



# Agenda Report

July 16, 2018

**TO:** Honorable Mayor and City Council

**FROM:** Planning and Community Development Department

**SUBJECT: APPEAL OF BOARD OF ZONING APPEAL'S DECISION ON AFFORDABLE HOUSING CONCESSION PERMIT #11866 LOCATED AT 233 NORTH HUDSON AVENUE**

## **RECOMMENDATION:**

It is recommended that the City Council:

1. Find that this project to be categorically exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act (Public Resources Code §21080(b)(9); Administrative Code, Title 14, Chapter 3, §15332, Class 32, In-Fill Development Projects); and
2. Uphold the Board of Zoning Appeal's decision and approve Affordable Housing Concession Permit #11866.

## **EXECUTIVE SUMMARY:**

On May 2, 2018, the Board of Zoning Appeals considered at its regularly noticed hearing, an appeal of the Hearing Officer's decision to approve Affordable Housing Concession Permit #11866. At the conclusion of the public hearing, the Board of Zoning Appeals made a motion to uphold the Hearing Officer's decision and adopt the Environmental Determination and approve the Affordable Housing Concession Permit #11866 that resulted in a 3-0 vote by the three members present.

On May 14, 2018, Hudson Locust Inc. HOA, submitted an appeal application to the City Council.

## **BACKGROUND:**

The applicant, DC Hudson Holdings, LLC, has submitted an Affordable Housing Concession Permit application to facilitate the construction of a new five-story, 47,670 square-foot, mixed-use building containing 5,835 square feet of commercial space on

the ground floor, 42 units (including three “very low income” units) on the upper four floors, and 76 parking spaces in three-levels of parking. The proposed building ranges in height from 53’-9” to 71’-8”, as measured from the lowest existing grade.

The subject 16,300 square-foot property is located on the northwest corner of Walnut Street and Hudson Avenue, within the CD-3 zoning district. The maximum permitted density is 87 units per acre, or 33 units for the subject lot. In order to develop the site with additional residential units, a density bonus and a concession are being requested.

The density bonus section of the Zoning Code (Section 17.43.040) permits an increase in the number of units permitted on the site, without discretionary approval, provided a specified percentage are designated as affordable units. In this case, the maximum number of units permitted on the property under the base zoning is 33 dwelling units. Per Table 4-3 of the City’s Zoning Code, shown below, designating 9 percent of the allowed base units (i.e., three units) as very low-income would permit a density bonus of 30 percent (i.e., 10 units), for a total of 43 dwelling units. The proposed 42 dwelling units are within the maximum permitted number of units with the provision of the three very low-income units.

Table 4-3 - Increase in Allowable Density for Very Low-Income Units

Percentage of Very Low-Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

California State Law permits a project that is utilizing a density bonus increase to request concessions, or deviations, from an applicable development standard, provided the concessions result in identifiable and actual cost reductions to provide for affordable housing costs or for rents for the targeted units. Per Section 17.43.050 of the Zoning Code, this request is processed through the Affordable Housing Concession Permit. Because the proposed project includes at least five percent of the units for very low-income households, the project may request one concession. The concession requested with this application is:

- (1) An increase in the Floor Area Ratio (FAR) from the permitted 2.25 to 2.92. The maximum permitted FAR on the subject 16,300 square foot property is 2.25, or 36,675 square feet. The gross floor area of the new building is 47,670 square feet, which equates to a 2.92 FAR.

With the exception of the requested concession, the project complies with all other applicable development standards as required by the City’s Zoning Code, including, but

not limited to, setbacks, open space, and parking. The project is proposing to utilize height averaging, as such the project must comply with the height averaging standards in Section 17.30.050.B.1 of the City's Zoning Code. If the project is approved by City Council, height averaging will be reviewed and approved during the Design Review process by the Design Commission.

