90064

**Public Hearing:** April 23, 2007

**Appeal Status:** To City Council  
**Expiration  
Date:** June 6, 2007

**PROJECT  
LOCATION:** 709 5<sup>th</sup> Avenue

**PROPOSED  
PROJECT:** A three-unit condominium building with two residential stories above a carport, providing seven parking spaces on an approximately 5,670 square foot lot in the Oakwood subarea of the Venice Coastal Zone Specific Plan (the building is partially completed, there is no Certificate of Occupancy).

**REQUESTED  
ACTIONS:** Pursuant to Section 11.5.7 F of the Municipal Code, an **Exception** from Section 8.H.3 of the Venice Coastal Zone Specific Plan. The request is for a varied roofline 33-feet 4-inches in height in lieu of the 30 feet permitted under specific plan.

**Case No.:** APCW-2006-9649-SPE  
**CEQA No.:** ENV-2002-5558-MND-REC

**Related Cases:**  
**Council No.:** 11  
**Plan Area:** Venice  
**Specific Plan:** Venice Coastal Zone  
**Certified NC:** Grass Roots Venice  
**GPLU:** Low Medium II Residential  
**Zone:** RD 1.5-1

**Applicant:** Mark A. Baez  
**Representative:** Alan Block

### RECOMMENDED ACTIONS:

1. **Disapprove** a Specific Plan Exception to permit the construction of a residential project with a height of 33-feet 4-inches.
2. **Adopt** the attached Findings.

S. GAIL GOLDBERG, AICP  
Director of Planning

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Betsy Weisman, Principal City Planner

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Jim Tokunaga, Hearing Officer  
(213) 978-1309

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## PROJECT ANALYSIS

### Project Summary

The proposed project involves a three unit residential building located at 709 South 5<sup>th</sup> Avenue in the Oakwood subarea of Venice in the RD1.5-1 zone. The request is for an increase in height for the previously approved three units. During 2002 and 2003 the applicant obtained a variety of entitlements to construct the three units at a height of 30 feet with a varied roofline. After construction it was discovered that the actual height of the structure is 33-feet, 4-inches. The Department of Building and Safety has also concluded that the constructed structure has a flat roof rather than the authorized varied roofline. The applicant now asks for an exception from Section 10.G.3.a of the Venice Coastal Zone Specific Plan to allow for a height of 33-feet 4-inches in lieu of the 30 feet for a varied roofline (25 feet for a flat roof line), required in the Specific Plan.

### Background

The requested Specific Plan Exception is for a three-unit residential structure in the Oakwood subarea of Venice. In 2003 the applicant obtained a Parcel Map for the construction of three condominium units. The applicant also obtained a Specific Plan Project Permit Adjustment from height restrictions in the specific plans that require height above 25 feet to be set back from the front property line. The adjustment granted the property the right to reach 30 feet in height at a distance two feet closer to the property line than permitted under the Specific Plan. Additionally that same year the applicant obtained a Specific Plan Exception for density in order to construct three residential dwelling units in lieu of the two permitted under the Specific Plan, a Zoning Administrator's Adjustment for a reduced access passageway, Specific Plan Project Compliance, Mello Act Compliance, and a Coastal Development Permit. Construction of the project substantially began in December of 2004.

An April 6, 2006 inspection by the Department of Building and Safety revealed that the structure had been constructed to a height in excess of that allowed in the above entitlements and in excess of the restriction found in Section 8.H.3 of the Venice Specific Plan. The structure was built 3-feet, 4-inches above what was originally approved.

A Mitigated Negative Declaration (ENV-2002-5558-MND) was issued in 2002 and reconsideration issued on April 16, 2007 found that the proposed project conforms to the General and Community Plans and that Aesthetics is the only environmental factor potentially affected by this proposal and that the project would not contribute to impacts which are cumulatively considerable. The MND found that mitigation measures such as the use of paint or screening should be implemented to disguise the new equipment to ensure that it is less noticeable in its surroundings.

### Prior relevant cases

*Case No. AA-2002-5557-PMLA* – On October 30, 2003, the Advisory Agency approved a Parcel Map to allow a one-lot subdivision with three condominium units.

*Case No. APCW 2002-5556-CDP-ZAA-SPE-MEL-SPP-1A* – On July 23, 2003, the City Council, on appeal of the West Los Angeles Area Planning Commission disapproval, approved a Specific Plan Exception to allow 3 units in lieu of the allowable 2 units on a Venice Specific Plan RD1.5-1 lot, a Coastal Development Permit for the construction of 3 condominium units, a

Zoning Administrator's Adjustment for a 5 foot 6 inch passageway in lieu of the 12 foot required, a Mello Act Determination, and a Specific Plan Project Permit for the condominium project.

