ATTACHMENT F
HEARING OFFICER ADDENDUM
Dated March 6, 2021

ZHO Addendum for
Hillside Development Permit #6837
801 So. San Rafael Avenue

March 6, 2021

Background

On January 11, 2021, I issued a written determination approving the Hillside Development Permit #6387.

I have reviewed the appeal, filed by the owner of 815 So. San Rafael (which abuts the subject property), which was filed on January 18, 2021, including both the appeal form itself and the two-page attachment.

Appeal Issues:

This Addendum addresses each of the issues raised in the appeal. In some instances, I have consolidated various points in the interest of addressing related issues. The applicant's issues, and my responses, are provided herein.

Inadequate Information/Conditions:

> "A.1: [F]ailing to include a Condition requiring the applicant to use excavation, demolition, and construction methods that can reasonably be expected to avoid and minimize damage to my train room, display cases and collection . . ."
>
> "A.2.: [N]ot requiring a demolition plan describing the methods and tools the applicant intends to use to demolish the existing guest house . . ."
>
> "A.3.: [N]ot requiring an excavation and grading plan describing plan describing the methods and tools the applicant intends to use to excavate and grated the sites . . . "
>
> "A.4.: [N]ot requiring the applicant to specify and submit plans for other 'future foundations' that will be excavated . . ."
>
> **Response: The requests to specify certain "methods" associated with excavation, grading, demolition, and construction is beyond the scope of a Hillside Development Permit. The applicant's proposal is subject to several provisions in the City's Municipal Code, which are the appropriate means of addressing the concerns noted, above, by the appellant. Condition No. 22 requires compliance with all relevant governing codes, including the "Current Edition of the California Building, Mechanical, Electrical, Plumbing, Energy, and Green Building Standards Codes." Condition No. 23 states that "If greater than 50 cubic yard (excluding**

excavation for foundation), Grading/Drainage Plans shall be prepared by a registered engineer."

Failure to require plantings for privacy:

"A.5.: [F]ailing to include a Condition requiring the applicant to install plantings along the property line behind Accessory Structure 3 to protect my [appellant's] privacy and shield my house from noise from the new outdoor 'cabana' centered in and located only about 25 feet from my nearest window."

Response: I do not support the appellant's contention that trees to protect his privacy are required for a small cabana which, according to the appellant, is located twenty-five feet (25') from the appellant's nearest window. This distance is more than adequate to mitigate any privacy issues. The distance is, without question, substantially farther than the spacing that exists between single-family dwellings and accessory buildings on abutting properties in many single-family neighborhoods in Pasadena. The appellant's claim that a twenty-five feet (25') separation somehow represents an unacceptable invasion of the appellant's privacy is not supported by any facts in the record, nor by common practice in existing neighborhoods in Pasadena, nor by any reasonable standard of privacy amongst adjoining properties.

Delegation of Findings to Staff:

"A.5.: [D]elegating to other departments the task of making findings that are required to be made by the Hearing Officer.

Response: The appellant's use of the word "delegating" inaccurately conflates two separate actions. While Planning Department staff prepares a set of draft findings, the Hearing Officer makes those findings as a component of rendering his or her decision (or, in the alternative, adopts a different set of findings). I reviewed the draft findings presented by staff, and I found them to be adequate, well-reasoned, defensible, and sufficient to approve Hillside Development Permit #6837. I made all eight (8) findings required for a Hillside Development Permit, as documented on Pages 3 through 5 of the January 11, 2021 decision letter.

Inadequate Findings:

"B.1. Finding 4 because, among other reasons, absent conditions (a) the project will not be constructed in a manner to minimizer impacts on me and my property; and (b) the project will be detrimental to me, my property and my house; and (b) [sic] the property will pose health and safety risks."

<u>Response:</u> The applicant's proposal is subject to several provisions in the City's Municipal Code, which are the appropriate means of addressing the concerns noted, above, by the appellant. As the decision-maker, I simply do not agree that the project will be detrimental to the appellant and his house. The applicant has not provided sufficient evidence do document any alleged detriment to the appellant's "property" (presumably his trains, displays, and related items) by the proposed development on the subject property at 801 So. San Rafael Avenue. The contention that "the property will pose health and safety risks" is vague and is not supported by the record.

