

**ATTACHMENT D  
APPEAL APPLICATION OF BOARD OF ZONING APPEALS' DECISION DATED  
JUNE 17, 2019**

# APPEAL APPLICATION

CITY CLERK  
19 JUN 17 09:29PM

GENERAL INFORMATION: (Please print)

Date: June 17, 2019 \_\_\_\_\_

Appellant: Pasadena Heritage / Women's City Club of Pasadena / Blinn House Foundation \_\_\_\_\_

Mailing Address: 651 South St. John Avenue \_\_\_\_\_

City: Pasadena \_\_\_\_\_ State: CA \_\_\_\_\_ Zip: 91001 \_\_\_\_\_

Phone #: (day) 626-441-6333 \_\_\_\_\_ (evening) 626-441-6333 \_\_\_\_\_ Fax #: \_\_\_\_\_

Contact Person: Sue Mossman / Pauline Field / Brian Alan Baker \_\_\_\_\_ Phone #: 626-441-6333 x14 \_\_\_\_\_

E-mail Address of Contact Person: smossman@pasadenaheritage.org \_\_\_\_\_

Applicant (if different from appellant): Balian Investments, LLC \_\_\_\_\_

## APPEAL APPLICATION


Application # AHCP #11879 \_\_ Date of Decision June 5, 2019 \_\_\_\_\_ Appeal Deadline June 17, 2019 \_\_\_\_\_

Property Address: 127, 141 N. Madison Avenue \_\_\_\_\_

I hereby appeal the decision of the: Board of Zoning Appeals \_\_\_\_\_

The decision maker failed to comply with the provisions of the zoning ordinance in the following manner: Pasadena Heritage, the Women's City Club of Pasadena, and the Blinn House Foundation believe that approvals granted for this project by the Board of Zoning Appeals are in error and cannot be justified because the project does not comply with the General Plan, is in violation of the Zoning Code, does not qualify for a Class 32 CEQA Exemption, and does not fulfill requirements for a tree removal permit, as detailed in Attachments A and B, attached herewith and to be considered part of this appeal. \_\_\_\_\_

If necessary, please attach additional sheets



Susan N. Mossman, Pasadena Heritage



Pauline Field, Women's City Club of Pasadena



Brian Alan Baker, Blinn House Foundation



Date of Application

Activity # _____	
Application Fee: \$ _____	Appeal Hearing Date _____
Date Received: _____	Received by: _____

**ATTACHMENT "A" TO APPEAL OF BOARD OF ZONING APPEALS DECISION  
AHCP #11879  
127 AND 141 N. MADISON AVENUE**

The following errors or omissions by City Staff and/or the Board of Zoning Appeals (BZA) and/or Project Consultant Environmental Science Associates (ESA) are the reasons for this Appeal:

1. CEQA Determination is Incorrect. The City Staff and/or the BZA and/or Consultant ESA erred in determining that the proposed Project is categorically exempt from environmental review under the California Environmental Quality Act (CEQA). The City Staff and/or the BZA and/or Consultant ESA also erred in failing to require an Initial Study under CEQA and full CEQA-level environmental review, particularly since the Project encompasses foreseeable and potentially significant environmental impacts under CEQA.

City Staff asserts that the Project has been determined to be exempt from environmental review pursuant to CEQA Guidelines, Public Resources Code Sec. 21080(b)(9), Administrative Code, Title 14, Chapter 3, Sec.15332, Class 32, In-Fill Development Projects. In fact, this determination is in error because several Exceptions apply pursuant to the CEQA Guidelines which make the claimed Categorical Exemption inapplicable. Further, the proposed Project does not qualify in the first instance as an In-Fill Project; and Consultant ESA erred in failing to adequately analyze Noise and Vibration potentially significant impacts on the Ford Place Historic District.

(a) Historical Resources. CEQA Guideline 15300.2, Exceptions (to Categorical Exemptions) provides in Subsection (f): *A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.*

Here, the proposed Project is immediately adjacent to, between, and, in immediate proximity to, two National Register Historic Districts: the Ford Place Historic District (NR #10000496) and the Pasadena Playhouse Historic District (NR #94000462).

Ford Place Historic District. The Ford Place Historic District (currently within the Fuller Theological Seminary campus), is located immediately adjacent to the Proposed Project site, sharing a rear property line, approximately 56 feet west. As discussed on Pages 30-31 of the ESA Cultural Resources Assessment: the

Ford Place Historic District consists of a residential subdivision created in 1902 envisioned as a "showplace" upscale residential neighborhood; the District's ten buildings and one grouping of landscape features are contributors to the Ford Place Historic District; the Ford Place Historic District is significant architecturally for its distinctive examples of intact period (1902-1916) architectural styles; and, as also stated in the Ford Place District Nomination, the setting and historic landscape features contribute to the original planned residential community, including large set-backs, deep lots, and a wide street flanked with trees to create a park-like setting with unobstructed views of the San Gabriel Mountains.

The ESA Cultural Resources Assessment is in error in that the Assessment fails to call out and take account of the fact that the Ford Place Historic District is not "urban" in character, but, in fact, retains substantially all of its original residential character and its original landscaped park-like setting and character. The District's low-rise original residential buildings currently are mainly adaptively reused as a college campus in the existing park-like, contemplative, landscaped setting.