#### Hearing Officer Public Hearing

The application was presented to the Hearing Officer at a public hearing on February 21, 2018. Staff's recommendation to the Hearing Officer was to approve Affordable Housing Concession Permit #11866. At the conclusion of the meeting, and after hearing public testimony, the Hearing Officer approved Affordable Housing Concession Permit #11866. On March 5, 2018, Hudson Locust Inc. HOA, submitted an appeal application (Attachment E) to the Board of Zoning Appeals.

#### Board of Zoning Appeal's Public Hearing

On May 2, 2018, the Board of Zoning Appeals considered the appeal of the Hearing Officer's decision to approve Affordable Housing Concession Permit #11866. During the Board of Zoning Appeals hearing, in addition to the appellant, four people spoke against the project. The applicant spoke in favor of the request. Those speaking in opposition to the request had the following concerns:

- Setback along the north property line;
- Location of the proposed driveway, and noise and pollution associated with the driveway;
- Traffic on Hudson Avenue and Locust Street; and
- Insufficient Parking.

State law sets forth criteria for denying a concession permit (Government Code Section 65915 citation):

1. The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).
2. The concession or incentive would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.
3. The concession or incentive would be contrary to state or federal law.

If none of the above findings can be made, the concession permit must be approved.

The Board of Zoning Appeals considered the public testimony and the staff report, including the financial analysis prepared for the project and its conclusion that indicates that the requested concession results in an identifiable and actual cost reductions to provide for the affordable housing costs.

At the conclusion of the public hearing, the Board of Zoning Appeals made a motion to uphold the Hearing Officer's decision to adopt the environmental determination and to approve Affordable Housing Concession Permit #11866. That motion resulted in a 3-0 vote by the three members present.

On May 14, 2018, Hudson Locust Inc. HOA submitted an appeal application (Attachment C) to the City Council. The hearing before the City Council is a de novo hearing where the Council has no obligation to honor the prior decisions and has the authority to make an entirely different decision.

#### **APPEAL OF BOARD OF ZONING APPEALS DECISION:**

The appellant cited the following issues as the basis of his appeal of the Board of Zoning Appeals' decision:

- Review of design elements;
- Violation of Section 17.30.050.A.1, A.2 of the Zoning Code;
- Violation of Section 17.30.050.B.3 of the Zoning Code; and
- Violation of Section 17.30.050.C.2, C.3 of the Zoning Code.

#### **Responses to the Appeal:**

##### *Review of Design Elements:*

In the appeal application, the appellant states that the design elements of the project should be reviewed as part of the Affordable Housing Concession Permit, instead of being considered by the Design Commission during the Design Review process.

The request being considered as part of the Affordable Housing Concession Permit is the increase of the Floor Area Ratio requirement from 2.25 to 2.92. The findings for approving an Affordable Housing Concession Permit do not include a finding related to architectural design. Other than the requested concession, the project complies with all other applicable development standards as required by the City's Zoning Code.

The Design Review process is intended to implement urban design goals and policies and the Citywide design principles in the General Plan and to apply the City's adopted design guidelines to Design Review. Some of the purposes of Design Review are to:

1. Apply Citywide urban design principles to ensure that new construction supports the best of the City's architectural traditions;
2. Encourage new structures that show creativity and imagination, add distinction, interest, and variety to the community, and are environmentally sustainable;
3. Promote architectural and design excellence in new construction and discourage poor- quality development;
4. Ensure that future development should:
  - a. Reflect the values of the community;
  - b. Enhance the surrounding environment;
  - c. Visually harmonize with its surroundings and not unnecessarily block scenic views; and
  - d. Avoid nostalgic misrepresentations that may confuse the relationships among structures over time; and
5. Ensure that new landscaping provides a visually pleasing setting for structures on the site;

As such, the design elements for the proposed project will be reviewed by the Design Commission during the Design Review process.

*Violation of Section 17.30.050.A.1, and A.2:*

The appeal application states that the project is in violation of Section 17.30.050.A (Central District Exceptions to General Development Standards – Setback Exceptions) since the proposed building would provide more than a 10-foot setback from Hudson Avenue and this additional setback would be injurious to the appellant's property.