*Case No. DIR-2002-5433-SPPA* – On December 31, 2002, the Director of Planning approved a Specific Plan Project Permit Adjustment to allow a deviation of two feet from Venice Specific Plan height provisions (Section 8.H.3) requiring that projects with varied rooflines have the 30 feet high portion set back from the required front yard at least one foot in depth for each foot in height above 25 feet.

### Surrounding Land Use and Zoning

The proposed project is located on a 5,670 square foot lot in the RD1.5-1 zone in the Venice Specific Plan within the Venice Community Plan Area. The site has a Low Medium II Land Use designation. The project is in the single-jurisdiction portion of the Coastal Zone.

The subject property is a level, rectangular-shaped, mid-block, record lot, having a frontage of approximately 42-feet on 5<sup>th</sup> Avenue and a uniform depth of 135 feet. Access to the site is taken from both 5<sup>th</sup> Avenue and the alley in the rear of the property. The subject site is developed with two stories of residential over ground-level parking. Surrounding properties are Zoned RD1.5-1 and are characterized by level topography and improved streets. The surrounding properties are developed with one-, two-, and limited numbers of three-story single and multiple family dwellings. There is also a school and industrial facilities to the northwest of the subject property.

Residential buildings on the subject block and the adjacent blocks range from 12 to 33-feet. While there are buildings of comparable height to the subject property, there are not taller buildings in the immediate vicinity. The vast majority of structures are less than 25-feet in height. The buildings that are higher than the height specified by the Specific Plan were built prior to the adoption of the Specific Plan.

### Street Classification

Vernon Avenue, 4<sup>th</sup> Avenue, Indiana Avenue and 5<sup>th</sup> Avenue are all local streets. Their improved widths range from 50 to 60 feet.

### Issues

The proposed exception of height is for a previously reviewed and approved project. Although the additional height is not substantially greater than height allowed by the plan it is considerable in relation to the 1-story single-family homes to the north, south, and west of the subject property. There are two three-story structures of considerable height in close proximity to the subject property. Extensive landscaping shields the additional height on the side yard elevations but the structure is visible, at the street and a block away, on the 5<sup>th</sup> Avenue elevation. There are practical considerations to disapproving a steel structure that has already been constructed at considerable cost in time and materials, but there is also concern for granting a development right (height) that has been withheld from other properties in the Venice Coastal Zone Specific Plan.

Venice has undergone a brisk pace of residential construction over the past four years and those projects have largely complied with the Venice Coastal Zone Specific Plan. Land transactions, construction, and investment expectations throughout the Specific Plan area are based upon the rules of the Specific Plan applying to all properties within its borders. Exceptions are typically awarded when special circumstances exist such as an extremely small lot that would be not be developable without relief from a development restriction, or in the case

of height a lot with a considerable slope that necessitates some additional height to form a unified structure. No such special circumstances apply to this subject parcel: it is flat, rectangular and of a slightly above standard sized lot. In addition, the project has already been reviewed for multiple prior entitlements and the applicant is well aware of the requirements of the Specific Plan.

The applicant has asserted that the building will be a “green” building and is made of prefabricated glass and steel should be taken as special circumstances. The applicant further suggests that the cost of removing the excess height from the structure will be impractical and punitive. The applicant has submitted estimates ranging from 1.2 to 1.7 million dollars to alter the structure’s height. While all these factors should be considered, the excess height is a self-imposed hardship, a direct result of the applicant’s decision to build a prefabricated building to a height in excess of what was approved by the Department of City Planning and the Department of Building and Safety. A self-imposed hardship is not grounds for an exception.

### **Conclusion**

The proposed height exception is not substantial in relation to the height allowed by the Specific Plan but will be visible and substantial to adjacent single family homes. The Municipal Code Findings necessary for granting a Specific Plan Exception are exemplary in this case. In this case there is a self-imposed hardship whereby the applicant built a structure that was taller than what was granted in prior entitlements and taller than depicted on the plans submitted to the Department of City Planning and Department of Building and Safety.

There are no exceptional circumstances or conditions on the subject parcel, which is of standard size, orientation and slope; the granting of the exception would provide a special right to excess height that is not enjoyed by other property owners. The buildings are significantly taller than adjacent single family homes. A Specific Plan Exception is not appropriate relief post hoc from a hardship created through error or misrepresentation.

