



CITY PLANNING COMMISSION

200 N. Spring Street, Room 272, Los Angeles, California, 90012-4801, (213) 978-1300
<http://planning.lacity.org/>

Determination Mailing Date: **MAR 03 2015**

CASE NO.: CPC-2014-4595-CU
CEQA: ENV-2014-4596-CE

Location: Citywide
Council Districts: All
Plan Areas: All
Requests: Conditional Use, Density Bonus

Applicant: LADWP Solar Program

At its meeting of February 26, 2015, the City Planning Commission took the following action:

1. **Approved** a **Master Conditional Use Permit** to allow certain types of solar installations operating under the Feed-in-Tariff (FiT) program.
2. **Adopted** the attached modified **Conditions of Approval**.
3. **Adopted** the attached **Findings**.
4. **Found** that the request is Categorical Exempt from environmental review pursuant to: Article 19, Section 15301, Class 1; Section 15303, Class 3; Section 15307, Class 7; Section 15308, Class 8; and Section 15321, Class 21 of the California Environmental Quality Act.

Fiscal Impact Statement: There is no General Fund impact as administrative costs are recovered through fees.

This action was taken by the following vote:

Moved: **Katz**
Seconded: **Segura**
Ayes: **Ahn, Ambroz, Choe, Mack, Dake-Wilson**
Absent: **Cabildo, Perlman**

Vote: **7 - 0**



James K. Williams, Commission Executive Assistant II
City Planning Commission

Effective Date/Appeals: The City Planning Commission's determination regarding the *Conditional Use* is appealable. Any aggrieved party may file an appeal within 15-days after the mailing date of this determination letter. Any appeal not filed within the 15-day period shall not be considered by the City Council. All appeals shall be filed on forms provided at the Planning Department's Public Counters at 201 N. Figueroa Street, Fourth Floor, Los Angeles, or at 6262 Van Nuys Boulevard, Suite 251, Van Nuys.

FINAL APPEAL DATE: **MAR 18 2015**

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.

Attachments: Modified Conditions of Approval, Findings
City Planner: Michelle Singh

CONDITIONS OF APPROVAL

A. CONDITIONAL USE CONDITIONS

1. **Site Development.** The property shall be developed in substantial conformance with the submitted plans, labeled “**Exhibit E-2,**” dated **February 12, 2015,** and attached to the subject case file, except as modified herein. No change to the plans will be made without prior review by the Department of City Planning, Plan Implementation Division, and written approval by the Director of Planning. Each change shall be identified and justified in writing. Minor deviations may be allowed in order to comply with the provisions of the Municipal Code or the project conditions.
2. **Residential Density.** The project shall be limited to a maximum of 20 residential units, composed of 14 base units and 6 “density bonus” units.
3. **Affordable Units.** A minimum of 42 percent (i.e. 6 units) of the 14 base units shall be reserved as Low Income Restricted Affordable Units, as defined by the State Density Bonus Law 65915(c)(2).
4. **Open Space.** A minimum 1,000 square-foot open space area shall be provided on-site within the rear portion of the lot, and the following amenities shall be provided: a minimum 3’6” high decorative fence enclosure, perimeter landscaping, outdoor seating, and a barbeque area, per Exhibit E-2. Prior to any building permit sign-off, photographic evidence showing the complete installation and landscaping of the open space area shall be submitted to the file in order to satisfy this condition.
5. **Housing and Community Investment Department.** Prior to issuance of a building permit, the owner shall execute a covenant to the satisfaction of the Los Angeles Housing and Community Investment Department (HCIDLA) to make a minimum of 42 percent (i.e. 6 units) of the pre-density bonus units of the development available for Low Income Households, for sale or rental as determined to be affordable to such households by HCIDLA, for a period of at least 55 years. The project shall comply with any monitoring requirements established by HCIDLA. Enforcement of the terms of said covenant shall be the responsibility of HCIDLA. The applicant will present a copy of the recorded covenant to the Department of City Planning for inclusion in this file.

B. AFFORDABLE HOUSING INCENTIVE CONDITIONS

1. **Site Development.** The property shall be developed in substantial conformance with the submitted plans, labeled “**Exhibit E-2,**” dated **February 12, 2015,** and attached to the subject case file, except as modified herein. No change to the plans will be made without prior review by the Department of City Planning, Plan Implementation Division, and written approval by the Director of Planning. Each change shall be identified and justified in writing. Minor deviations may be allowed in order to comply with the provisions of the Municipal Code or the project conditions.
2. **Residential Density.** The project shall be limited to a maximum of 20 residential units, composed of 14 base units and 6 “density bonus” units.

3. **Affordable Units.** A minimum of 42 percent (i.e. 6 units) of the 14 base units shall be reserved as Low Income Restricted Affordable Units, as defined by the State Density Bonus Law 65915(c)(2).
4. **Automobile Parking.** Vehicle parking shall be provided consistent with LAMC Section 12.21 A.4. Based upon the number and type of dwelling units proposed, a minimum of 38 parking spaces shall be provided.
5. **Adjustment of Parking.** In the event that the number of Restricted Affordable Units should change, or the composition of such units should change (i.e. the number of bedrooms, or the number of units made available to Senior Citizens and/or Disabled Persons), or the applicant selects another Parking Option (including Bicycle Parking Ordinance), and no other Condition of Approval is affected, then no modification of this determination shall be necessary, and the number of parking spaces shall be re-calculated by the Department of Building and Safety based upon the ratios set forth in the Municipal Code.
6. **Side Yard Setbacks.** The project is granted a reduced side yard setback of 5-feet along both western and eastern property lines.
7. **Passageways.** The project is granted a reduced passageway width of 5-feet to access the rear ground-floor unit (identified as #210 on Exhibit E-2).
8. **Housing and Community Investment Department.** Prior to issuance of a building permit, the owner shall execute a covenant to the satisfaction of the Los Angeles Housing and Community Investment Department (HCIDLA) to make a minimum of 42 percent (i.e. 6 units) of the pre-density bonus units of the development available for Low Income Households, for sale or rental as determined to be affordable to such households by HCIDLA, for a period of at least 55 years. The project shall comply with any monitoring requirements established by HCIDLA. Enforcement of the terms of said covenant shall be the responsibility of HCIDLA. The applicant will present a copy of the recorded covenant to the Department of City Planning for inclusion in this file.