Per Figure 3-7 (Central District Required Setbacks), the subject property is subject to the "Setback Type 2" along Hudson Avenue, where nonresidential development (e.g. mixed-use projects) are not required to have a setback along the street, however may set back up to 5 feet maximum. Along Hudson Avenue, the proposed project incorporates a garden between the building and the street, resulting in the building being set back 26'-8" from the Hudson Avenue property line.

Section 17.30.050.A.2 reads in full:

"In order to achieve the objectives of the Central District Specific Plan, the following exceptions to the general development standards in Section 17.30.040 may be granted as noted.

- A. Setback exceptions. The setback requirements of Section 17.30.040 are modified as follows. See Figure 3-7 (Central District Setback Requirements) for identification of street frontages where setbacks from the street are required for nonresidential and/or residential uses.
  2. Increased openness. Side and rear yard setbacks are recommended under the following circumstances:
    - a. Nonresidential and residential uses that front along streets where a setback is required, thereby establishing a more open character. This is appropriate

to areas where less intense pedestrian activity and/or a higher percentage of residential development is anticipated. A minimum 10-foot side and rear yard setback is recommended.

- b. Additional setbacks/stepbacks are encouraged where necessary to protect the character of an architecturally significant building or landscape”

The additional setback along Hudson Avenue is appropriate since Hudson Avenue is residential in character, and the additional setback would be improved with a garden and would maintain a more open character.

*Violation of Section 17.30.050.B.3:*

The appellants state that there has been no justification to allow for additional height, and that the request for Height Averaging should be considered as part of the Affordable Housing Concession Permit.

Section 17.30.050.B of the City’s Zoning Code provides the provisions for Height Averaging. Height Averaging is reviewed and approved by the City’s Design Commission, as part of the Design Review process. As such, at this time, the findings for Height Averaging are not required for approval of an Affordable Housing Concession Permit.

*Violation of Section 17.30.050.C.2, and C.3:*

The appellant states that the project is in violation of Section 17.30.050.C (Central District Exceptions to General Development Standards – Floor Area Ratio) and that there has been no justification to support the additional FAR.

Section 17.30.050.C of the City’s Zoning Code offers provisions for exceeding the maximum allowed floor area ratio requirement within the Central District Specific Plan area, contingent upon the Design Commission making the required findings in Section 17.30.050.C.2. The applicant is not seeking additional floor area per the provisions in Sections 17.30.050.C of the Zoning Code; therefore, this section is not applicable to the project.

The applicant is requesting the additional floor area through the Affordable Housing Concession Permit process established in Section 17.43.050 of the Zoning Code and Government Code 65915 (State Density Bonus Law).

An analysis of the request for an Affordable Housing Concession Permit and the applicable findings is provided in the section below.

## **ANALYSIS:**

### Affordable Housing Concession Permit to Increase Floor Area Ratio (FAR)

The proposed project includes a Concession requests to increase the FAR. As described earlier, three findings are required for approval of an Affordable Housing Concession Permit (Government Code Section 65915):

1. It must be found that the concession results in the identifiable and actual cost reduction to provide for affordable housing costs or for rents;
2. It must also be shown that the project would not have a specific adverse impact on health or safety, or on the physical environment, or an adverse impact on property listed on the California Register of Historic Places, and
3. It must also be shown that the concession would not be contrary to state or federal law.

#### *Financial Analysis*

To assess the project for the first finding, the City forwarded the project's financial information to its financial consultant, Keyser Marston Associates (KMA) for analysis. KMA reviewed and analyzed the following scenarios:

1. Base Zoning Alternative – a development in compliance with all current zoning requirements;
2. Proposed Project Scenario – a development with a 27.3% density bonus, plus the concession to increase the FAR to 2.92.

Based on their review, it has been determined that the net cost associated with providing three very low-income rental units is estimated at approximately \$1.54 million. The net cost of providing affordable units is the difference between the value of the market rate unit and the value of the affordable unit. Comparatively, the value of the proposed density bonus and concession is estimated at \$1.18 million. The value of the proposed density bonus and concession is the difference between the net cost to provide the very-low income units and the net surplus. The value of the density bonus and requested concession is estimated to be \$360,000 less than the net cost associated with providing three very low-income units.

