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CITY CLERK
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?

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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 than 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

Iraheta, Alba

Subject: FW: City Council Meeting 9/27/2021; Agenda Item 15 -- Call For Review, BZA Decision, 141 South Lake.

Please distribute to the Council and post. Thank you.

**Nina Chomsky
Pasadena, CA**

Pasadena City Council

Re: City Council Meeting 9/27/2021; Agenda Item 15 -- Call For Review, BZA Decision re Zoning Administrator Decision, 141 South Lake.

Mayor Gordo and Councilmembers,

I am writing in my individual capacity to request, with respect to 141 South Lake Ave., that the Council overturn the Board of Zoning Appeals' (BZA) decision and uphold the Zoning Administrator's Determination that an affordable housing concession or incentive cannot be granted for modifications of use restrictions.

South Lake Ave. is one of Pasadena's several premiere commercial and "shopping" streets. This decision under the **current and applicable Central District Specific Plan**, rooted in extensive and broad public participation, sets aside decades of Planning and Zoning policies identifying, encouraging, and maintaining South Lake as a primary "shopping" and commercial street, and sets in motion the permanent transformation of the street without broad public participation and **BEFORE** the future Central District Specific Plan update process is finalized.

The mixed legal and policy issues before the BZA were whether an affordable housing concession or incentive can be granted for modifications of use restrictions as opposed to typical Development Standards such as height or FAR. The Zoning Administrator determined No. The pertinent application requested an affordable housing concession to allow residential use to occupy more than 50 percent of the project's gross floor area on the eastern portion of the site (along Lake Avenue). The current and applicable Central District Specific Plan and Zoning Code provide that along South Lake Ave:

"ground-floor housing is prohibited, and housing shall not occupy more than 50 percent of total building floor area along Lake Avenue from Green Street south to California Boulevard, to maintain the commercial retail and service character of the South Lake Shopping Area. Housing is allowed on upper floors and adjacent parcels to stimulate and activate the area."

On the other hand, the Applicant argued before the BZA that the requested concession can apply by law to a development standard, and, that the refusal to grant the concession violates the State (Housing) Density Bonus Law (SDBL). The BZA (3-1 vote) agreed, in effect, misinterpreting and misapplying the SDBL and allowing the SDBL to override long-time City policy and rules outside of the public process that should govern the adoption and updates of Specific Plans, particularly one so important as the Central District Specific Plan.

Unlike the BZA, I think that you should keep this simple: this is about **USE STANDARDS versus DEVELOPMENT STANDARDS**. The language of the current Central District Specific Plan should be interpreted and applied in a legally correct manner consistent with the intent and purposes of the Specific Plan, and also consistent with state and Pasadena law governing Use Standards versus Development Standards as discussed in detail in the Staff Report. On this basis, the decision of the BZA should be overturned.

Thank you for your attention to my comments,

Nina Chomsky

Iraheta, Alba

Subject: FW: Public Comment Item 15

From: Erika Foy <> **Sent:** Monday, September 27,
2021 4:34:52 PM **To:** Jomsky, Mark
<mjomsky@cityofpasadena.net>
Subject: Public Comment Item 15

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Dear Mayor and City Council,

I am writing in my individual capacity in support of the Council to overturn the Board of Zoning Appeals' decision for 141 South Lake Ave. and uphold the staffs determination that a change in zoning use is not permitted as a concession or incentive. If the Council does not overturn the decision, I am afraid we will see a transformation of South Lake much before associations like Madison Heights Neighborhood Association are given the opportunity to participate in the Central Districts Specific Plan process. Our organization is preparing for an October 28th meeting with staff and Councilmember Wilson to discuss South Lake and its future changes. What a disappointment if permanent changes occur before the public has had a chance to weigh in. I pray the opposition does not make this an "affordable housing" issue like we have seen in the past. This is about public process and transparency. What I see happening here is mental gymnastics about zoning to alter a street usage for a developers benefit without the proper input of the community. It is obvious from our own zoning code South Lake was intended as a commercial and shopping district. Now this may easily change in the future, but approving this projects concession would be an abuse of the planning process and vision for the area. What's interesting is our own city housing advisor Rick Cole was recently quoted in the Pasadena Star News <https://www.pasadenastarnews.com/2021/07/15/starbucks-wants-a-solar-powered-cafe-in-east-pasadena-but-not-everyone-is-onboard/> as saying the same thing but about a drive- thru Starbucks. He believed approving the Starbucks was wrong because it didn't fit with the purpose and plan for the area. How is this any different? There is no question the vision for South Lake was intended to be for shopping and commercial uses as clearly written in our expansive zoning code. I hope you consider supporting staff decision and allowing the specific plan process to happen organically rather than forcing this issue to instantly approve changes in zoning uses on South Lake without proper public process as we have followed successfully for years. What would be the point of our specific plan process if it can be undone in one night? Why participate? Thank you, Erika Foy

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