ATTACHMENT J
APPEAL APPLICATION OF HEARING OFFICER'S DECISION
Dated January 19, 2021

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REQUEST FOR APPEAL

APPLICATION INFORMATION

Project Address: 1820 Linda Vista Ave [APN: #5704001049]

Case Type (MCUP, TTM, etc.) and Number: Hillside Development Permit #6838 , ZENT2020-10016

Hearing Date: January 6, 2021 Appeal Deadline: January 19, 2021

APPELLANT INFORMATION

[NOTE: PLANNING STAFF AND/OR INTERESTED PARTIES SHOULD CONTACT APPELLANT'S COUNSEL AT INFORMATION PROVIDED BELOW]

APPELLANT: Jin Ser Park Telephone: [310] 806-9212

Address: 1812 Linda Vista Avenue Fax: [310] 943-2216

City: Pasadena State: CA Zip: 91103 Email: stephen@weaverlandlaw.com

APPLICANT (IF DIFFERENT): Matthew Feldhaus

I hereby appeal the decision of the:

- ☑ Hearing Officer
- ☐ Design Commission
- ☐ Historic Preservation
- ☐ Zoning Administrator
- ☐ Director of Planning and Development
- ☐ Film Liaison

REASON FOR APPEAL

The decision maker failed to comply with the provisions of the Zoning Code, General Plan or other applicable plans in the following manner (use additional sheets if necessary):

See attached "Justification for Appeal"

Signature of Appellant

1/19/2021
Date

Stephen J. Weaver, Esq., attorney for Appellant
WEAVER LAND LAW // 12100 Wilshire Boulevard, 8th Fl // Los Angeles, CA 90025
Phone: 310.806.9212 // Fax: 310.943.2216

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PLN # _____ CASE # _____ PRJ # _____

DESCRIPTION _____

DATE APPEAL RECEIVED: _____ APPEAL FEES: $_____ RECEIVED BY: _____

PLANNING AND DEVELOPMENT DEPARTMENT
CURRENT PLANNING SECTION
175 NORTH GARFIELD AVENUE
PASADENA, CA 91101
T 626-744-4009
F 626-744-4785

Appeal Justification
by Appellant
re Project at 1820 Linda Vista Ave [APN: #5704001049]
Hillside Development Permit #6838 // Council District #6

JUSTIFICATION FOR APPEAL

(I) SUMMARY

This approved Project concerns a hillside parcel where the Project Applicant ("Applicant") seeks to nearly **double the square footage of his house and to construct structures that serve to adversely affect his neighbors' views and privacy, *despite widespread objections in the Community.*** Specifically, the Applicant sought a Hillside Development Permit to add a 2,208 square-foot, two-story addition to the existing 2,452 square-foot, single-story single-family residence, with an attached 366 square-foot garage, and an attached 439 square-foot carport. If built, the resulting structures will include a 4,660 square-foot residence with an attached 754 square-foot garage. The Plans submitted in support of the Project also showed accessory structures, such as an infinity pool and a spa.

After a hearing, the Hearing Officer granted a Hillside Development Permit (the "Permit") for the aforementioned expansion, which is the subject of this appeal. Appellant owns the adjacent lot to the south of subject property.

The Hearing Officer erred in approving the Permit for several reasons:

1. Out of Scale Development. The Project would result in a home completely out of scale with developments in the vicinity, as evidenced by the City's own Staff Report, and **its size and design does directly impact views from surrounding properties**. This runs counter to the objectives of the Hillside District, the General Plan, and the requirements of the Permit.
2. Failure to Consider View Rights. The City also gave insufficient consideration to the impacts on views and privacy of Appellant's property and other surrounding properties, in violation of the Municipal Code and the policies and directives of City's General Plan. Appellant himself will have direct, scenic views from his living room and other portions of his property compromised if the Permit is allowed to stand.
3. Unusual Circumstances. The Hearing Officer wrongly granted an environmental clearance because the Project falls within numerous exceptions to the CEQA Exemption it received, including usual circumstances. The Hearing Officer improperly determined that the Project was exempt from CEQA by failing to account for the location and scale of the Project, which is located on a steep hillside in a very high fire hazard zone, which also sits adjacent to Open Space in a large liquefaction[1] zone, which