Thus, based on the results of the financial analysis, the report concludes that the Developer's proposal meets the requirements imposed by the City's Density Bonus Ordinance as well as the California Government Code, Section 65915 (Density Bonus) to qualify for the concessions in order to facilitate the construction of three very-low income residential units.

### *Project Impacts*

In addition, the review must verify that there would be no adverse impact on public health, public safety, or the physical environment, and would not have an adverse impact on a property that is listed in the California Register of Historical Resources.

- **Traffic Impact Analysis**

The Department of Transportation (DOT) prepared a Traffic Impact Analysis for this project. The study evaluated the effect the project would have on existing neighborhood traffic volumes along access and neighborhood collector street segments and intersections within the vicinity of the project, and evaluated the existing Pedestrian Environmental Quality Index (PEQI) and Bicycle Environmental Quality Index (BEQI) along key corridors within the vicinity of the project.

The analyses determined that the ratio of project-related trip volumes over existing traffic exceed adopted caps along one of the three street segments studied; therefore, the project is required to implement measures to discourage neighborhood intrusion by project-related traffic. These measures are included in the conditions of approval for this project (Attachment B).

However, project-related vehicular trips were found to not exceed established Citywide Level of Service caps; therefore, no additional measures are required to reduce project-related vehicular trips. Furthermore, the pedestrian environment received an indicator score of “high” and the bicycle environment received an indicator score of “average”. No conditions of approval are required when the score is “average” or higher.

As such, as it relates to vehicular traffic and with the incorporation of the recommended conditions of approval, there will be no adverse impact on public health, public safety, or the physical environment and the proposal complies with the requirements needed to make the findings to be granted a concession.

- **Noise Analysis**

A Noise Analysis for the project site was prepared by Dudek in October, 2017. The purpose of the report was to determine potential noise and vibration impacts as they relate to the proposed construction activities (short term impacts) and the operational characteristics (long term impacts) of the use.

The analysis concluded that during the construction period, maximum construction noise levels would not exceed the City’s Noise Ordinance thresholds of 85 weighted decibels (dBA) at 100 feet. Additionally, it concluded that construction-related vibration would be less than significant since none of the anticipated vibration levels would exceed the 0.5 inches/sec significance threshold at the closest off-site building to the west. Therefore, no adverse short term noise and vibration impacts associated with construction would occur from the project.

Long term operational impacts of the project would be generated by mechanical equipment (heating, ventilation and air conditioning units) and vehicles entering and



leaving the property. The threshold for significance for operational noise, established in the City's Noise Ordinance, prohibits the making of noise that exceeds the ambient noise levels by 5 dBA. It was determined that the operational characteristics (long term impacts) of the use would not exceed the ambient noise levels by 5 dBA. Per the noise analysis, the proposed development would increase the ambient noise levels a negligible amount above existing conditions. The existing traffic-related ambient noise level ranges from 63 to 69 dBA. Project-related traffic would result in increases no greater than 1 dBA. As such, the nature of the features related with the operational characteristics of the use would not increase the existing ambient noise level by 5 dBA. Therefore, no adverse long term noise impacts would occur from the project and no mitigation is required.

Therefore, as it relates to noise, there would be no adverse impact on public health, public safety, or the physical environment and the proposal complies with the requirements needed to make the findings to be granted a concession.

- Air Quality and Greenhouse Gas Emissions Analysis

An Air Quality Analysis for the project site was prepared by Dudek in September, 2017. The purpose of the report was to determine if the project would conflict with an applicable air quality plan, violate an air quality standard or threshold, result in a cumulatively net increase of criteria pollutant emissions, expose sensitive receptors to substantial pollutant concentrations, create objectionable odors affecting a substantial number of people, generate greenhouse gas emissions that may have a significant impact on the environment, or conflict with an applicable plan adopted for the purpose of reducing emissions of greenhouse gases.