The Specific Plan has recently went thorough a review and update before it was adopted in December of 2003. If there were a desire to increase height in this subarea, it should have been accomplished through the process to update the Specific Plan. Granting an individual height exception without special circumstances is contrary to good planning practice and community development.

After considering these factors, the Planning Department recommends **Disapproval** of the request for this project.

## FINDINGS

1. **General Plan Land Use Designation.** The subject property is located within the Venice Community Plan area, which was adopted by the City Council on September 29, 2000 (pursuant to Council File 2000-1505 and CPC-97-0047-CPU). The Plan Map designates the subject property for Low Medium II Residential land use with corresponding zones of RD1.5, RD2, RW2, RZ2.5. The subject site is zoned RD1.5-1. Multifamily residential uses are permitted under RD 1.5-1 and are consistent with the Plan map land use designation of Low Medium II Residential.
  
2. **Venice Local Coastal Program – Land Use Plan (LUP).** The Los Angeles City Council adopted the Venice Local Coastal Program – LUP on March 28, 2001. The Plan was subsequently certified by the California Coastal Commission on June 14, 2001. The project site is designated as Low Medium II in the LUP. The project is subject to the regulations established by the Venice Coastal Zone Specific Plan. The Specific Plan was adopted in conjunction with the City's implementation of the Coastal Act requirements and to insure that new development is compatible in scale and character with the existing neighborhood. The Specific Plan regulates heights, landscaping, setbacks, façade treatments, parking and similar elements of new construction in addition to those requirements set forth in the Municipal Code.

The requested exception would permit construction and maintenance of a structure that exceeds the height standards of the LUP and the Venice Coastal Zone Specific Plan. This will result in a incompatible structure that would be materially detrimental to adjoining lots and the immediate neighborhood.

3. **Venice Coastal Zone Specific Plan.** The Specific Plan (Ordinance No. 175,693) became effective on November 21, 1993. Portion of the Specific Plan were amended by the City Council (Ordinance No. 171,946 effective January 19, 2004) and by Specific Plan Procedures amended pursuant to Municipal Code Section 11.5.7. The project **does not** meet the following Purpose of the Specific Plan:

*To regulate all development, including use, height, density, setback, buffer zone and other factors in order that it be compatible in character with the existing community and to provide for the consideration of aesthetics and scenic preservation and enhancement, and to protect environmentally sensitive areas.*

There are no special circumstances or hardships to support the requested exception. The construction and maintenance of a structure that exceeds the height standards of the Specific Plan will disrupt the neighborhood scale and character. Additionally, such an exception would provide a substantial property right to the applicant that is not enjoyed by other property owners.

4. **Specific Plan Exceptions Findings (Disapproval).** Pursuant to Section 11.5.7 F of the Municipal Code:
  - A. *The strict application of the regulations of the specific plan to the subject property **DO NOT** result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the specific plan.*

The Specific Plan limits height in the Oakwood area to 25 feet with a flat roof and 30 feet with a varied roofline. These height limitations allow for development consistent with the

density allowed under the Specific Plan while maintaining a consistent height limit. The height limit is appropriate to the scale of the neighborhood street network and for assuring compatibility between existing single family homes and construction of new multifamily projects. Additionally, height under the Specific Plan is measured from the centerline of the street, therefore on-site grading and site-preparation allows for some flexibility with building height.

In July of 2003 the applicant was granted an appeal for a Specific Plan Exception to permit a 30-feet in height, three unit condominium project (the third unit not being required to be an affordable unit). The applicant has since obtained building permits and has significantly constructed the buildings, however no certificate of occupancy have been issued. During the construction of the building it was discovered that the buildings currently constructed are actually above 30-feet in height and in fact 33-feet, 4-inches to the top of the solar panel ridgelines thus exceeding the previously approved height limit of 30-feet by 3-feet 4-inches.

The applicant has requested the specific plan exception to the height based on exceptional circumstances pertaining to the building design (pre-fabricated modular kit building) and construction materials (steel and glass) and an error made in the measurement of the height. The applicant requests that since the buildings have already been constructed it is too late to lower the property's finished grade and has submitted documentation showing considerable expense will be required to alter the height of the structure.

These estimates do result in a major financial hardship to the applicant at this time but are a result of the applicant's error in measuring building height. The applicant has been aware of the Venice Coastal Zone Specific Plan since the original exception requests from four years ago. The resulting hardship is not a practical difficulty or unnecessary hardship rather an error in accurately measuring the building height and now retroactively seeking an exception.