The Ford Place Historic District, immediately adjacent to the Proposed Project, also includes within the District a cultural resource separately and independently listed on the National Register (NR #01000329) that is not part of the Fuller campus: the Edmund Blinn House, currently the home of the Women's City Club. The Craftsman style Blinn House, located at 160 North Oakland Avenue, was designed by renown Chicago-based Arts and Crafts Architect George Washington Maher, and is one of only two examples of his architectural work west of the Mississippi. The original building includes a number of distinctive historic fabric and interior features, including fragile and irreplaceable stained glass windows and the glass-tiled fireplace surround, all designed and produced by Master Glazier Gianinni, regarded as on a par with Tiffany. In addition to fragile historic fabric and interior features, the building foundation is fragile, and the Northwest corner of the foundation is sinking. Other contributing structures in the Ford Place Historic District may have similar condition and historic fabric issues.

Pasadena Playhouse Historic District. The Pasadena Playhouse Historic District is located adjacent to the east of the Project site. At this point, the boundary of the Pasadena Playhouse District runs down the middle of North Madison. The District consists of 32 contributors, including 30 buildings. The Pasadena Playhouse Historic District developed throughout the 1920's as a major business district including the expansion of urban activities, and the District also plays a nationally significant role in the performing arts field. The Scottish Rite Cathedral, a contributor to

the District that has been determined to be individually eligible for listing on the National Register, is located across the street from the Project site.

127 - 141 N. Madison. Here, the three-story Mid-Century Modern office building on the Project site (the Madison Professional Building), which is slated for demolition as part of the Project, in fact, is identified on Page 55 of the ESA Cultural Resources Assessment as an Historical Resource under CEQA. The ESA Cultural Resources Assessment then concludes that the Madison Professional Building is not eligible for any sort of historic listing, which conclusion is incomplete and in error. In fact, the building may be eligible for historic listing on the National Register and/or the State Register and/or locally.

(b) Significant Effect Due to Unusual Circumstances. CEQA Guideline 15300.2, Exceptions (to Categorical Exemptions) provides in Subsection (c): *A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.*

The California Supreme Court ruled in *Berkeley Hillside Preservation v. City of Berkeley*, 60 C4th 1086 (2015), that an agency must determine whether there are "unusual circumstances" based on a substantial evidence standard of review, and then determine whether there is a reasonable probability that those circumstances will cause a significant environmental impact. As to the proposed Project, there is substantial evidence that the proposed Project involves "unusual circumstances", and, further, there is a reasonable probability that these circumstances will cause, or have caused, a significant environmental impact requiring environmental review.

Such "unusual circumstances" here include, but are not necessarily limited to, the following matters. First, the proposed Project site is a portion of a thin strip of land located between, and immediately adjacent to, two National Register Historic Districts: the Ford Place Historic District and the Playhouse Historic District. Two National Register Districts abutting a development site on several sides is a highly unusual circumstance. Second, the Ford Historic District use is not urban in character. Third, there is a Historical Resource on the Project site identified by ESA in its Cultural Resources Assessment, slated for demolition in connection with the proposed Project; sited immediately between the two National Register Districts, which may be eligible for historic listing on the National Register and/or the State Register and/or locally. An identified Historical Resource caught in such a vise between two National Register Historic Districts is a highly unusual circumstance.

Here, it is clear that there is a reasonable probability, as discussed herein, that these unusual circumstances will cause, or have caused, significant environmental impacts requiring environmental review, including, but not limited to, significant environmental impacts with respect to Historical Resources. Therefore, the claimed In-Fill Exemption is not applicable.

(c) Project Site is not Substantially Surrounded by Urban Uses.

Subsection (b) of the applicable CEQA In-Fill Development Projects Guideline requires that the proposed project is "substantially surrounded by urban uses". The proposed Project is not substantially surrounded by urban uses in that the immediately adjacent Ford Place Historic District is not urban in current use and character. The Ford Place Historic District retains substantially all of its original residential character and its original landscaped park-like setting and character. Therefore, the proposed Project is not an In-Fill Project, and the claimed In-Fill Exemption is not applicable.

(d) Project is Inconsistent with Pasadena's General Plan and/or

Pasadena's Central District Specific Plan. CEQA Guideline 15332, In-Fill Development Projects, provides in Subsection (a) that a project must be "*consistent with . . . all applicable general plan policies as well as with applicable zoning designation and regulations.*" City Staff and/or the BZA and/or the ESA Consultant erred in determining that the proposed Project is consistent with Pasadena's General Plan and/or Pasadena's Central District Specific Plan. The proposed Project site is located within the boundaries of Pasadena's Central District Specific Plan.