[1] Liquefaction occurs "when loose, water-saturated sediments lose strength and fail during strong ground shaking. Liquefaction is defined as the transformation of granular material from a solid state into a liquefied state as a consequence of increased pore-water pressure." (California Department of Conservation, https://www.conservation.ca.gov/cgs/shma, last accessed on January 14, 2020.) It happens in "soft, saturated sediments – when the ground shakes, the water that fills the pores increases in pressure, causing the soil to lose

includes a historic watershed (the Arroyo Seco), the subject property sits adjacent to a liquefaction zone properties to its north, and the house currently on the property has remained in its present form since 1948; collectively, these items constitute unusual circumstances; thus the finding of Exemption is inappropriate.

4. Cumulative Impacts. The Hearing Officer wrongly granted an environmental clearance because he failed to take into account the cumulative effect of developing properties on the east side of Linda Vista Avenue, which can contribute to soil displacement and put stress on the hillside and the surrounding liquefaction zones.
5. Threat to Historic/Natural Resource. The City should have required the preparation of an Environmental Impact Report (sometimes "EIR") with respect to the stability of the new structure and potential landslides that could result, given the large liquefaction zone that contains a watershed. The risks to the historic and natural resource of the Arroyo Seco cannot be understated. Appellant's plans include a swimming pool and a spa, which contributes to cumulative impacts promoting displacement of soil. Earthquakes would increase the likelihood of destabilization, occurring along with man-made alterations to long-preexisting developments.

Furthermore, Applicant *could have* simply sought an expansion of the existing single story of the property and avoided the impact on Appellant's views [and privacy intrusion]. The pool and the spa may that he desired to put on the property may have impacted his willingness to avoid obstruction of Appellant's rightful view corridor. He did not offer alternative designs to Appellant to avoid obstructing views, and the City did not enter into any meaningful analysis of view corridors from Appellant's or other surrounding properties. In addition to the environmental concerns articulated above, the City should also have considered the impacts of the necessary excavation and construction arising from the pool and other structures on the adjacent liquefaction zones to the east and north of the subject property.

Therefore Appellant requests that the Board of Zoning Appeals reverse of the approval of the Permit.

(II) THE PERMIT VIOLATES THE MUNICIPAL CODE, THE GENERAL PLAN, -AND- IT DOES NOT COMPLY WITH CEQA

(1) THE PROJECT IS AN OUT OF SCALE DEVELOPMENT THAT VIOLATES THE SUBJECT ORDINANCE AND RUNS CONTRARY TO THE GENERAL PLAN

Consistent with the objectives of the General Plan, the Pasadena Municipal Code requires neighborhood compatibility:

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strength and behave as a liquid." (General Plan, Safety Element, p. 4.) Liquefaction zones are prone to the effect of landslides.

> New houses and additions subject to a Hillside Development Permit shall be designed with consideration of the character and scale of the existing development in the vicinity. Through the Hillside Development Permit process, compatibility will be determined following a review of existing site conditions, visibility of the site, and the size, scale, and character of existing development within 500 feet of the site.
>
> (City of Pasadena Municipal Code ["PMC"] § 17.29.060-F.)

Consistent with the General Plan, the Hillside Development Ordinance requires that the Hearing Officer find, among other things, that:

> The design, location, and size of proposed structures and/or additions or alterations to existing structures will be compatible with existing and anticipated future development on adjacent lots, as described in Section 17.29.060.D, and in terms of aesthetics, character, scale, and view protection...
>
> (PMC § 17.29.080-F(1).)

The Hillside Development Permit also incorporates findings required by conditional use permits:

> 1. The proposed use is allowed with a ... Hillside Development Permit within the applicable zoning district and complies with all applicable provisions of this Zoning Code;
>
> 2. The location of the proposed use complies with the special purposes of this Zoning Code and the purposes of the applicable zoning district;
>
> 3. The proposed use is in conformance with the goals, policies, and objectives of the General Plan and the purpose and intent of any applicable specific plan;
>
> 4. The establishment, maintenance, or operation of the use would not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of the proposed use;
>
> 5. The use, as described and conditionally approved, would not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City; and
>
> 6. The design, location, operating characteristics, and size of the proposed use would be compatible with the existing and future land uses in the vicinity in terms of aesthetic values, character, scale, and view protection.
>
> (PMC § 17.61.050-H.)

