

# Agenda Report

March 14, 2022

**TO:** Honorable Mayor and City Council

**FROM:** Planning and Community Development Department

**SUBJECT: APPEAL OF THE BOARD OF ZONING APPEALS' DECISION ON  
HILLSIDE DEVELOPMENT PERMIT #6838  
1820 LINDA VISTA AVENUE**

## **RECOMMENDATION:**

It is recommended that the City Council:

1. Adopt the Environmental Determination that the proposed project is 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, §15301, Class 1, Existing Facilities); and,
2. Approve Hillside Development Permit #6838, with the required Findings in Attachment A and Conditions in Attachment B.

## **BACKGROUND:**

The subject property is located on the east side of Linda Vista Avenue, north of La Vista Place. The property descends east, down a hillside, toward the Arroyo Seco. The 50,332 square-foot property is developed with an existing single-story single-family dwelling including an attached two-car garage and attached carport. The site is generally flat at the location of the existing improvements. The average slope across the site is 29 percent.

### **Adjacent Uses:**

North – Single-Family Residential  
South – Single-Family Residential  
East – Open Space/Arroyo Seco  
West – Single-Family Residential

### **Adjacent Zoning:**

North – RS-4-HD (Single-Family Residential, 0-4 dwelling units per acre, Hillside Development Overlay District)

South–RS-4-HD (Single-Family Residential, 0-4 dwelling units per acre, Hillside Development Overlay District)  
East – OS (Open Space)  
West – RS-2-HD (Single-Family Residential, 0-2 dwelling units per acre, Hillside Development Overlay District)

## **SUMMARY OF PUBLIC HEARINGS**

### **Hearing Officer: January 6, 2021**

The applicant, Matthew Feldhaus, originally submitted a HDP application to allow the construction of a 2,208 square-foot, two-story addition to the existing 2,452 square-foot, single-story single-family residence, with an attached 366 square-foot garage, and an attached 439 square-foot carport. The application included a 1,401 square-foot addition to the same level as the existing residence and a new 807 square-foot lower-story addition. The project would have resulted in a 4,660 square-foot residence with an attached 754 square-foot garage. A HDP is required for an addition exceeding 500 square feet within the Hillside Overlay District.

The application included a request to exceed Neighborhood Compatibility, as allowed pursuant to Zoning Code Section 17.29.080. The Neighborhood Compatibility analysis maximum was 3,816 square feet. The proposal included a dwelling with 4,660 square feet of floor area (excluding the garage) and exceeded the Neighborhood Compatibility threshold by 844 square feet.

At the January 6, 2021 Hearing Officer hearing staff recommended approval of HDP #6838, with conditions, on the basis that all required findings for the HDP could be made (Attachment R). There were three public comments in opposition to the project including two from the attorney of the neighboring parcel to the south (1812 Linda Vista Avenue). The primary concerns raised were about privacy impacts on abutting properties, potential impact on protected views, the proximity of the addition to the top edge of the slope, grading impacts, and incorrect application of a CEQA exemption.

At the conclusion of public testimony, the Hearing Officer approved HDP #6838, as recommended by staff. This decision was based on the findings and conditions of approval in Attachment Q (Decision Letter). To supplement the decision, the Hearing Officer provided an addendum with an explanation for approval of the application (Attachment O).

### **Board of Zoning Appeals: April 22, 2021**

On January 19, 2021, Jin Ser Park, the abutting property owner of 1812 Linda Vista Avenue to the south, filed an appeal application (Attachment O) to the Board of Zoning Appeals stating out of scale development, failure to consider view rights, unusual circumstances, cumulative impacts and threat to a Historic/Natural Resource.

On April 22, 2021, the Board of Zoning Appeals considered the appeal. Staff response to each of the appellant's reasons was provided to the Board of Zoning Appeals as part of the staff report (Attachment M). This included a determination that the property did not meet the criteria for designation as a landmark (Attachment S). Staff recommended that the Board of Zoning Appeals adopt the environmental determination and approve HDP #6838.