General Plan Land Use Element: Inconsistencies. The Project is inconsistent with a significant number of Land use Element Goals and Policies, including, but not limited to, the following: Policy 1.7 (coordination of capital infrastructure, land use and economic development); Goal 3 (distribution of land uses characterized by compatibility); Policy 3.1 (avoid concentration of uses and in any neighborhood or district where their intensities, operations, and/or traffic could adversely impact the character, safety, health, and quality of life); Policy 4.11 (require that development demonstrates a contextual relationship with neighboring structures and sites addressing such elements as building scale, massing, orientation, setbacks, buffering, visibility, privacy, automobile and truck access, impacts of noise and lighting, infrastructure, and aesthetics); Policy 4.12 (require scale and massing of new development in higher-density centers and corridors provide appropriate transitions in building height and bulk and are sensitive to the physical and visual character of adjoining lower-density neighborhoods); Policy 6.2 ; Goal 8 (preservation and enhancement of Pasadena's cultural and historic buildings); and, Policy 8.1 (identify and protect historic resources that represent significant examples of the City's history).

City of Pasadena Central District Specific Plan: Inconsistencies. As stated by ESA in its Cultural Resources Assessment, the Central District Specific Plan encourages protection of area's architectural heritage, and recommends new development be designed in harmony with existing significant buildings. The proposed Project is inconsistent with a significant number of City of Pasadena Central District Specific Plan Objectives, Goals and Design Concepts, including, but not limited to, the following: Objective 6 (Preserve District Character: New development will respond to the area's architectural heritage); Objective 7 (Preserve Historic & Cultural Resources: adaptive reuse and infill development that respect existing resources will be encouraged); District-Wide Design Concept (Side and Rear Setbacks: additional setbacks and stepbacks are encouraged to protect the character of an architecturally significant building or landscape); Guideline SP 1.5 (Encourage Integrated Site Planning -- buffer adjacent sensitive land uses from undesirable impacts); Guideline BD 1 (Respect Surrounding Character -- Integrate new development with its surroundings; Establish harmonious transitions ; Compatible design should respect the scale, massing and materials of adjacent buildings and landscape); and, Guideline BD 2 (Mitigate Massing and Bulk -- Building volumes should maintain compatible scale; Use articulated sub-volumes as a transition to adjacent historic structures that are smaller in scale; Emphasize the horizontal dimension to make tall buildings appear less overwhelming).

**Consistency with Pasadena General Plan Housing Policies is not enough: for CEQA In-Fill Exemption purposes, the project must comply with ALL applicable General Plan policies. Here it is clear that the Project is inconsistent with a significant number of Pasadena's General Plan Land Use Element and/or Pasadena's Central District specific Plan provisions and policies. CEQA Environmental review is required.**

(e) ESA Noise and Vibration Analysis Erred in Failing to Consider Vibration and Noise Impacts on the Ford Place Historic District, Particularly the Blinn House. The ESA Noise and Vibration analysis fails completely to consider, analyze and mitigate potential significant vibration and noise impacts, including on a cumulative basis, of the proposed project during construction and on an ongoing operational basis, on the sensitive historical resources in the Ford Place Historic District. Of particular concern is the fragile Blinn House property, listed separately on the National Register and discussed in detail elsewhere herein. The ESA Noise and Vibration Analysis clearly is in error and incomplete.

**The proposed Project will cause substantial adverse changes in the significance of these Historical Resources for the following reasons: the mass,**

height and location on site of the proposed Project will cause the Project to loom over, dominate and overwhelm these resources with such impacts as to alter their historic setting and cultural landscape, historic character, and historic context, including, but not limited to, impacting sightlines and light and shade/shadow impacts. The ESA Cultural Resource Assessment and Exemption Report both are grossly in error in failing to identify and analyze historic setting, character and context, particularly with reference to the location of the proposed Project so narrowly between two Historic Districts, one of which is not urban in character and which is composed of adaptively reused historic assets which remain residential in character. These substantial adverse changes in significance of Historical Resources must be studied and analyzed, and fully and effectively mitigated, pursuant to CEQA. Therefore, the claimed In-Fill Exemption is not applicable.

2. Required Finding Number 2 for the Requested Permit, and Applicable State Law, Require that the Requested Concessions Would Not Have Adverse Impacts on Historic Resources. As discussed in detail above, the requested Project Concessions will have adverse impacts on historic resources listed on the National and California Registers, and, therefore, required finding Number 2 cannot be made.

**This Required Finding cannot be made, and, therefore, there is sufficient basis pursuant to applicable law for Pasadena to reduce or reject the Height and FAR Concession requests made by the applicant, and deny the Affordable Housing Concession Permit as requested.**

3. Required Finding Number 1 for the Requested Permit, and Applicable State Law, Require that the Requested Concessions are Required for the Designated Units to be Affordable.

As required by California Government Code Sec. 65915(d)(A), Pasadena is required to determine if there is sufficient financial evidence to reject the Height and FAR Concessions requested under the Affordable Housing Concession Permit application. KMA considered the two development scenarios described in the Staff Report, and concluded that the value created by the proposed density bonus and the two identified concessions requested is estimated to exceed to exceed the net cost associated with providing four very low income units by \$314,000, representing approximately 1.2 percent of the proposed Project's estimated construction costs. KMA then opines that this difference in magnitude can be considered insignificant, and, therefore, there is insufficient evidence for the City to reject the height and FAR concessions requests.