At 4,600 square feet, the proposed residence on its own (not counting the accessory structures) would be significantly larger than that of **almost every single lot in the vicinity**, with *the exception of only two lots out of 31* that have buildings exceeding 4,000 square feet. While the lot size appears substantial, the vast majority of the lot is *unbuildable* because of the steep slope. Thus the FAR is an inappropriate measure to determine the neighborhood consistency.

Even reviewing larger lots from Attachment C to the Staff Report (Neighborhood Compatibility): the following inconsistencies result:

(a) No lot that is 51,000 square feet or less has a building that is more than 3,270 square feet;

(b) Excluding vacant lots (leaving 28 lots), the average building size is 2,765.5 square feet.

(c) The *Median* building size is 2,827, *which is over 1,800 square feet smaller* than the proposed residence.

The above shows how out of scale the house is with those in its 500-foot vicinity. The General Plan requires balance in choosing the size and location of new development. It requires residences to maintain appropriate scale and massing. (See General Plan Land Use Policy 21.9 (Hillside Housing).) The Hearing Officer's complete reliance upon the statutorily defined Floor Area Ratio as the sole and final measure of compatibility in this case does not adequately take into account the relative sizes of homes in the vicinity, particularly given the limited building area and the required avoidance of the Arroyo Seco Slope. The failure to maintain scale not only diminishes the quality of the life of the surrounding inhabitants, it leads to the elimination of view corridors and vistas.

Thus, the overscale house *does actually harm the neighborhood.* (PMC § 17.61.050-H(5).) It blocks views, as discussed in the following Section III(2), which diminishes the quality of life and property values for nearby landowners. The Project is incompatible, based on its size and location on a steep slope, with the aesthetics, scale, and view protections advanced by the Code. (PMC § 17.61.050-H(5).) It is severely out of step with the neighborhood.

(2) The View Analysis With Respect to Applicants' Property and Surrounding Properties is Entirely Insufficient

Views are an important benefit and privilege that comes with living in the Hillside District. Naturally, a critical requirement for Hillside Development Permits is that the applicants must endeavor to protect the views of their neighbors:

> **View protection.** A proposed structure shall be designed and located so that it avoids blocking views from surrounding properties to the maximum extent feasible, as determined by the review authority, and including, but not limited to, consideration of the following:

1. The feasibility of relocating the proposed structure to another part of the site;

2. The feasibility of modifying the massing of the proposed structure such that views from surrounding properties would not be impacted; and

3. The feasibility of minimizing architectural features that may intrude upon views from surrounding properties.

(PMC § 17.29.060-G.)

The Staff report concluded that since the proposed project would "maintain the general height of the existing residence, ... the existing view conditions [of Appellant's Property] would not be impacted." (Staff Report, p. 8.) However, the expansion of square footage for the Project will leave new structures and obstacles directly within the line of sight from Appellant's living room. Applicant's proposed footprint blocks significant vistas, including the overlooks upon which Appellant's property sits, a beautiful ridgeline and downslope views of the valley floor. (See PMC §§ 17.29.010; 17.29.060-G [new structures shall avoid blocking downslope views of the valley floor, prominent ridgelines, and the horizon line.])

The parcel could have "minimized view impacts," as required by the ordinance, by (1) allocating square footage to the upper level, (2) simply not adding on to the portion of the residence that sits in direct view of Applicant's home, or (3) removing or minimizing luxury elements/structures that would not inhibit views, such as a swimming pool, spa, etc. Occupying space that serves as Appellant's vantage points, without evaluation of appropriate conditions, is simply not in line with the requirements of the Municipal Code and patently unnecessary.

The Hearing Officer and Staff report completely fails to consider the "feasibility of modifying the massing of the proposed structure such that views from the surrounding properties [such as Appellant's'] would not be impacted." (PMC § 17.29.060-G.) Unfortunately, the proposed addition will have direct views into Appellant's living room, backyard, and the pagoda, which also serves to reduce privacy and thus quality of life. Appellant's living room currently benefits from the views that will be blocked. The reviewing authority also failed to take any consideration of "views of open sky, existing foliate, private yards, and existing structures on surrounding properties," as he was required to do. (PMC § 17.29.060-G.) There is no consideration for the views of the Appellant's property. The reviewing authority did not make the necessary findings before impacting Appellant's views, such as deeming such obstruction necessary. (PMC § 17.29.080-G.)