See, also, the response to A.1. through A.4., above.

See, also, the response to B.3., below.

"B.2.: Finding 5 because, among other reasons, without conditions, the project and its use will be detrimental and injurious to my property and improvements."

<u>Response:</u> My determination approving Hillside Development Permit #6837 is not "without conditions." There are forty-four (44) conditions of approval, found on Pages 6 through 12 of the January 11, 2011 decision letter.

See, also, the response to B.3., below.

"B.3.: Finding 7 because the project is not compatible with the existing development and use of my home, namely the train room and use of the train room to display the train collection."

Response: There are existing single-family homes on both the subject property (801 So. San Rafael Avenue) and the appellant's property (815 So. San Rafael Avenue), which abuts the subject property. Although the appellant is certainly entitled to the quiet enjoyment of a room which houses trains, displays, and related items in his home, the existence of the train room does not prevent neighbors from the quiet enjoyment of reasonable uses in their homes and ancillary structures. The existing home on the subject property, and the proposed expansion thereof, is a reasonable exercise of the applicant's right to the quiet enjoyment of his property. The appellant has created what is, in essence, a "train museum" in his single-family dwelling, and his appeal suggests that neighboring property-owners should maintain the activities, decorum, and behavior one might expect in a museum. A museum is an institutional use, if not a commercial use. This use is more appropriately located on a property which enjoys commercial, institutional, or public/semi-public General Plan and zoning designations.

Hillside Ordinance

"C.: Hillside Ordinance Incorrectly Interpreted and Applied."

Response: The appellant contends that I erred in interpreting the Hillside Ordinance. The claim is unsubstantiated, as there are no facts nor evidence in the record to support the claim.

General Plan

"D.: Inconsistent with General Plan"

Response: The appellant contends that the project is inconsistent with the General Plan. The claim is unsubstantiated, as there are no facts nor evidence in the record to support the claim.

California Environmental Quality Act (CEQA)

E. CEQA

Response: The appeal contends that I erred by adopting a categorical exemption, based upon a letter provided by appellant's attorney (Silverstein Law Firm). The Silverstein letter was provided in advance of the hearing, and I thoroughly read through it. I found nothing in the Silverstein letter to be in any way persuasive that a categorical exemption is inappropriate relative to the applicant's proposal. Having considered the Silverstein letter, I nevertheless stand by the adoption of the categorical exemption as the appropriate CEQA clearance for Hillside Development Permit #6837.

Significant Errors and Omissions

"F.: Significant Errors and Omissions. The Hearing Officer's decision is invalid because the record, including the project description and information incorporated into the findings that weas contained in the staff presentation, and the staff report and Table A thereto includes measurement mistakes, arithmetic mistakes, factual mistakes, misstatements and other errors and inconsistencies describing the proposed project."

Response: While the claim is all-encompassing, the appellant fails to provide any documentation of said "mistakes, misstatements, and errors." The claim is unsubstantiated, as there are no facts nor evidence in the record to support the claim.

Evidence

"G.: Failure to Consider Evidence. The Hearing Officer's decision ignored and failed to consider significant, substantial and relevant evidence submitted concerning the proposed Project and its effects on me.

Response: The claim is unsubstantiated, as there are no facts or evidence in the record to support the claim; more specifically, what significant, substantial and relevant evidence" did I ignore or fail to consider? In advance of the hearing, I reviewed all of the letters, photographs, and related information provided by the applicant. In advance of the hearing, I reviewed, in detail, the letter from the appellant's attorney. In advance of the hearing, I reviewed documents, evidence, materials, photographs, applications, correspondence, and related materials from staff, the applicant's consulting team, and other stakeholders. At the public hearing, I considered public testimony. To simply assert that I somehow "ignored" or "failed to consider" any evidence submitted is inaccurate and contrary to the record.

"H.: Decision Not Supported by Substantial Evidence. The Hearing Officer's decision is not supported by substantial evidence."