The KMA Financial analysis includes, but is not limited to, the following described errors.. There is an obvious mistake on Pages 2 and 6 of Attachment 1. The analyst accords the same percentage weight to the costs associated with the site area for residential for both scenarios. In fact, the correct percentage for the first scenario is 97%, which reduces the total construction cost in this scenario to \$474,000, or the same construction cost in the second scenario. Thus, the concession does not result in the identifiable and actual cost reduction required under the applicable Government Code section. More significantly, KMA has been inconsistent about including or excluding the "construction cost" of Pasadena's In Lieu fee in its analyses for the City of Pasadena. In this case, when measured consistently with other projects and excluding the "construction cost" of the In Lieu fee (since the applicant could meet the inclusionary housing provisions on site), the cost in Scenario 1 drops to about \$450,000, much less than building the larger project.

Also obvious is the misstatement on Page 10 of the KMA Financial analysis that says "It is likely that the only way to physically accommodate this additional area (granted by the FAR concession, necessary to house the additional 35% bonus density on the site) is to grant the Height Concession being requested by the applicant. this is a blanket statement made by an econometrician unfamiliar with land use planning, and is categorically false. The City makes no effort to validate this claim. FARs of 2.25 are often achieved in Pasadena by adhering to a 50 foot height limit. And, in any event, the City already enables a developer to seek a higher level on a height averaging basis, limited to 30% of the footprint.

The biggest inadequacy of the KMA Financial Analysis is the use of bad and incorrect sales "comp" data. The numbers simply do not add up to KMA;s findings. Last, the assertion that the \$314,000 difference in magnitude is in error, and is not insignificant.

**The KMA Financial Analysis, in fact, is in error, inaccurate and incomplete, and, therefore, this required Finding cannot be made and there is sufficient basis pursuant to applicable law for Pasadena to reduce or reject the Height and FAR Concession requests made by the applicant, and deny the Affordable Housing Concession Permit as requested.**

#### 4. Additional Bases for Appeal.

(a) Significant Tree Impacts. As designed, the proposed Project's subterranean garage will severely damage or kill a minimum of 16 offsite, mature trees on adjacent properties, including, but not limited to, significant trees located within the Ford Place

Historic District. The proposed subterranean garage goes all the way to the property lines on three sides of the proposed Project site. As stated in the Arborist's Report on Page 1 of the February 2, 2018, letter, four of these neighboring trees are protected. CEQA Mitigation measures are required to protect these offsite adjacent trees.

(b) Required Findings Cannot Be Made. The City Staff and/or the BZA erred in determining that required Findings 1, 2 and 3, inclusive, can be made. Findings 1, 2 and 3 cannot be made.

(c) Significant Errors and Omissions. The decision of the BZA is invalid in that the record includes numerous and significant errors, omissions, inaccuracies, contradictions and inconsistencies in the description and analyses of the proposed Project, and, in applying and executing proper administrative procedures to the proposed Project.

(d) Failures to Consider Evidence. The BZA's decision ignored and failed to consider significant, substantial and relevant evidence submitted concerning the proposed Project.

(e) Decision Not Supported by Substantial Evidence. The BZA's decision is not supported by substantial evidence.

(f) Decision is Arbitrary and Capricious. The BZA's decision is arbitrary and capricious and is in error, and, constitutes a breach of both administrative discretion and quasi-judicial procedure and process.



## ATTACHMENT B

June 17, 2019

Pasadena City Council  
City of Pasadena  
100 North Garfield Avenue  
Pasadena, California 91101

RE: Appeal to the City Council of Board of Zoning Appeals Decision  
AHCP #11879: 127 and 141 N. Madison Ave. – Balian Investments, LLC

Dear Honorable Members of the City Council,

Pasadena Heritage, in conjunction with the Women's City Club of Pasadena and the Blinn House Foundation, opposes the development as proposed at 127-141 N Madison Ave. The project lies on a parcel between two National Register Historic Districts (Ford Place to its west and Pasadena Playhouse to its east) and is sited diagonally from the individually listed Blinn House. The project has been characterized as a Category 32 Infill Exemption project, and we believe that finding has been made erroneously for reasons including the detrimental impact on the immediately adjacent historic resources, inconsistencies with the General Plan, and inconsistencies with applicable zoning designations. An additional tree removal permit has also been granted, which we ask the City Council to more closely scrutinize and reject.

### General Plan Inconsistencies

California Environmental Quality Act (CEQA) Guidelines §15332 establish five conditions that a project must meet in order to be eligible for the Class 32 Categorical Exemption (CE). These conditions are:

- a. 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**.
- b. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- c. The project site has no value as habitat for endangered, rare or threatened species.
- d. Approval of the project would not result in any significant effects relating to **traffic, noise, air quality, or water quality**.
- e. The site can be adequately served by all required utilities and public services.