- B. *There are no exceptional circumstances or conditions that are applicable to the subject property or to the intended use or development of the subject property that do not generally apply to other properties within the specific plan area.*

There are no special circumstances unique to the property, such as the shape of the lot, the size of the lot, a substantial grade difference, or provision of affordable dwelling units as part of the project that would warrant an exception. All properties fronting 5<sup>th</sup> Avenue and surrounding residential streets are approximately 40 feet wide and 132 feet deep, or 5,280 square feet, and rectangular in design. The lots are flat with little grade differential.

The property is adjacent to one and two story structures ranging from 12 to 25-feet on the southwest side of 5<sup>th</sup> Avenue and 12 to 18-foot one story structures on the northeast side of 5<sup>th</sup> Avenue. Other neighborhood residential structures range from one to three stories approximately 12 to 30-feet in height. Only the apartment building at 420 Indiana appears to be above the 30-feet limit on height; the vast majority of structures are in fact of less than 30-feet in height.

The constructed buildings are prefabricated and assembled on-site. The exceptional circumstance is in part based on the uniqueness of the building design and construction materials. According to the applicant because the building is made primarily from steel and glass rather than wood and stucco, it is unlike other buildings in Venice and much less susceptible to modification to reduce the building height. While the design of the units may be unique, the decision to build with a prefabricated building does not relieve

the applicant or any other property owner from complying with the requirements of the Specific Plan.

- C. *The requested exception is **NOT** necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other property within the geographically specific plan in the same zone and vicinity but which, because of such special circumstances and practical difficulties or unnecessary hardships is denied to the property in question.*

No special circumstances or hardship or difficulties have been presented by the applicant. The fact that a structure was constructed in excess of its permitted height is a self-imposed hardship and such a hardship cannot be the basis for an exception. All lots along 5<sup>th</sup> Avenue and surrounding residential streets are fairly uniform and have been developed consistent with the standards of the Venice Coastal Zone Specific Plan.

The granting of an exception for height after the fact would entitle the subject property to a right not possessed by other property within the specific plan. The subject lot is of a standard size, orientation and grade; no special circumstances or practical difficulties exist to necessitate an exception for height. The applicant claims extreme financial hardship in having to comply with the height requirement. However, in granting an exception, financial costs cannot be considered a special circumstance, practical difficulty, or unnecessary hardship since factors pertaining to financial constraints vary from applicant to applicant and a financial hardship for one applicant may not be for another.

- D. *The granting of the exception **will** be detrimental to the public welfare and injurious to property or improvements adjacent to or in the vicinity of the subject property.*

Granting the exception for increased height will result in a structure that is inconsistent with neighboring properties and the community. The purpose of the Venice Coastal Zone Specific Plan is to regulate development, including height, in order to be compatible in character with the existing community and to provide consideration of aesthetics and scale. If the exception were granted the resulting structure would be taller than the single family homes adjacent to and across the street from the subject site.

While Specific Plan exceptions are considered on a case by case basis, granting an exception where no special circumstances exist could lead to further such requests. Such incremental deviations from the Specific Plan regulations would lead to incompatible structures and wane at the integrity of the Specific Plan. The strict application and enforcement of a Specific Plan is necessary not only to protect the character of communities but to provide assurance, stability, and reasonable expectations to property owners regarding their development rights. Granting an exception where no special circumstances exists creates a speculate environment whereby development standards are not considered binding because exceptions are granted without cause.

- E. *The granting of the exception is **NOT** consistent with the principles, intent and goals of the specific plan.*

A stated Purpose of the Specific Plan is to regulate development, including height, in order to be compatible in character with the existing community. The proposed project is not consistent in terms of height with the existing community and does not follow the development restrictions found in the Specific Plan. The Specific Plan makes provision



for exceptions only in relation to special circumstances and the provision of affordable housing, neither of which apply to this project. The project proposes height in excess of the 30 feet with a varied roofline permitted in the Specific Plan and there are no special circumstances such as lot size, orientation or grade to justify this request.

## **PUBLIC HEARING AND COMMUNICATIONS**

### **Summary of Public Hearing Testimony and Communications Received**

The Public Hearing on this matter was held at West Los Angeles Municipal Building, 1645 Corinth Avenue, 2<sup>nd</sup> Floor Hearing Room, Los Angeles, CA 90025 on Monday, April 23, 2007, at 9:00 AM.

1. Present: Approximately 15 people attended.
2. Speakers: The applicant (Mark Baez) and his representative (Alan Block) spoke regarding the project.

### **Public Hearing Testimony Notes**

Five speakers in Support of the Project

Six speakers in Opposition to the Project (Including a Representative for CD 11)

One speaker with General Comments

### **Communications Received**

Letters - Support: 1  
Letters - Opposition: 2