The analysis concluded that the project would not conflict with or obstruct implementation of the SCAQMD 2016 Air Quality Management Plan, and air quality impacts from construction and operation of the project would be below SCAQMD air quality thresholds. Project-related construction emissions would be temporary and would not represent a long-term source of criteria air pollutant emission.

The analysis determined that implementation of the project would not exceed the demographic growth forecasts in the Southern California Association of Governments (SCAG) 2016 Regional Transportation Plan/Sustainable Communities Strategy (2016 RTP/SCS); therefore, the project would also be consistent with the SCAQMD 2016 Air Quality Management Plan (AQMP), which based future emission estimates on the SCAG 2016 RTP/SCS. In addition, the project would not result in an increase in the frequency or severity of existing air quality violations or cause or contribute to new violations. Based on these considerations, impacts related to the project's potential to conflict with or obstruct implementation of the applicable air quality plan would be less than significant.

It also determined that construction of the project would result in the temporary addition of pollutants to the local airshed caused by on-site sources (i.e., off-road construction equipment, soil disturbance, and VOC off-gassing) and off-site sources (i.e., on-road

haul trucks, vendor trucks, and worker vehicle trips). Maximum daily construction emissions would not exceed the SCAQMD significance thresholds for VOC, NO<sub>x</sub>, CO, SO<sub>x</sub>, PM<sub>10</sub>, or PM<sub>2.5</sub> during construction in both construction years (2018 and 2019). An operational year of 2019 was assumed to reflect the first year of operation consistent with the construction schedule. Operation of the project would generate operational criteria air pollutants from mobile sources (vehicles), area sources (consumer product use, architectural coatings, and landscape maintenance equipment), and energy (natural gas). Maximum operational emissions would not exceed the SCAQMD operational significance thresholds for VOC, NO<sub>x</sub>, CO, SO<sub>x</sub>, PM<sub>10</sub>, or PM<sub>2.5</sub>.

Additionally, construction activities would not generate emissions in excess of the SCAQMD site-specific localized significance thresholds (LSTs); therefore, site-specific construction impacts would be less than significant. In addition, operation of diesel equipment during project construction would be subject to the California Air Resources Board (CARB) air toxic control measures for in-use off-road diesel fleets, which would minimize diesel particulate matter (DPM) emissions. No residual toxic air contaminants (TAC) emissions and corresponding cancer risk are anticipated after construction, and no long-term sources of TAC emissions are anticipated during operation of the project. Therefore, the exposure of project-related TAC emission impacts to sensitive receptors would be less than significant. The project is not anticipated to significantly contribute to a CO hotspot when compared with similar intersections in the immediate vicinity. As such, potential project-generated impacts associated with CO hotspots would be less than significant.

Potential odors produced during construction would be attributable to concentrations of unburned hydrocarbons from tailpipes of construction equipment, architectural coatings, and asphalt pavement application, which would disperse rapidly from the project site and generally occur at magnitudes that would not affect substantial numbers of people. Impacts associated with odors during construction would be less than significant. The project is a mixed-use development that would not include land uses with sources that have the potential to generate substantial odors, and impacts associated with odors during operation would be considered less than significant.

The potential for the project to result in a cumulatively considerable impact, per the SCAQMD guidance and thresholds, is based on the project's potential to exceed the project-specific daily thresholds. As discussed previously, maximum construction and operational emissions would not exceed the SCAQMD significance thresholds for VOC, NO<sub>x</sub>, CO, SO<sub>x</sub>, PM<sub>10</sub>, or PM<sub>2.5</sub>. Therefore, the project would not result in a cumulatively considerable increase in criteria air pollutants.

- **Historic Resources**

The proposed project was reviewed by the City's Design and Historic Preservation Section of the Planning Division. There are no known or identified historic resources on the subject site as the property is currently vacant, therefore no existing buildings are proposed to be demolished or altered. Therefore, as it relates to historic resources, there would be no adverse impact on a property listed on the California Register of

Historic Places and the proposal complies with the requirements needed to make the findings to be granted a concession.