In order to be eligible for a Class 32 Exemption, the project must be consistent with **all applicable** General Plan policies. We find, as have others (as documented in letters to the Planning Commission and to the Board of Zoning Appeals), that the project is not consistent with multiple principles and policies in Pasadena's General Plan, and also Pasadena's Central District Specific Plan policy (which is incorporated in Pasadena's Zoning Code). These are some of the principles and policies we are asking the City Council to consider:

### **General Plan - Guiding Principle #2**

*Pasadena's historic resources will be preserved. Citywide, new development will be in harmony with and enhance Pasadena's unique character and sense of place. New construction that could affect the integrity of historic resources will be compatible with, and differentiated from, the existing resource.*

This project design ignores the adjacent historic resources, including the Ford Place National Register Historic District (to the west), the Pasadena Playhouse National Register Historic District (to the east and to the south), and the National Register listed Blinn House (also designated as a State Historic Resource and a City of Pasadena Landmark), home to the Women's City Club of Pasadena and approximately 30 other Not-For-Profit entities that contribute to Pasadena's rich social environment. The project's architectural design exhibits no relationship with the existing historic buildings, and its size, block-like configuration and lack of sufficient setbacks do not even allow for adequate landscape buffering between this new building and adjacent historic structures. According to the General Plan, "the Guiding Principles were developed through an extensive program of community outreach and input conducted over a six year period." Disregarding the Plan would mean disregarding 6 years of community input and the long-term goals that Pasadenans have set forth to preserve a unique sense of place citywide.

### **General Plan – Policies**

In addition to Guiding Principle #2, the General Plan provides specific policies that must be followed. This development, as proposed, is incompatible with the General Plan policies as follows:

#### **Policy 4.11 Development that is Compatible**

*Require that development demonstrates a contextual relationship with neighboring structures and sites addressing such elements as building scale, massing, orientation, setbacks, buffering, the arrangement of shared and private open spaces, visibility, privacy, automobile and truck access, impacts of noise and lighting, landscape quality, infrastructure, and aesthetics.*

The developer's height and density request disregards the surrounding context of the neighborhood. Indeed, there are examples of high density housing on the same block, but the developer has failed to consider contextual relationships in the current proposal. Further study of the adjacent historic resources is needed, including the Dunn House (Taylor Hall), the Carpenter House (Slessor Hall), the Hines House (Carnell Hall), the McHenry House (Kreysler Hall) and the Blinn House, which are all in close proximity to the development and part of the Ford Place Historic District. Across the street from the project on the east side of N. Madison Ave., stands the J.J. Blick-designed Scottish Rite Cathedral, part of the Pasadena Playhouse Historic District. We maintain that the eastern façade of the proposed building should respond to this resource as well. We suggest these buildings be studied before height and FAR

concessions are considered, so that the final project “demonstrates a contextual relationship with neighboring structures and sites” as mandated by the General Plan. Failure to do so violates existing planning standards in Pasadena.

#### **Policy 4.12 Transitions in Scale**

*Require that the scale and massing of new development in higher-density centers and corridors provide appropriate transitions in building height and bulk and are sensitive to the physical and visual character of adjoining lower-density neighborhoods.*

Pasadena Heritage believes the overall height requested (and increase from 50 to 62 feet for the entire building) is grossly excessive, especially in proximity to the much lower scale Ford Place buildings to the immediate west. More height may be justified where the new building will be adjacent to other tall buildings, however it should be lower in height where adjacent to the smaller scale buildings of Ford Place. As presented, the proposed project is all of one height (62 feet), which is not sensitive to the physical and visual character of the adjoining lower-density historic district immediately to the west. As proposed, there are no transitional elements and no references to the physical and visual character of the adjacent neighborhood.

#### **6.1 Sense of Place and History**

*Require new development and changes to existing development to be located and designed to respect the defining elements of Pasadena’s character and history such as its grid street pattern, block scale, public realm, courtyards, paseos, alleys, neighborhoods and districts, building massing and heights, significant architecture, and relationship to the mountains and Arroyo Seco.*

This project as proposed, with the concessions requested, ignores the block scale and building massing and heights of Pasadena’s character and history. Furthermore, there is no indication in the design that there has been an attempt to study its relationship with significant buildings that are immediately adjacent to it, including the National Register listed Blinn House, the Scottish Rite Cathedral (a contributing building in the Pasadena Playhouse Historic District), and the adjacent historic houses in Ford Place Historic District. Renderings show a building that towers over adjacent historic resources, and would create a significant deviation in the adjacent development patterns.

#### **6.2 Established Neighborhoods**

*Preserve, protect, and enhance established residential neighborhoods by providing appropriate transitions between these and adjoining areas. Require new development to complement and respond to the existing physical characteristics that contribute to the overall character and livability of the neighborhood.*

The proposed project offers no transition to the more modest scale and residential character of Ford Place. A better analysis of the block needs to be done to inform design for this project. Ford Place’s setting and neighborhood character is integral to its significance as a Historic District. Lower height and greater setbacks, particularly on the Ford Place-adjacent edge of the development site, may allow for a reasonable transition to the Ford Place Historic District, and a redesign could achieve a more complementary response.

### 7.3 Compatibility

*Require that new and adaptively re-used buildings are designed to respect and complement the defining built form, massing, scale, modulation, and architectural detailing of their contextual setting.*

This project fails in regard to these conditions. The project as proposed makes no attempt at compatibility. We urge that this and future Affordable Housing Concession Permits clearly demonstrate how compatibility will be achieved.