The appellants attorney spoke in opposition to the project and submitted additional correspondence to the Board of Zoning Appeals (Attachment N). The appellant's concerns were in regards to view impacts, the scale of proposed development and environmental determination. The appellant submitted photographs from an interior first-story window showing a cross-view to the north, over the roof of the project site and its temporary silhouette (see photos 7-10 of Attachment N). The photographs depict a partial view of the ridge line of the San Gabriel Mountains that would be blocked by the new roof-design of the additions. At the conclusion of the hearing the Board of Zoning Appeals determined that:

- *The application was requesting 844 square feet of additional floor area above the maximum permitted by the Neighborhood Compatibility requirement.*
- *One of the two required findings for the granting of additional floor area, per Section 17.29.80.G.1, requires the decision maker to find in the affirmative that "no additional view impacts will occur to neighboring properties as a result of granting additional square footage".*
- *The project would block the appellant's views of the ridgelines to the north from a first floor window on the north elevation of the residence at 1812 Linda Vista Ave.*
- *Due to the view impacts, the finding required to grant the additional floor area above the maximum permitted by the Neighborhood Compatibility requirement cannot be made.*

Based on the determination above, the Board of Zoning Appeals overturned the Hearing Officer's decision and disapproved the HDP by a 5-0 vote from the members present (Attachment L).

#### City Council Public Hearing: October 18, 2021

On May 3, 2021, the project applicant, Matthew Feldhaus, submitted an appeal application (Attachment K) of the Board of Zoning Appeals' decision to the City Council and proposed a revised project. On October 18, 2021 the City Council did not review the project and referred the revised project back to the Board of Zoning Appeals for their consideration first.

#### Board of Zoning Appeals: November 18, 2021

On November 18, 2021, the Board of Zoning Appeals considered the revised project and appeal from the applicant of their decision to disapprove HDP #6838.

### *Revised Project*

In response to the Board of Zoning Appeals decision on April 22, 2021, and as part of the City Council appeal request, the applicant revised the project by eliminating the lower-story as an addition and instead proposed an Accessory Dwelling Unit (ADU) of the same size in its place. The additions were replaced with an ADU to have the size of the residence within the allowed floor area of the Neighborhood Compatibility analysis (ADU's are not calculated in this analysis). The revised project included a 1,401 square-foot addition to the same level as the existing residence, resulting in a 3,853 square-foot residence; the previous proposal was for a 4,660 square-foot residence. The proposal included a 315 square-foot garage addition that would result in an attached 754 square-foot garage. The project also included a 158 square-foot of pool equipment and storage areas resulting in a total gross floor area of 5,572 square feet. A new swimming pool and an 807 square-foot lower-story ADU were part of the development but would not require review and approval of a HDP. No protected trees were proposed to be removed.

Pursuant to California Government Code Section 65852.2, ADUs are ministerial and shall not be subject to discretionary review or a public hearing. Although the ADU, proposed deck expansion, and pool are allowed by right, they were included both on the proposed development plans and in the geotechnical report as part of the overall project scope.

As part of the revised application, the applicant requested that the Board of Zoning Appeals modify the "neighborhood" by excluding all properties within the RS-2-HD zoning district from the calculation, resulting in the parcels only located within the RS-4-HD zoning district. This is an allowed request under the Zoning Code.

The Board of Zoning Appeals decided to adopt the environmental determination that the proposed project was exempt from environmental review. A motion was made to approve HDP #6838. As part of the motion, the request by the applicant to modify the Neighborhood Compatibility Analysis was denied and two additional conditions of approval were included. The first condition required the size of the addition be reduced by 37 square feet to 1,364 square-feet as the request to modify the Neighborhood Compatibility Analysis was not approved. The second condition required the height of the garage roofline to be lowered by 18 inches. With the added conditions, action was taken to approve HDP #6838.