*State and Federal Laws*

The requested concession would be granted consistent with the procedures and requirements established by California Government Code Sections 65915 (Density Bonuses and Other Incentives) and will not be contrary to any federal laws.

Based on these analyses, staff believes that the three required findings to approve the requested Affordable Housing Concession Permit can be made.

**CONCLUSION:**

It is staff's assessment, based on the analysis, that the findings necessary for approving the Affordable Housing Concession Permit to grant the concession to increase the maximum permitted floor area ratio from 2.25 to 2.92 can be made in the affirmative (Attachment A). As conditioned, it is not expected that the development resulting from the requested concession would result in any adverse negative impacts to the neighboring uses. It was demonstrated that the concession results in the identifiable and actual cost reduction to provide for affordable housing costs. It was also shown that the project would not have a specific adverse impact on health or safety, or on the physical environment, and would not have an adverse impact on a property listed on the California Register of Historic Places. Therefore, staff recommends that the City Council approve the application with the findings in Attachment A and the Conditions of Approval in Attachment B.

**ENVIRONMENTAL ANALYSIS:**

This project has been determined to be exempt from environmental review pursuant to the guidelines of the CEQA Public Resources Code §21080(b)(9); Administrative Code, Title 14, Chapter 3, §15332, Class 32, In-Fill Development Projects and there are no features that distinguish this project from others in the exempt class; therefore, there are no unusual circumstances. Section 15332 specifically exempts from environmental review in-fill development where: 1) the project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations; 2) the proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses; 3) the project site has no value as habitat for endangered, rare or threatened species; 4) approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and 5) the site can be adequately served by all required utilities and public services.

In this case, the project meets the minimum requirements to qualify as an in-fill project under CEQA. The project is consistent with the General Plan designation and policies as discussed above; the mixed-use project is a use that is permitted by right within the CD-3 zoning district, and the project complies with the applicable development

standards. The project site is approximately 16,300 square feet (less than five acres) and surrounded by other commercial and residential uses. The project site has been previously developed and graded, however is currently vacant, therefore it does not contain habitat for endangered, rare or threatened species. A traffic impact analysis, noise analysis, and an air quality analysis were prepared for the project which determined that there would be no project-related impacts. The project site is located in an urban area where utilities and public services can be adequately served.

**FISCAL IMPACT:**

There is no fiscal impact as a result of this action and will not have any indirect or support cost requirements.

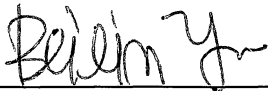
Respectfully submitted,



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DAVID M. REYES  
Director of Planning and Community  
Development

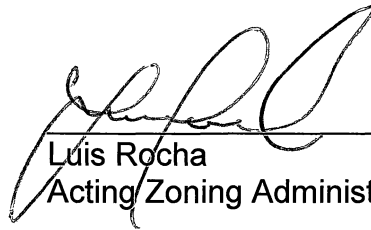
Prepared by:



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Beilin Yu  
Planner

Reviewed by:



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Luis Rocha  
Acting Zoning Administrator

Approved by:



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STEVE MERMELL  
City Manager

Attachments (10)

- Attachment A – Specific Findings
- Attachment B – Conditions of Approval
- Attachment C – Appeal Application of Board of Zoning Appeals' Decision dated May 14, 2018
- Attachment D – Board of Zoning Appeals Decision Letter dated May 9, 2018
- Attachment E – Appeal Application of Hearing Officer's Decision dated March 5, 2018
- Attachment F – Hearing Officer Decision Letter dated February 27, 2018
- Attachment G – Financial Analysis prepared by Keyser Marston Associates, Inc.
- Attachment H – Noise Analysis prepared by Dudek
- Attachment I – Air Quality Analysis prepared by Dudek
- Attachment J – Transportation Analysis prepared by the Department of Transportation