### 7.4 Design Review

*Require design review for new and redeveloped projects to assure compatibility with community character, while promoting creativity, innovation, and design quality.*

The approval of a concessions permit prior to careful review of the project by the Design Commission, either through the preliminary consultation process or formal design review, severely restricts the role of the Design Commission and may prevent it from guiding a project to achieve compatibility. We have seen countless examples of projects that have received zoning entitlements that then tie the hands of the Design Commission in directing the design team to make modifications necessary to create a compatible project that fits into the existing context. We find that the mandatory policy that states that Design Review will assure compatibility cannot be accomplished. At the Design Commission's preliminary consultation meeting, this project received overwhelmingly negative feedback from Commissioners. The report prepared by ESA inaccurately claims that these concerns have been addressed; there are very few changes.

We urge that the application permits for this project, and all others going forward, require that the Design Commission review and provide direction which is then addressed before entitlements are considered.

### Central District Specific Policy

#### 31.4 Contextual Development in Historic Districts.

*Require new development within and adjacent to the historic districts to be compatible with the scale, density, and urban design features of existing historic buildings and districts.*

Because this project lies within the Central District, it must comply with this additional district specific policy. This is the clearest verbiage in the General Plan that explicitly refers to projects like the proposed building, which is directly adjacent to the Ford Place Historic District. We ask that any proposed building at this site respect and be compatible to Ford Place, as stated in this policy. At the Board of Zoning Appeals hearings, there were countless community objections to the proposed scale of the project, and we believe that the massing proposed is incompatible with the scale of the Ford Place Historic District. We disagree with the report authored by ESA that did not find any scale issues.

We believe that a quantifiable analysis can bring to light the incompatibility of the proposed development. Below is a parcel-by-parcel analysis of the as-built FARs of each individual parcel that makes up the Ford Place Historic District. Some parcels have multiple buildings, many of which were later additions, but the data points directly to a district of relatively low scale and density.

AIN	Address	Historic Name	Land Usable SqFt	Bldg SqFt	Built FAR
5723-015-041	110 & 114 N Oakland Ave	Behlow House	15,403	8,537	0.554
5723-015-040	120 N Oakland Ave	Grosse House	16,588	4,587	0.277
5723-015-039	130 & 140 N Oakland Ave	McHenry House	16,588	10,304	0.621
5723-015-038	146 & 150 N Oakland Ave	Dunn House	16,588	4,874	0.294
5723-015-037	160 N Oakland Ave	Blinn House	30,000	8,736	0.291
5723-016-021	175 N Oakland Ave	Richards House	19,336	16,188	0.837
5723-016-038	135 & 145 N Oakland Ave	Carpenter House	83,853	119,933	1.430
5723-016-017	460 Ford Pl	Hatch House	6,299	5,444	0.864
5723-016-016	450-456 Ford Pl/144 N Los Robles Ave	John Erickson Apartments	13,647	14,606	1.070
5723-016-015	451-455 Ford Pl	Hall Apartments	8,986	7,261	0.808
		<b>TOTAL</b>	<b>227,288</b>	<b>200,470</b>	<b>0.882</b>

The average FAR per parcel in the Ford Place District is .882. The proposed project's FAR of 2.25 is a 155% departure from the average, and exceeds the next greatest FAR by 0.82. Furthermore the three closest properties, the McHenry, Dunn, and Blinn Houses, have much lower FARs, with FARs ranging from .291 to .621. As we have consistently stated, this project would be a major departure from normal scale in terms of the Ford Place District.

The Playhouse District, on the other hand, does contain examples of denser construction than Ford Place. Of the 39 Parcels that make up the Historic District, there is a great difference in height and density. The average FAR of the district is 1.78. This is generally consistent with the Specific Plan suggestion that new construction in or near the Ford Place District would have an allowable FAR of 1.5, or 2.0 after density bonuses. The proposed project exceeds the recommended maximum. It is our finding that this zoning code provision is exceedingly appropriate, and that the concessions being granted are exceedingly inappropriate.

The City of Pasadena General Plan Land Use Element is a critical tool that should guide development city wide, and was compiled through six years of hard work by dedicated staff members, countless community meetings, and invaluable input from community members. Pasadena Heritage is a firm believer in community-based planning, and is currently participating in the workshops and walking tours that are essential in terms of the Specific Plans update. If development can clearly disregard the policies of the Specific Plan, and the Board of Zoning Appeals is not bound by it, then this entire effort is invalidated.

### **Zoning Inconsistency**

P.M.C. §17.30.040 - CD General Development Standards

Figure 3-9 in the Pasadena Municipal Code sets maximum FARs for parcels within the Central District. This parcel is located within the Ford Place/Fuller Seminary District, has a maximum FAR of 1.50, but "Permits a maximum Floor Area Ratio of up to 2.00 in accordance with P.M.C. §17.30.050.C for projects proposed with the Ford Place/Fuller Seminary Precinct." Condition A of CEQA §15332 mandates that the project be consistent with applicable zoning designation and regulation. As proposed, the project does not comply with this mandate. This





## CEQA Guidelines §15300 et seq.

In addition to the general plan conditions that were not met, we do not believe that the project qualifies for the “Infill” CEQA exemption due to its impact on historic resources. We recommend, and CEQA requires, that a full CEQA analysis be conducted in order to determine the potential impacts of this development on adjacent historic resources.