Furthermore, the Code provides additional standards for view protection of surrounding properties, such as Appellant's. "New structures and tall landscaping shall not be centered **directly in the view of any room of a primary structure on a neighboring parcel**. Views shall be considered from windows of any room in the primary structure." (PMC § 17.29.060-G [emphasis added.]) The Project will obstruct the Appellant's own views, reduce his family's

privacy, and diminishes the value of his property. Applicant's proposed structures disregard this completely, and the analysis upon which the Hearing Officer relies does not evaluate these impacts.

(3) THE PROJECT HAS UNUSUAL CIRCUMSTANCES THAT REQUIRE THE PREPARATION OF AN EIR

CEQA requires the preparation of an Environmental Impact Report where a project may have a significant effect on the environment, and the exceptions to it are narrowly construed. (*Azusa Land Reclamation Co. v. Main San Garbriel Basin Watermaster* (1997) 52 Cal. App. 4th 1165, 1120 ["The purpose of CEQA in general is well established: **to afford the fullest possible protection to the environment within the reasonable scope of the statutory language**." Emphasis added, internal citation and quotation marks omitted.]) The EIR must be prepared "as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment.'" (*Laurel Heights Improvement Ass'n v. Regents of University of California* (1988) 47 Cal. 3d 376, 395.)

14 CCR § 15300.2(c) includes, among the exceptions to Class 1 projects (Existing Structures), that "an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." An activity has a significant effect if it "has the potential to degrade the quality of the environment.t" (Pub. Res. Code § 21083.)

The Hearing Officer found the Project to be exempt from environmental review under the Existing Facilities Exemption (Class 1). The decision letter incorrectly states that "there are no features that distinguish this project from others in the exempt class." However, there are a host of features that require special consideration, in this case, or in other words **"unusual circumstances**." Here are some of the circumstances that render the Project unique and in need of further review:

(a) The property is located directly adjacent to a large liquefaction zone, which includes a historic watershed, the Arroyo Seco (see General Plan Land Use Policy 10.9 (Natural Open Space) [mandating protection of watersheds and hillsides]);
(b) The property to the north of the subject property, 1840 Linda Vista Avenue, it itself directly within a liquefaction zone, according to the California Earthquake Hazards Map maintained by the California State Department of Conservation;
(c) The Project seeks to nearly double the footprint of the existing structures -- This is a 90% expansion to the home itself, from a property that has been in place *since 1948*. The effect on the hillside, which likely has had substantial soil movement in the past **72 years** is something that must be reviewed (See General Plan, Safety Element, 2.2 ["Man-made modifications to a slope, and stream erosion and down- cutting can also cause a slope to become unstable and fail."];
(d) Portions of the property contain a steep slope (over 50%), and the average slope for the remaining portions of the parcel is 29%;

(e) The subject property is located in a high fire severity zone (See General Plan, Safety Element, 2.4 [Fire Hazards]; Safety Element, 1.0 ["Specific hazards of concern to Pasadena include earthquakes, landslides and mudflows, dam or reservoir failure, wildland and structural fire, and contamination of soil and groundwater resources by hazardous materials associated with some of the research, commercial, and industrial facilities present in the City."]
(f) The subject property is located next to other properties at the top of the hillside which all sit next to the largest liquefaction zone in the City;
(g) The subject property itself sits within a landslide zone, according to the California Earthquake Hazards Map maintained by the California State Department of Conservation;
(h) The adjacent golf course with the watershed could be damaged in the event the soil on the subject property shifts, due to earthquakes, landslides, or other soil movement and this could affect the watershed, a natural resource. (See Pub. Res. Code § 21084(e) [identifying *nonexempt* projects as including "[a] project that may cause a substantial adverse change in the significance of a historical resource."]; 15 CCR § 15300.2(f); also PMC § 17.029.010-C [stating that one of the purposes of Hillside Development district was to prohibit features that increase "landslide or other safety hazards to the public health and safety..."])