### **SUMMARY OF APPEAL:**

On November 29, 2021, Jin Ser Park, the abutting property owner of 1812 Linda Vista Avenue to the south, filed an appeal (Attachment C) to the City Council of the decision of the Board of Zoning Appeals. The appellant cites the following reasons for the appeal:

1. Failure to properly apply the provision of the Hillside Development Overlay District
2. Failure to properly evaluate for compliance with CEQA
3. Unequal treatment of the applicant
4. The project approved by the BZA is a new project
5. BZA did not have jurisdiction to review and approve the project
6. BZA's previous determination that the project impacted a view
7. Flawed Neighborhood Compatibility Analysis
8. Failure to consider the entirety of the project, including Accessory Dwelling Unit
9. Appellant incorporates by references all of its previous objections to the Project, including but not limited to those expressed in its April 21, 2021 Letter to the BZA, its October 15, 2021 letter to the City Council, its November 17, 2021 Letter to the BZA, as well as all exhibits (such as reports, videos, and images submitted by Appellant) previously delivered to the City Council and the BZA as part of this file.

Staff Responses to the Appeal:

1. *Failure to properly apply the provisions of the Hillside Development Overlay District.*

The appellant states that the Board of Zoning Appeals failed to properly apply the provisions of the Hillside Development Overlay District. There are no facts nor evidence in the record to support the claim. As discussed in the staff report the Board of Zoning Appeals (Attachment E), and in the analysis section of this report, the purposes and provisions of the Hillside Ordinance were carefully analyzed and the project meets the requirements of the Zoning Code to approve the HDP.

2. *Failure to properly evaluate for compliance with CEQA.*

The applicant claims that the BZA failed to properly evaluate the project for compliance with the California Environmental Quality Act. The applicant claims the project has unusual circumstances such as size, location and vicinity to historic resources. The applicant claims that the geotechnical report submitted from the original approval is inadequate because it fails to consider the cumulative massing of all structures proposed as well as weight of the pool on the hillside. Therefore the applicant claims that the BZA failed to review the cumulative impacts of successive projects.

This project has been determined to be 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, §15301, Class 1, Existing Facilities). Section 15301 exempts additions to existing structures, provided the addition will not result in an increase of more than 10,000 square feet when the project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan, and the area in which the project is located is not environmentally sensitive. The proposed does not exceed the size



threshold, is in an area where all public services and facilities are available, is a developed lot and not environmentally sensitive.

The project is not considered as unusual in terms of size, location, or vicinity to historic resources. The staff of the Design & Historic Preservation Section of the Planning Division reviewed the information submitted with the application, including photographs of the building, and after researching information about the building, its builder and its former occupants, determined that the property was substantially altered and does not retain the character-defining features of any of the architectural styles identified in the Cultural Resources of the Recent Past Historic Context Report and, therefore, is not eligible for historical designation (Attachment S). Therefore, the project qualifies for the specified CEQA categorical exemption and does not meet the eligibility requirements for the exception clause as the project would not cause a substantial adverse change in the significance of a historic resource.

Although the ADU, proposed deck expansion, and pool are allowed by right, they are included both on the proposed development plans and in the geotechnical report prepared by Irvine Geotechnical Inc. as part of the overall project scope. The report concluded that the the proposed construction will have no adverse effect on the geologic stability of the adjacent properties provided recommendations are followed. Furthermore, the City's plan check process will ensure that the proposed project will meet all applicable code requirements. The request to invalidate the Categorical Exemption, and to require the preparation of an Environmental Impact Report, is not supported by the facts in evidence found in the appeal.

*3. Unequal treatment of the applicant.*

Staff provided the same information to all parties as requested and did not give preferential treatment to any party as part of the review of the application(s).

