

Venice Neighborhood  
Council  
Post Office Box 550  
Venice, CALIFORNIA 90294



**Land Use and  
Planning Committee**

Staff Report to Board of Officers  
**May 16, 2007**



**Case Number:** [CASE # APCW - 2006-9649-SPE](#)

**Address of Project:** [709 South 5th Ave, Venice \(between Indiana and Vernon\)](#)

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

**Size of Dwelling or Project:** 1-story, 3-unit existing apartment building, as per APCW 2002-5556 CDP ZAA SPE MEL, square footage in each unit: 1,922

**Venice Subarea:** Oakwood-Millwood-Southeast Venice

**Permit Application Date:** First permit in early 2000  
November 11, 2006

**Applicant:** Mark Baez

**Representative:** Alan Robert Block, Esq.  
**Contact Information:** 1901 Avenue of the Starts, #470  
Los Angeles, 90067  
310.552.3336  
Justin@blocklaw.net

**Dates heard by LUPC:** April 25, 2007  
May 2, 2007

**Date heard by WLA** January 17, 2003  
**Zoning Administrator:** April 23, 2007

**NOTE: ZA Jim Tokunaga holding his staff recommendation until hearing from the Venice Neighborhood Council's Board of Officers**

**WLA Area Planning**  
**Commission Dates:** July 24, 2003

**LUPC Motion to Recommend that the VNC Board of Officers support and approve the request from the applicant for an exception to the Venice Coastal Zone Specific Plan, and that the mitigation for this exception be payment of \$500,000.00 into the Venice Affordable Housing Fund; payments to be 1/3 at the close of each unit's escrow, or a total payment of \$500,000.00 within three years after the issuance of the Certificates of Occupancy whichever comes first.**

**Vote: 6-3-0 motion carried**

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## **REPORT**

### **Project Description:**

#### **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 30 feet which is otherwise permitted by the Venice Specific Plan"

[Staff note: Thirty feet is the maximum allowed under the Specific Plan, and that was the height limit set by the City and submitted by the applicant in his plans on many occasions. Approved many times at the height].

## **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 Height, a 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.

## **Summary of Arguments Against this Project/Issue:**

It violates both sections of the Venice Coastal Zone Specific Plan cited above.

## **Summary of Arguments For this Project/Issue:**

It is a “green” building. The city of Los Angeles was in error in granting approval of this building.

## **Findings by LUPC:**

According to applicant’s representative, Alan Block, the problem is that the 3 unit apartment building is 18" higher than permitted by the Specific Plan and 18" higher than the plans for the project approved by the City.

So the City cited him for a violation of his plans, refused to issue certificate of occupancy, and finally DEMANDED that the owners lower their building by 18" or have it destroyed. This was the problem which the applicant presented to LUPC at its May 16 meeting. Also, he had been renting the building without a certificate of occupancy, and Building and Safety was upset with both issues.

The applicant has requested that LUPC come up with a solution which might satisfy the City of Los Angeles, excluding shortening the building by 18 inches.

The mandatory estimates required by the City of the applicants, and submitted to the City by applicant, as to the costs to lower the building by 18" and thus satisfy the City were:

\$1,789,000.00 from Pac Rim LLA of Ocean Park CA.

\$1,500,000.00 from Construction Management Consultants.

[Staff comment: I visited the site May 2, and found that the building is essentially one large rectangle, which sits on large I Beam stilts, which are bolted into the foundation. Most of the ground floor is devoted to parking. Parking entrance is off 5th Ave, where one curb cut took one parking space off of the street parking. Exit is onto the west facing alley. The height of the first floor parking is about 12 feet, so IT IS feasible to put the building on jacks, cut the I Beams, and lower the building by 18". This is probably why Building and Safety suggested this solution]

The LUPC questioned and discussed this issue with the applicant and his representative and the public present at its meeting of April 25, 2006

The applicant was directed to supply certain information and materials to chair Challis MacPherson, which he has done.

During the questioning and give and take it became apparent that:

1) This project never came before the Neighborhood Council or the LUPC prior to 2007.

2) The materials supplied by the applicant to LUPC chair included:

a) Planning Dept Feasibility Analysis to comply with Mello Act 3/24/03

b) Mitigated Negative Declaration. Planning and Land Use Management Committee. Report to City Council. July 24, 2003

c) Construction estimates to lower the building 18#. June 2006, Ap. 07.

[Staff note: After a cursory review of the above documents the following additional documents were requested of applicants representative on May 2, 2007.

a) Copy of the Staff report and decision with conditions issued to the applicant sometime in 2002 or 2003.

b) Copy of the applicants appeal against this decision and request to reverse it. This material would be e mailed to Chair LUPC prior to May 2, 2007 LUPC hearing.

