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CITY OF PASADENA

September 24, 2021

**City Council**

c/o Mark Jomsky

City Clerk  
100 North Garfield Ave. Pasadena, CA 91101

**Re: Review of BZA decision for proposed project at 141 South Lake**

Dear Mayor Gordo and City Council members:

Livable Pasadena believes the city staff correctly assessed the eligibility of the requested "concession" in this project, and as result, we believe the City Council should uphold the original city staff's prior decision to deny, and overturn the BZA decision to approve, the above proposed project. As described below, the regulated proportion of commercial space and residential space on South Lake Avenue is a use restriction and so relief from this regulation is unavailable to developers as a concession. Furthermore, there are strong public policy reasons to deny the requested relief. To grant the requested relief at this time would ignore the important part public comment and City Council review plays in adopting any changes.

The developer of the proposed project sought relief from a site condition in the Central District Specific Plan that limits residential units in mixed-use developments on South Lake Avenue to no more than 50% of total floor area (the "50% Rule"). In denying the application, city staff argued that the 50% Rule is not a development standard but instead is a use restriction. The city staff reasoned that because the zoning code describes the governing codes as "land use," the limitation is a limitation on use and not design. Therefore, the city staff originally concluded, it was not available as a design standard concession. The city staff further concluded that to allow the relief would be to allow an impermissible change of use. On appeal, the BZA determined that the project was a mixed-use project and that changing the 50% floor area restriction would not result in a change of use. The BZA also found that the 50% Rule is a development standard. As a result, the BZA ruled that the applicant is allowed to apply for the requested relief. We believe, however, that the BZA was mistaken. The 50% Rule is a use restriction, and the proposed change here would be a change in use. Therefore, the project should be denied at this time.

There are two questions at play here – Is the 50% Rule a development standard or a use restriction? And, if it is a use restriction, does allowing relief from the 50% Rule cause a change in the primary use?

09/27/2021  
Item 15

We believe that the 50% Rule clearly is a use restriction. In fact, the 50% Rule only addresses the use of a project, not the design. It is meant to preserve the function of the area and is triggered only by the mixed-use nature of the project. The use of a building and the design of a building are very different concepts, with the use of the building independent of the development standards. There is heightened scrutiny for the use of a building in this location because of the purpose of the area. The applicant may point to the statutory definition of development standard, and the mention of FAR as a development standard, to bolster their argument that the 50% Rule is a development standard. This, comparison, however, is misleading. The 50% Rule serves a completely different purpose. The requirements listed in the development standards are physical requirements that can apply to any building anywhere, and the buildings on South Lake Avenue still must comply with those development standards. The 50% Rule is an overlay on that – you also must comply with the 50% Rule because of the use of the area. Simply listing FAR in the definition of development standards does not mean the 50% Rule is a development standard. One only needs to look at what the 50% Rule is meant to address – the function of the building. As a result, the applicant should be unable to request relief from this requirement as a concession.

As to the second question, to allow relief from the 50% Rule here would result in a change of use. The primary use of South Lake Avenue is as a commercial shopping district. The Pasadena Municipal Code defines “primary use” as the “main purpose for which a site is developed and occupied, including the activities that are conducted on the site a majority of the hours during which activities occur.” (Pasadena Mun. Code § 17.80.020 (U).) On South Lake Avenue, the main purpose for which the area has been developed and occupied is commercial. Pasadena Mun. Code §§ 17.30.020 (E), 17.30.030(B), 17.30.030(C)(2)(b). Setting aside the 50% Rule would impermissibly change the primary use at this project (and by extension, all other future similar proposed projects) from commercial to residential and would result in a substantial change to the entire commercial shopping area. Consequently, the requested relief should not be granted.

The use restriction at issue here is found in the Central District Specific Plan. That requirement may change. The question of whether there should be more housing on South Lake Ave, and what that housing should look like, is an important question that the people of Pasadena should discuss. Indeed, the Central District Specific Plan currently is under review and is going through the public comment process. That process, however, is not over. The revised Specific Plan has not been presented to City Council and adopted. To provide relief to this applicant under the theory that the 50% Rule may change would be inappropriately giving one specific developer preferential treatment and should not be allowed. To provide the requested relief here would require the city to provide the same relief to all future applicants and would improperly bind the City Council’s hands in reviewing the Central District Specific Plan. It begs the question, then, why even have a Central District Specific Plan if we aren’t going to follow it? We shouldn’t change the rules only for specific applicants. And we shouldn’t be making policy and development decisions based solely on what particular developers want. If the applicant would like relief from this requirement, the applicant should wait until the Specific Plan has been revised and adopted. If the 50% rule is changed – which, again, certainly has not been determined - and the project meets the new requirements, the applicant is free to continue through the permitting process. Anything less that this is problematic and a slippery slope that Pasadena should not want to be on.

Finally, if the City Council determines that the BZA was correct in determining the 50% Rule is a design standard and that the applicant is entitled to apply for relief as a concession, we urge City Council to carefully review the project financials and the claim that the relief is needed make the project financially viable. This is a fundamental requirement, and one that demands careful and thorough

scrutiny. However, as we have discussed above, it is difficult to see how the 50% Rule is not a use restriction given that it is triggered by use of the building and use of the area. We understand why the developer here would like relief from this requirement, but the requirement at issue here is governing the use of the project and therefore is outside of the available concessions.

Thank you, Megan Foker  
On behalf of Livable Pasadena