Taken together, foregoing factors represent the potential for environmental damage that must be reviewed in a thorough Environmental Impact Report. A preliminary geotechnical report is an insufficient substitute for an EIR, particularly where the property is a risk to surrounding public resources, is situated at the top of a hillside, lies next to a great quantity of earth that is unstable, and would require the doubling in size of structures not moved in over 70 years. The presence of a favorable geotechnical report that mainly itself with the subject property does remove the existence of the "unusual circumstances" that trigger exceptions to CEQA exemptions.

As stated above, the subject property sits adjacent to a large liquefaction zone that happens to include a significant natural and historical resource, the Arroyo Seco watershed. The existing house has been in place for 72 years, and the expansion requires substantial excavation and will place a very different strain on the hillside. While one can theorize about the effect of such a massive change to the existing structures, it is undeniable that there is a **reasonable possibility** that the new development could affect the adjacent property, which is already subject to the effects of soil movement.

Thus, environmental review is necessary.

[*continued on next page*]

(4) THE CUMULATIVE IMPACTS OF HILLSIDE PROPERTIES BUILT OUT ADJACENT TO THE ARROYO SECO BOUNDARY[2] AND THE LIQUEFACTION ZONE REQUIRE THE PREPARATION OF AN EIR

14 CCR § 15300.2(b) provides, " All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant. Numerous properties that all abut the Arroyo Seco Boundary have been built up over the years on the same side of the street as Applicant's property. Undoubtedly, over time the effects of these properties are significant, especially when the abut a liquefaction zone and historic natural resources. As stated above, an EIR is required.

(5) THE PROJECT MAY CAUSE A SUBSTANTIAL ADVERSE CHANGE TO A HISTORIC RESOURCE AND THUS REQUIRES THE PREPARATION OF AN EIR

Categorical exemptions do not apply when the potential threat to a historic resource is present. (15 CCR § 15300.2.) As stated, the property seeks a massive expansion of its structural footprint, and lies to the west of a large liquefaction zone and directly south of 1840, 1850, and 1852 Linda Vista Avenue (these three properties are adjacent), which themselves are in liquefaction zones. A substantial buildout of a property on a slope as steep as the subject property, while the current structures have been in place and unchanged for 72 years, presents a great risk to the community. This risk must be evaluated through a complete environmental review.

(III) CONCLUSION

The Hearing failed to acknowledge and evaluate how the development would affect protected views, neighborhood compatibility, or the circumstances that should have required environmental review. The development, as proposed, does not advance the goals of the Hillside District nor does it protect the natural and scenic resources that provide value.

Applicant requests reversal of the decision of the Hearing Officer and denial of the Permit.

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[2] Here the "Arroyo Seco Boundary" is used to refer to the edge of the properties adjacent to and overlooking Brookside Golf Course, which is a large liquefaction zone that is zoned Open Space. Some of the properties along this line are 1726, 1750, 1776, 1812, 1840, 1850. 1854, 1890 Linda Vista Avenue, as well as 1700, 1726, La Vista Place.

Exhibit A
[Google Map Showing Subject Property With Annotations]

CITY OF PASADENA

GENERAL RECEIPT

RECEIVED FROM Stephen Weaver DATE 1/19/21

ADDRESS _____ CITY _____ PHONE # (310) 806-9212

AMT. PAID $ 1,681.48

- ☐ MUNICIPAL SERVICES - ACCOUNT # _____
- ☐ LICENSE _____
- ☐ PARAMEDIC - INV. # _____ INV. AMT. $ _____
  - PAID THIS DATE $ _____
  - BALANCE DUE $ _____
- ☐ PARKING CITATIONS $ _____
- ☒ OTHER Appeal of Permit 6838 INV. AMT. $ 1,681.48
  - PAID THIS DATE $ _____
  - BALANCE DUE $ Ø

CODE: _____

- ☐ CASH
- ☒ CHECK # 1236
- ☐ MONEY ORDER # _____

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CITY OF PASADENA

GENERAL RECEIPT

RECEIVED FROM Stephen Weaver DATE 1/19/21

ADDRESS _____ CITY _____ PHONE # (310) 806-9212

AMT. PAID $ 1,681.48

- ☐ MUNICIPAL SERVICES - ACCOUNT # _____
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