- 3) The appeal of the applicant to the City Council to overturn the WLAPC approval with conditions was granted July 24, 2003. The applicant received a virtual blanket exception from the Venice Specific Plan, which allowed the three units.
- 4) The project was built in 2004 on a normal Oakwood lot in the RD 1.5 zone. It had three units, not the two allowed under the VCSP.

At the April 25 2007 LUPC discussion of this project, the applicant and his representative insisted that the only issue on the table was the 18" of height by which the project exceeded the VCSP.

However, LUPC members reminded the applicant about third units being only permitted if they were low income or affordable. A review of the Planning Commissions overturn of the WLAPC decision revealed that the City approved the three units on the site after concluding, from the Mello Act required feasibility study, that a low income unit as a third unit was not feasible. Therefore, applicant's request for a third market rate unit was approved.

Since the Commission was exempting the project from the Specific Plan provisions, it did not refer to the VCSP provision that the third unit, or density bonus unit, was only to be applied if the unit was low income.

The Planning Commission used Mello Act provisions on affordability to negate the density bonus provision of the VCSP, without addressing at all the language and intend of the VCSP. Councilperson Miscikowski energetically supported the applicant and thus contributed to undermining this provision of the Venice Coastal Specific Plan.

The documents indicate that there was conscious intent by the applicant and especially by the Councilperson to obfuscate the issue by mixing provisions of Mello with provisions of VCSP, and then exempting the project from the VCSP. This allowed applicant to build 3 market rate units on an RD 1.5 lot which WLAPC had specifically limited to 2 units.

here appeared to be confusion as always between what Mello provisions applied and didn't, and what VCSP provisions applied or didn't. The Land Use and Management Committee of the City Council clearly confused Mello Act and density bonus provisions of the VCSP in order to approve this project, and so its permits and findings seem to be legally compromised.

At the conclusion of the April 25, 2007 informal discussion at LUPC, there was a determination by members of LUPC to: 1) help the applicant cut the gordian knot, and: 2) apply the specific provision of the VCSP, specifically in the Oakwood region, that any unit

beyond the 2 units allowed as an exemption to the VCSP be an affordable or low income unit.

The applicant said at the conclusion that he had no problem with paying some kind of fee as mitigation to get his final project approval and sign off from the city.

Subsequently the applicant got in touch with Challis MacPherson, sent in the requested information. The project was assigned to me. I received the information and reviewed it on the evening of May 22, and here is what I can report and suggest.

## **TIMELINE:**

JANUARY 17 2003: Public Hearing. West Los Angeles

CASE # APCW 2002-5556 SPE -CDP- SPP - ZAA -MEL

Specific Plan Exemption: Coastal Development Permit: Project Permit Compliance.

Applicant applied for a Specific Plan Exception to permit one additional dwelling unit "in excess of the two unit maximum in the RD 1.5" and "to permit a 30 foot building height in lieu of the maximum 25 feet permitted."

WLAPC staff prepared a thorough report of 4 pages. Among its findings were:

### 1) S-3-4: Hearing Officer Comments:

"The Venice Coastal Zone Specific Plan has a density limitation of two dwelling unit on lots zoned RD1.5 within the Oakwood-Milwood-Southeast Venice subarea. This is due to the relatively small, overbuilt parcels that make up the Venice community which has led to a lack of on-street parking. The Specific Plan does permit additional dwelling units if they are replacement affordable units."

"There is nothing unique to the site with regard to size, shape, topography, location or surroundings. Approving an exception for a market rate unit would set a precedent for other properties to seek similar exceptions."

"There is a provision in the Specific Plan that allows for exemptions from the Specific Plan if plans had been accepted by the Department of Building and Safety and a fee paid, not more than 365 days after the effective date of the Specific Plan. However, this provision is not applicable to this case and the applicant therefore must now comply with the Specific Plan. While it is true that other nearby parcels with three or more

units, they were built prior to the enactment of the Specific Plan. The applicant has not stated how this project is unique with regard to the density requirements of the Specific Plan, other than the potential economic gains to be had from having three units as opposed to two."

"By obtaining prior approvals the applicant has been able to start construction on the building as a single family residence in anticipation of getting approvals for the Specific Plan Exemption, Zoning Administrator's Adjustment, and a Parcel Map."