*4. The project approved by the BZA is a new project.*

The appellant states that the project as approved by the BZA is a new project because it constitutes an intensified use of the area, by addition of an accessory dwelling unit to the original scope of the permit application. Although the project was revised after the April 22, 2021 Board of Zoning Appeals hearing to change the 807 square-foot lower story for the 807 square-foot ADU, the overall project envelope has not changed in terms of footprint, setbacks, height, massing, etc. Per Section 17.72.070.2.c, changes to the original submittal to address objections of the review authority need not be the subject of a new application.

*5. BZA did not have jurisdiction to review and approve the project.*

Per Section 17.72.070 of the Zoning Code, the City Council has the authority to refer a project back to the Board of Zoning Appeals for review and decision.

6. *BZA's previous determination that the project impacted a view.*

The appellant states that the BZA already determined that the Project blocked the appellant's protected view of a prominent ridgeline, on the north elevation and does not comply with the view protection requirements of the Zoning Code in its determination letter of April 28, 2021 (Attachment L). The project presented to the Board of Zoning Appeals at the April 22, 2021 hearing specifically requested to exceed the Neighborhood Compatibility Analysis by 844 square feet. In order to grant this, two additional findings were required to be made per Section 17.29.080:

- a. *No additional view impacts will occur to neighboring properties as a result of granting additional square footage; and*
- b. *The massing, scale, and building articulation of the proposed dwelling or other structure is compatible with the neighborhood as viewed from public or private streets.*

Due to the view impacts resulting from the additional requested square footage, the Board of Zoning Appeals could not make the findings required to grant the additional floor area and the project was denied.

The revised project presented to the Board of Zoning Appeals on November 18, 2021 did not request to exceed the Neighborhood Compatibility Analysis square footage and was not subject to the findings. Therefore, the decision from the April 22, 2021 BZA meeting which required additional findings, is not considered a determination for the project presented to the BZA on November 18, 2021.

7. *Flawed Neighborhood Compatibility Analysis.*

The appellant claims that the BZA relied on a flawed and conclusory analysis of Neighborhood Compatibility as provided by the Planning Department.

Staff assessed the most current Neighborhood Compatibility data and determined the maximum floor area of 3,816 square feet. Pursuant to Zoning Code the applicant may request to modify the "neighborhood" if the project meets certain criteria. At the November 18, 2021 BZA meeting the applicant requested that the Board of Zoning Appeals modify the neighborhood by excluding all properties within the RS-2-HD zoning district from the calculation. This would have allowed for a maximum floor area of 3,853 square feet. The request to modify the Neighborhood Compatibility Analysis was denied. The current project complies with the Neighborhood Compatibility Analysis based on data provided by the Los Angeles County Assessor.

8. *Failure to consider the entirety of the project, including Accessory Dwelling Unit.*

Pursuant to California Government Code Section 65852.2, ADUs are ministerial and shall not be subject to discretionary review. In addition, the proposed deck expansion and pool are not subject to a Hillside Development Permit. Although the ADU, proposed

deck expansion, and pool are allowed by right, they are included both on the proposed development plans and in the geotechnical report as part of the overall project scope.

9. *Appellant incorporates by references all of its previous objections to the Project, including but not limited to those expressed in its April 21, 2021 Letter to the BZA, its October 15, 2021 letter to the City Council, its November 17, 2021 Letter to the BZA, as well as all exhibits (such as reports, videos, and images submitted by Appellant) previously delivered to the City Council and the BZA as part of this file.*

The appellant's letters are included as attachments, including the letter dated April 21, 2021 (Attachment N), letter dated October 15, 2021 (Attachment I), and letter dated November 17, 2021 (combined with the appellant's presentation in Attachment H). The video was played during the November 18, 2021 BZA meeting and is part of the public record.

### **ANALYSIS:**

The hearing before the City Council is a de novo hearing where the Council has the authority to make an entirely different decision. The City Council may approve a Hillside Development Permit only after making eight findings pursuant to Zoning Code Section 17.61.050 and 17.29.080 (Attachment A). The following analysis discusses the project's compliance with the primary development standards of the Hillside Overlay District. A summary of development standards is provided in Table A.