State *CEQA Guidelines* section 15300.2 lists possible exceptions to a categorical exemption, as noted in the cursory “Exemption Report.” One such exemption (f), speaks directly to historical resources:

### **15300.2. Exceptions**

*(f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.*

CEQA case law instructs that when a historical resource is present—and at least five are indisputably present in this case—a categorical exemption cannot lawfully be used if there is even so much as a *fair argument* based on substantial evidence in the record that the proposed project “may cause a substantial adverse change in the significance of an historical resource.” (*Valley Advocates v. City of Fresno* (2008) 160 Cal. App. 4th 1039, 1072.) This longstanding principle was expressly reaffirmed by the California Supreme Court in *Berkeley Hillside Preservation v. City of Berkeley*:

At issue in [*Valley Advocates*] were the following CEQA provisions: . . . and (3) Guidelines section 15300.2, subdivision (f), which provides that “[a] categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.” The court [in *Valley Advocates*] held that, in applying these provisions, “the fair argument standard does not govern” an agency’s determination of whether a building qualifies as a “historical resource.” However, the court continued, “once the resource has been determined to be an historical resource, then the **fair argument standard applies to the question whether the proposed project ‘may cause a substantial adverse change in the significance of an historical resource’ . . . and thereby have a significant effect on the environment.**” (Emphasis added.)

*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60. Cal. 4th 1086, 1117.

The California Supreme Court held that this fair argument standard was “fully consistent” with its holding in *Berkeley Hillside*. (*Ibid.*)

The Exemption Report admits that there are at least two designated historical resources immediately adjacent to this proposed project, the Ford Place Historic District and the Blinn House. Therefore, under the legal test noted above, if there is a fair argument that the proposed project may have a substantial adverse change in the significance of the identified historic resources, the exemption to CEQA cannot be used “even if there is other information in the record indicating that the project will not have a significant effect.” (*Id.* at p. 1104.)

Here, the Exemption Report, the accompanying staff analysis and BoZA approval findings fail to apply this legal standard. Instead, the approvals improperly disregard the arguments and substantial evidence in the record, which indicate that there will be significant adverse impacts to adjacent historic resources, and rely on the flawed and internally inconsistent Exemption Report to disregard this evidence of significant adverse impacts.

Importantly, the Exemption Report and accompanying staff analysis for the Board of Zoning Appeals impliedly admit that there is at least a "fair argument" that significant adverse impacts to adjacent historic resources will occur.

First, at page 19, the Exemption Report concedes that the proposed project would "alter the surrounding setting of the Ford Place Historic District by constructing a taller building on the Project Site, affecting one of the seven aspects of integrity."

Second, the staff analysis dated as of June 5, 2019 indicates that the Board of Zoning Appeals was sufficiently concerned about the testimony and other evidence presented as to the proposed project's effects on adjacent historic resources that it continued the initial April 3, 2019 hearing in order to facilitate additional analysis of the proposed project's impacts on historic resources.

While the Exemption Report ultimately (and erroneously) concluded that no impact on historic resources was anticipated despite the arguments and evidence in the record, the Exemption Report does not—and legally cannot—replace the open and transparent environmental analysis that is required by CEQA.

Moreover, the Exemption Report is substantively incorrect when it claims that there will be no impact to the character defining features of the adjacent historic resources. The Women's City Club and the Blinn House Foundation are rightly concerned that the heavy construction required for the proposed project would damage some of the delicate art glass features of the historic house, which include both windows and wall tiles. The building's foundation is 115 years old. Previous surveys have found it to be fragile and in need of repair.

Pasadena Heritage agrees that the project may damage these historic character defining features.

As brief background, Pasadena Heritage is the second-largest historic preservation organization in the State of California. For more than four decades, we have regularly advised property owners, development professionals and public sector organizations on proper means and methods for preserving historic resources in this City. Pasadena Heritage is also qualified to hold more than 80 historic preservation easements (the largest easement program west of the Mississippi). The implementation of these easements involves the review of proposed alterations of historic structures to ensure that the proposed work will not cause an adverse change to the historic resources.

The physical characteristics at the Blinn House most at risk as a result of the proposed project include the art glass windows and mosaic tile as well as the other delicate. Full analysis of ground-borne vibration and other construction impacts is vital to ensuring that these irreplaceable resources will not be lost as a result of the proposed project.

In addition to the substantial risk of direct physical impacts to the adjacent, designated historic resources, the proposed project will adversely affect the historic setting of these resources, a fact expressly acknowledged by the Exemption Report.

Because of the proposed project's adjacency to multiple (and undisputed) historic resources, the Secretary of the Interior's Standards for Rehabilitation (the "Standards") serves as the key measure for whether the proposed Project will cause a significant adverse effect on historic resources. (See CEQA Guidelines Section 15064.5.) Standards 9 and 10 expressly address new construction adjacent to historic resources. These standards provide as follows:

*Standard 9: "New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and **will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.** (Emphasis added.)*

*Standard 10: New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.*

As informed by the National Park Service's "Preservation Brief 14," which is recognized as a key measure of compliance with Standards 9 and 10, it is vitally important that structures built adjacent to historic resources will be "subordinated" to the historic structures themselves.