"IT IS THE APPLICANT'S PIECEMEAL APPROACH TO THE DEVELOPMENT OF THE SITE THAT HAS MADE ANY HARDSHIP SELF-IMPOSED. THE APPLICANT CAN STILL MAINTAIN THE BUILDING UNDER CONSTRUCTION EITHER AS A SINGLE FAMILY RESIDENCE, A TWO UNIT APARTMENT, OR A THREE UNIT APARTMENT WITH ONE DEDICATED AS AN AFFORDABLE UNIT, PROVIDED THAT THE BUILDING COMPLIES WITH ALL OTHER ASPECTS OF THE VENICE COASTAL ZONE SPECIFIC PLAN AND PROVISIONS OF THE LOS ANGELES MUNICIPAL CODE." [Staff. caps added for emphasis]

Recommendation after the hearing and staff report.

1) Disapprove the requested Exception to permit one additional unit in excess of the two unit maximum. Disapprove a 30 foot building height in lieu of the 25 feet maximum permitted.

2) Disapprove the requested Coastal Development Permit.

3) Disapprove the requested Project Permit Compliance.

4) Disapprove the requested ZA's adjustment for a reduced passageway.

5) Adopt the attached Findings.

FINDINGS: F-10 pages.

p.5: "The proposed third unit is not an affordable housing unit and is inconsistent with the Specific Plan requirement that units over the allowed density be maintained as affordable. The Specific Plan explicitly identifies the area surrounding the site as Low Medium II Density Residential with appropriate density levels. The proposed project exceeds those levels and does not propose to offset any impacts by providing only market rate units."

[Staff Note: applicants representative has submitted the above for LUPC review. It is 10 pages, very thorough, and argues persuasively that no Specific Plan exemptions to height, setbacks, and especially density for a third market rate unit be permitted.]

Applicant was informed that he could appeal this decision to the City Council by March 5, 2003. Applicant appealed the entire decision.

MELLO ACT FEASIBILITY COMPLIANCE DOCUMENT:

January 24, 2004: Initial application

March 24, 2004: Revised application.

Applicant applies for APCW. This is required for Mello Compliance. It is on a form marked:

Los Angeles City Planning Department.

Moderate-income Housing Purchase Feasibility Analysis.

Number of (Lofts) units. Three

Number of bedrooms in each unit: Two

Square footage in each unit 1,922.

To which was appended the additional information, to wit:

Deck area: plus 1116 sq feet

Open area: plus 2260 sq. feet

Covered parking: [unreadable in my copy]

Cost per sq foot. \$150.00

ESTIMATED COST.

<u>Land</u>	<u>\$450,000</u>
<u>Improvements</u>	<u>\$15,000</u>
<u>arch &amp; engineering</u>	<u>\$40,000</u>
<u>Legal</u>	<u>\$15,000</u>
<u>Permits &amp; fees</u>	<u>\$30,000</u>
<u>Interests &amp; loan cost</u>	<u>\$81,600 (figure has been written over)</u>
<u>Construction Cost</u>	<u>\$950,000 (total sq feet times 3 sq ft)</u>
<u>Management</u>	<u>\$60,000</u>

Total for 3 market units: \$1,641,600

SALES PROJECTIONS:

Three market rate units @ \$650,000 each = \$1,950,000.00



Less sales cost of 8% = \$56,000,.00

Net Sales Proceeds: \$1,794,000.00

If One 1,000 sq foot unit of moderate housing: Price \$1,470,600.00

[Staff note: the form calculations lost me here.]

JULY 24, 2003 HEARING OF THE APPEAL BY APPLICANT OF DENIAL OF PROJECT AS PROPOSED by WLAPC.

REPORT OF THE PLANNING AND LAND USE AND PLANNING COMMITTEE TO THE CITY COUNCIL. MEMBERS: REYES, SMITH, GREUEL. Notice sent to Councilmember Miscikowski (she supported this appeal) California Coastal Commission many City agencies.

Appeal from decision of West Los Angeles Planning Commission (APCW 2002-5556-SPE CDP SPP ZAA MEL)

This report was occasioned by the appeal by applicant Mark Baez from the entire decision of the West Los Angeles Area Planning Commission, to reverse that decision, and to "Approve an Exception from the Venice Specific Plan, Project Permit Compliance, Coastal Development Permit, the Zoning Administrators Adjustment, and Mello Act Compliance for the proposed construction of a three story, three unit condo project, 30 feet in high, with seven parking spaces at 709 5th Ave.

"The project applicant and his representative were present to urge the Committee to approve the Specific Plan Exception. A representative from the 11th Council District Office stated that Councilmember Miscikowski supports the project and urges the Committee to grant the appeal. It was stated that the Venice Specific Plan allows for a third unit to be built in such cases, provided the unit is made available as affordable housing. The City's Housing Department has determined however, that providing an affordable housing unit at this location is not feasible"

"The issues regarding curb cuts have been resolved with the Transportation Department".

Recommendation: Approve the Venice Specific Plan Exemption.