Response: The decision letter includes three pages of substantial evidence in the form of the eight (8) findings for approval in the affirmative (see Pages 3-5 of the January 11, 2021 decision letter). As noted throughout this Addendum, there is an exhaustive administrative record for Hillside Development Permit #6837, which includes substantial evidence to support the approval.

See, also, the response to G., above.

Arbitrary and Capricious Decision

"I. Decision is Arbitrary and Capricious. The Hearing Officer's decision is arbitrary and capricious and in error and constitutes a breach of both administrative discretion and quasi-judicial procedure and process."

Response: The allegation that my decision is arbitrary and capricious is unsubstantiated, as there are no facts nor evidence in the record to support the claim. The claim is vague, in that it provides no supporting evidence to document how the decision represents "a breach of both administrative discretion and quasi-judicial procedure and process."

Zoning Hearing Officer's Summary

There is no question that the appellant has amassed a world-class collection of museum quality antique trains, tracks, memorabilia, and related items within his home at 815 So. San Rafael Avenue. The appellant's home abuts the subject property at 801 So. San Rafael Avenue, for which I approved Hillside Development Permit #6837.

Once one sorts through the exhaustive set of claims in the appeal documents, the thrust of the appellant's argument is that the property-owner of 801 So. San Rafael should not be permitted to add new development on his property because it will adversely impact the appellant's train collection on the abutting property at 815 So. San Rafael Avenue.

I take no issue with the fact that the appellant is entitled to the quiet enjoyment of a room which houses trains, displays, and related items in his home. But the mere existence of the train room does not, and more importantly, should not, prevent neighbors from exercising the quiet enjoyment of reasonable uses in their homes and accessory structures. The existing home on the subject property, and the proposed expansion thereof, is a reasonable exercise of the applicant's right to the quiet enjoyment of his or her property. The appellant has created what is, in essence, a "train museum" in his single-family dwelling, and his appeal suggests that neighboring property-owners should maintain the activities, decorum, and behavior one might expect in a museum—this is an entirely unreasonable expectation in a neighborhood composed exclusively of single-family dwellings, on properties designated in the General Plan and the City's Zoning Ordinance for residential uses. A museum is an institutional use, if not a commercial use. This use is more appropriately located on a property which enjoys commercial, institutional, or public/semi-public General Plan and zoning designations.

To grant the appeal would set a dangerous precedent relative to future development and expansion of existing single-family homes in Pasadena. Granting the appeal would establish the notion that an individual landowner cannot reasonably develop or expand his or her existing home if a neighbor chooses to use his or her property for a use more appropriately located in a non-residential zone.

Consider the following examples:

- Recording studio: A musician might choose to use a room in his or her house to record music. Could that musician contend that a neighbor cannot develop his or her property because it would create noise that would interfere with the musician's recordings?

- Insect-keeping: Presume that an individual keeps a collection of live butterflies n his or her home. Presume, further, that these butterflies need a dark, quiet environment in which to breed, live, and thrive. Could the owner of the house with

the butterflies argue that his neighbor cannot develop his or her property because it would somehow harm the butterflies?

- Film Editing: The editing of film, particularly as it involves sound recordings, can be sensitive to both noise and vibration impacts. Could a film editor argue that a neighbor cannot develop his or her property because it would prevent the film editor from carrying out his or her film editing work?

To reiterate, to grant the appeal would set a precedent. To grant the appeal would put the City of Pasadena on a slippery slope, one in which individual property-owners could simply house a unique and sensitive collection within their home to prevent neighbors from the reasonable development of a new single-family home, or the reasonable expansion of an existing single-family home, all in neighborhoods which the General Plan and zoning designate for residential uses.

This appellant's ancillary arguments--inadequate CEQA clearance, and arbitrary and capricious determination, inadequate findings, the failure to consider evidence, and other claims—are specious, unsubstantiated, and contrary to the record, as documented herein.

Zoning Hearing Officer's Conclusion

Given the foregoing, the appellant has not provided an adequate reason why my decision to approve Hillside Development Permit #6837 should be overturned on appeal. The CEQA decision is adequate and justifiable; the approval contains appropriate conditions; and the findings are thorough, comprehensive, and well-reasoned. The appeal should, therefore, be denied, and my original decision to approve Hillside Development Permit #6837should be sustained.