*Table A: RS-4 and Hillside Overlay Development Standards*

<b>Development Standard</b>	<b>Required</b>	<b>Proposed</b>	<b>Analysis</b>
Front Setback (West): Garage Residence	25 feet	52'-2" 59'-9"	Complies
Interior Side Setback (North & South)	9'-5" (10% of lot width, minimum of 5 feet – maximum of 10 feet)	9'-9" (North) 10'-9" (South)	Complies
Rear (East)	25 feet	253'-2"	Complies
Maximum Site Coverage	17,616 square feet or 35 percent	7,397 square feet or 15 percent	Complies
Maximum Floor Area Ratio	10,714 square feet	5,535 square feet	Complies
Maximum Allowable Height- Primary Structure	28 feet at any point from existing grade; and 35 feet from lowest point where the building touches finished grade to highest point of the building	17'-2" at any point 32'-3" overall height	Complies
Minimum Parking	2 covered spaces	2 car garage	Complies
Guest Parking	2 on-site guest spaces	2 guest spaces	Complies
Neighborhood Compatibility within a 500- foot radius	Median – 2,827 square feet Median + 35 percent – 3,816 square feet	3,816 square feet	Complies



### *Gross Floor Area*

The maximum allowed floor area is 10,714 square feet. The modified project as approved by the Board of Zoning Appeals would result in a 3,816 square-foot residence with an attached 754 square-foot garage and 158 square-foot of enclosed storage space on the lower level for a gross floor area of 4,765 square feet. Outside of the HDP review the project includes an expansion of the existing deck to include a patio cover and infinity pool, and an 807 square-foot lower floor ADU where the previous lower level addition was proposed. The total gross floor area, including the ADU, is 5,535 square feet and is in compliance with the property's maximum allowable floor area.

### *Height*

Properties in the Hillside Overlay District are required to comply with two separate standards for building height. No structure may exceed a height of 28 feet at any point on the site nor can the overall height exceed 35 feet. The project proposes a building height of up to 17'-2" measured from the adjacent elevation of the existing grade, and an overall height of 32'-3", measured from the lowest grade to the highest ridge. The structure does not exceed a height of 28 feet at any point on the site and is within the total height limitation of 35 feet. Therefore, the project complies with building height.

### *Neighborhood Compatibility*

Projects subject to a Hillside Development Permit are to consider the character and scale of existing development in the neighborhood. The neighborhood is generally comprised of lots with residential properties located within a 500-foot radius of the site. The Zoning Code specifies that the allowable floor area of a proposed dwelling (excluding garages, accessory structures, basements, accessory dwelling units, equipment rooms, etc.) may not exceed the median floor area of existing dwellings within the 500-foot radius by more than 35 percent.

After the April 22, 2021 Board of Zoning Appeals meeting, the applicant requested that staff provide an updated neighborhood compatibility calculation table (Attachment F) to reflect recent finalized building permit square footage for 1860 Linda Vista Avenue. This resulted in an updated neighborhood compatibility requirement of 3,816 square feet. The project complies with Neighborhood Compatibility.

### *View Protection, Story Poles, Notice of Application Requirements*

Section 17.29.060.G (View Protection) of the Zoning Code requires applicants to design and locate improvements so that they avoid blocking views from surrounding properties *to the maximum extent feasible* as determined by the review authority. Specifically, new structures shall not be centered directly in the view of any room of a primary structure on a neighboring parcel. Views shall be considered from windows of any room in the primary structure. The standard specifies that improvements are to avoid blocking culturally significant structures such as the Rose Bowl, Colorado Street Bridge, City Hall, downslope views of the valley floor, prominent ridgelines, and/or the horizon line. Views of the open sky, existing foliage, private yards, and existing structures on surrounding properties are not protected.

To assist with the view protection analysis, story poles were installed on the subject property in December of 2020. The residences to the west, across Linda Vista Avenue, are situated at an elevation approximately 20 feet higher than the project site and would not have their views towards the east impeded by the proposed project. The adjacent property to the north, 1840 Linda Vista Avenue, is improved with a single-story, single-family residence, and its easterly views and views toward the north would not be impacted by the proposed project.