[Staff Note by Arnold Springer. All of the documents relating to this case can be found in: Council File # 03-0713, located in Dept of City Planning, Environmental Review Section - including the Mitigated Negative Declaration (ENV) 2002-558-MND]

JULY 23, 2003

Mitigated negative declaration adopted by City Council. The recommendation approved the project, the CDP, and overruled the WLA planning commission.

SEPT 24, 2003

MELLO ACT COMPLIANCE REPORT; City of Los Angeles. Department of City Planning; Entitlement Management Unit.

Case # ZA - 2003 -2642; CDP AA-2002-5557 - PMLA

Project Description: Demolish an exiting owner-occupied single family dwelling and construct a new three unit condominium. Applicant Mark Baez and Arthur Kenworthy

"This report is being provided to you in accordance with.....and the terms of the Settlement Agreement between the City of Los Angeles, Venice Town Council....and Carol Berman, concerning implementation of the Mello Act in the coastal zone area of the City of Los Angeles".

"Since the proposed project involves the demolition of an owner occupied single family swelling, a LA Housing Dept report is not required. Therefore the applicant/owner/developer is not required to provide replacement affordable dwelling units on site or within the Coastal Zone."

Since the development is less than 10 units, it is under the threshold of Mello and need not provide Mello Act affordable housing. "Therefore, the applicant is not required to provide any inclusionary affordable dwelling units on site or within the Coastal Zone.

"Based upon the information submitted by the applicant for the demotion of an owner occupied single family residence and the construction of a three unit condominium, the proposed project is eligible for the Small Housing Development exemption from the Mello Act.

[Note by Arnold Springer. The above compliance and report focused only on the Mello Act and did not address the findings about the third unit provisons of VCSP. No review of the requirements for low income housing for a third unit on this site was even

mentioned in this report. So a CDP was issued without taking into consideration the VCSP. This action was supported by Councilperson Miscikowski.]

## **CONCLUSION OF STAFF REPORT:**

Construction on the project began before necessary and required permits were applied for. Applicant changed his project several times, enlarging it from a single family addition to the three unit market rate units over several years. When construction was finally finished in 2004 the applicant applied for a Certificate of Occupancy which Building and Safety refused to grant. The reason was that the project was not permitted to reach a height of 31.6 feet, but only 31 feet. Also, the building was supposed to be set back one foot for every foot above 25 feet.

Building inspectors must have been furious. From the completion of the project in 2004 to this date, approximately 2.5 years have passed, during which time the applicant has been unable to get Building and Safety to issue a certificate of occupancy. Meanwhile applicant has rented out the units in violation of other ordinances. This has compounded the problem for the applicant.

## **LUPC STAFF RECOMMENDATION:**

Applicant would like to get a certificate of occupancy and sell the three condominium units at market rate. He is prepared to pay a significant amount of money into the Housing Pouch of the Venice Fund, which currently contains \$500,000.00

To help the applicant achieve his objective using his own favored strategy, it is proposed to:

Estimate the market value of each of the three condominiums:

— According to Betsy Goldman of Abbot Kinney Real Estate whom I contacted for information, the estimated market price which each of the market rate condos today would be about \$1,100,000.00 .

Estimate the Cost of each unit to construct.

— According to the applicants own figures, the cost of the project was \$150 per square foot. The total cost for the three units was \$1,640,000.00

Subtract construction cost from the market rate. Estimate the profit for each unit.

Subtract 30% from the profit of each unit and earmark it for donation to the Housing element of the Venice Fund.

Monies to be used to establish and maintain a parking and affordable housing section under the Neighborhood Council, to be administered by the Venice Community Housing Corporation and Abbot Kinney District Association. Terms to be worked out. This section should be up and running in 60 days.

## **IF THE UNITS ARE TO BE SOLD:**

Payments equivalent to \$167,000.00 shall be paid into the housing element of the Venice Fund not more than 30 days following the sale of each unit, and the full \$500,000.00 shall be paid into the fund not later than May, 2010.

## **IF THE UNITS ARE TO REMAIN RENTAL UNITS:**

Section 5.T of the Venice Coastal Zone Specific Plan defines 'Replacement Affordable Unit', and provides, in a relevant section, that "...the owner shall record a document with the Los Angeles County Recorder guaranteeing that these affordability criteria will be observed for at least 30 years from the issuance of the Certificate of Occupancy."

It is estimated that the contribution needed to subsidize an apartment rental unit at the level of a "moderate" income family for 30 years is \$500,000. This figure is calculated as 360 months (30 years x 12 months) at approximately \$1,400 per month. [Robert Aronson]

**Author of Report:** Arnold Springer

**Date submitted:** May 18, 2007