The proposed project—which will tower over the adjacent historic properties—fails to comply with this standard, and therefore will have a significant adverse impact on adjacent historic resources.

More specifically, the size and bulk of the new structure will impact the cohesive residential character of the Ford Place Historic District. The ESA report clearly states that the Ford Place District is "significant architecturally for its distinctive examples of intact period architectural styles that have a common relationship of site plan, scale and materials." Therefore, the Exemption Report's assertion that a 5-story, 62' tall building immediately adjacent to (and substantially taller than) Ford Place would not have an substantial adverse change is internally contradicted by the analysis contained in that very Report.

In short, this project needs (and the law requires) full CEQA review. The physical characteristics we are most concerned about include the art glass windows as well as the other delicate features of the Blinn House, as well as the single-family residential setting of the Ford Place Historic District, essential to its significance. CEQA analysis would include further study of potential impacts *and* provide mitigation measures, as well as require a study of alternatives that will achieve all or most of the project objectives but still avoid or reduce substantial adverse impacts to historic resources.

Pasadena Heritage respectfully requests that the City Council grant the appeal, and require the proposed project to comply with CEQA before it is reconsidered.

## Tree Removal Permit

At the previous two hearings, we raised concerns on the tree removal plan. The applicant is seeking approval to remove mature protected trees and replace them with new specimen trees. Planning staff suggested that that the tree canopies would be sustainable over the long term, but we disagree. The six *Ginkgo biloba* Trees planted in a narrow 10' wide planting bed, and the applicant's drawings demonstrate that the second floor balconies extend directly into the heart of these trees, nearly touching the trunk. The three *Hymenosporum flavum* trees are situated approximately 10' apart, directly under a small cut out in the balcony. However, as these trees on average have a 15-20' canopy, they are located too closely to mature properly. Furthermore, because of the massing of the building on the southern portion of the site, the trees will never get the full-sun or even partial-sun that they require. Additional replacement trees in the projects courtyard are located in-ground, but just below is a subterranean level of parking. The proposed project's below ground parking structure extends lot-line-to-lot-line, creating relatively small planters for replacement trees, but it is not a substitute for trees that are planted in the actual ground. A tree removal permit would effectively be permitting the replacement of mature trees with trees that would never reach full maturity and provide appropriate canopies. Due to this reality, Findings 4-7 of the Affordable Housing Concession Permit cannot be made.

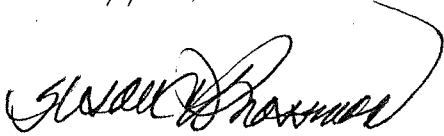
Unfortunately, we have yet to see any changes offered that provide new evidence on the legality of this permit. We ask again for further analysis, which would include a sun study of the proposed plantings, as well as an independent arborist's report, because these nine trees seem at great risk of dying prematurely, and would not fulfill the replacement requirement. Retention of mature trees is critical for a number of reasons. First, the trees provide a natural buffer between neighboring buildings, reducing noise the spread of exhaust fumes from the street, and grant a level of privacy. Second, trees are critical in terms of carbon capture, and cutting them down will release stored carbon into the atmosphere. Third, the Eucalyptus trees on site, while not native, provide valuable habitat for migrating Monarch butterflies. Finally, the Eucalyptus was the tree of choice for many early Pasadena gardeners and horticulturalist, and was showcased in the now demolished Carmelita Gardens as well as the Huntington's Australian Garden. Some Eucalyptus trees in Pasadena date back to the earliest colonists, and were used as "wind breaks" on the original citrus farms. Judging by the size of these trees, they do not date to the 19<sup>th</sup> Century, but may be 50-60 years old. It is also important to note that the original tree inventory, prepared by Carlberg Associates on March 5, 2018, gave an "A" health rating to all four trees. Two trees scored an "A" in terms of structure as well, while one received a "B" and another a "B-". Given Carlberg Associates' clean bill of health on the trees, the four trees should be protected in place, and pruned effectively to ensure their longevity.

## Conclusion

We understand the need for housing, especially affordable housing, and further understand that the State requirements placed on the City mean that concessions will be made to provide for more affordable housing. Including affordable units within the project is a good idea and one we generally support, though we see the construction of just 4 affordable units as too little given the need. Pasadena Heritage does not support this project proposal, due to our many concerns. **Pasadena Heritage urges you, for the reasons outlined above, to deny all approvals for the project as proposed, including the permit for tree removal and to require a full CEQA analysis.**

The recommendations we offered at previous hearings could help bring the project into conformance with the General Plan and may alleviate the serious concerns about the proximity of construction to the fragile historic Blinn House, the Ford Place Historic District, and the Pasadena Playhouse Historic District.

Sincerely yours,



Susan N. Mossman  
*Executive Director*



Andrew Salimian  
*Preservation Director*