The property adjacent to the south, 1812 Linda Vista Avenue, is improved with a two-story, single-family residence. The proposed project would not block the protected southeast views including those towards the valley floor, Rose Bowl, Colorado Street Bridge, or City Hall. As part of their appeal of the Hearing Officer's approval to the Board of Zoning Appeals, the property owner of 1812 Linda Vista submitted photographs from an interior first-story window showing a cross-view to the north, over the roof of the project site (see photos 7-10 of Attachment P). The photographs depict a partial blockage of a protected view from the north of the ridge line of the San Gabriel Mountains that would be impacted from the proposed garage. Staff requested permission to enter the residence and photograph this proposed view. Staff was denied access. After a second more recent request access was granted but only under certain conditions that could not be agreed upon. Therefore staff has been unable to take photographs to document the proposed partial blockage from this one north window.

The applicant has proposed the additions in an area that minimize (to the maximum extent feasible) views protected by the Zoning Code. From the street, the project would continue to appear to be only a single-story residence, with the lower-floor ADU addition at the rear, underneath the main level and deck, and not visible from the public street. The garage roof has been lowered as conditioned by the BZA to reduce this portion of the project and there are no other areas of the home impacted and no other surrounding properties impacted. The project also complies with the ridgeline protection standards of the Zoning Code and the Arroyo Seco Slope Bank requirements.

**CONCLUSION:**

Staff finds that the findings necessary for approving Hillside Development Permit #6838 to allow for the construction of the proposed addition can be made. Therefore, staff recommends that the City Council approve Hillside Development Permit #6838 subject to the findings in Attachment A and recommended conditions of approval in Attachment B.

**FISCAL IMPACT:**

There is no fiscal impact as a result of the proposed project.


Respectfully submitted,

  
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DAVID M. REYES  
Director of Planning and Community  
Development

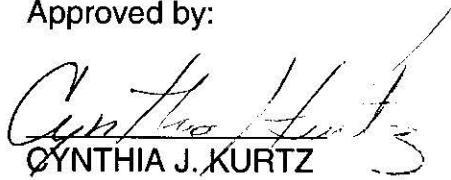
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**Attachments (20):**

Attachment A– Hillside Development Permit Findings  
Attachment B– Conditions of Approval  
Attachment C– Appeal Application of Board of Zoning Appeals' decision (November 29, 2021)  
Attachment D– Board of Zoning Appeals Decision Letter (November 23, 2021)  
Attachment E– Board of Zoning Appeals Staff Report (November 18, 2021)  
Attachment F– Neighborhood Compatibility Analysis (August 4, 2021)  
Attachment G– Board of Zoning Appeals Applicant Comment Letter/Presentation (November 18, 2021)  
Attachment H– Board of Zoning Appeals Appellant Comment Letter/Presentation (November 18, 2021)  
Attachment I – City Council Appellant Comment Letter (October 15, 2021)  
Attachment J – City Council Applicant Comment Letter (October 15, 2021)  
Attachment K– Appeal Application of Board of Zoning Appeals' decision (May 3, 2021)  
Attachment L– Board of Zoning Appeals Decision Letter (April 28, 2021)  
Attachment M– Board of Zoning Appeals Staff Report (April 22, 2021)  
Attachment N– Board of Zoning Appeals Appellant Presentation (April 21, 2021)  
Attachment O– Hearing Officer Addendum (March 20, 2021)  
Attachment P – Appeal Application of Hearing Officer's decision (January 19, 2021)  
Attachment Q– Hearing Officer Decision Letter (January 11, 2021)  
Attachment R– Hearing Officer Staff Report (January 6, 2021)  
Attachment S– Design and Historic Preservation Historical Designation Review (July 21, 2020)  
Attachment T– Project Plans