C. ADMINISTRATIVE CONDITIONS

1. **Final Plans.** Prior to the issuance of any building permits for the project by the Department of Building and Safety, the applicant shall submit all final construction plans that are awaiting issuance of a building permit by the Department of Building and Safety for final review and approval by the Department of City Planning. All plans that are awaiting issuance of a building permit by the Department of Building and Safety shall be stamped by Department of City Planning staff "Final Plans". A copy of the Final Plans, supplied by the applicant, shall be retained in the subject case file.
2. **Notations on Plans.** Plans submitted to the Department of Building and Safety, for the purpose of processing a building permit application shall include all of the Conditions of Approval herein attached as a cover sheet, and shall include any modifications or notations required herein.
3. **Approval, Verification and Submittals.** Copies of any approvals, guarantees or verification of consultations, review of approval, plans, etc., as may be required by the subject conditions, shall be provided to the Department of City Planning prior to clearance of any building permits, for placement in the subject file.

4. **Code Compliance.** Use, area, height, and yard regulations of the zone classification of the subject property shall be complied with, except where granted conditions differ herein.
5. **Department of Building and Safety.** The granting of this determination by the Director of Planning does not in any way indicate full compliance with applicable provisions of the Los Angeles Municipal Code Chapter IX (Building Code). Any corrections and/or modifications to plans made subsequent to this determination, which involve a change in site plan, floor area, parking, building height, yards or setbacks, lot width, lot coverage, open space, or affect any part of the exterior design or appearance of the project as approved by the Director, and which are deemed necessary by the Department of Building and Safety or other Agency for Code compliance, shall require a referral of the revised plans back to the Department of City Planning for additional review and sign-off prior to the issuance of any permit in connection with those plans.
6. **Enforcement.** Compliance with these conditions and the intent of these conditions shall be to the satisfaction of the Department of City Planning.
7. **Expiration.** In the event that this grant is not utilized within **three years** of its effective date (the day following the last day that an appeal may be filed), the grant shall be considered null and void. Issuance of a building permit, and the initiation of, and diligent continuation of, construction activity shall constitute utilization for the purposes of this grant.
8. **Indemnification.** The applicant shall defend, indemnify and hold harmless the City, its agents, officers, or employees from any claim, action, or proceeding against the City or its agents, officers, or employees relating to or to attack, set aside, void or annul this approval which action is brought within the applicable limitation period. The City shall promptly notify the applicant of any claim, action, or proceeding and the City shall cooperate fully in the defense. If the City fails to promptly notify the applicant of any claim action or proceeding, or if the City fails to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City.

FINDINGS

A. CONDITIONAL USE (DENSITY BONUS)

Pursuant to Section 12.24.U.26 (Density Bonus Greater than 35%) of the LAMC, the City Planning Commission finds that:

1. *The project will enhance the built environment in the surrounding neighborhood or will perform a function or provide a service that is essential or beneficial to the community, city or region.*

The project does not include any significant changes to the physical environment, but will be providing increased opportunities for affordable housing and additional amenities to the building's residents. Conditions of approval for the project will require the extension of the affordability period for the four legally permitted affordable units, the conversion of underutilized space to create two new affordable units, and the reinstallation of recreational amenities for the building. The expansion of housing opportunities and amenities within the existing apartment complex will serve a critical need to provide expanded and quality affordable housing to the community.

2. *The projects location, size, height, operation and other significant features will be compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood, or the public health, welfare, and safety*

The project was originally reviewed and approved by the City Council during a Zone Change and Density Bonus review process and constructed in 1987. At that time, the project's location, size, height, and design were reviewed and conditions were imposed on the property to ensure neighborhood compatibility. These conditions included a maximum height limit, minimum parking requirements, setbacks from the adjacent single-family residence, vehicular access restrictions from Nordhoff Street, appropriate landscaping, and conformance with the approved building plans. The existing building continues to meet these standards. However, the project's operation will be changed to include two new residential units within the existing building and the addition of an outdoor patio within the rear parking area to replace a previous recreational use in the same location. The project will not otherwise result in any significant changes to the physical or operational features of the building. Therefore, the project will continue to be compatible with the surrounding neighborhood and will not result in any adverse impacts.

3. *The project substantially conforms with the purpose, intent and provisions of the General Plan, the applicable community plan, and any applicable Specific Plan.*

The subject property is located within the Mission Hills - Panorama City - North Hills Community Plan, the Land Use element of the General Plan, adopted by the City Council on June 9, 1999. The project is consistent with the following goals, objectives and policies of that Plan:

GOAL 1: A SAFE, SECURE, AND HIGH QUALITY RESIDENTIAL ENVIRONMENT FOR ALL ECONOMIC, AGE, AND ETHNIC SEGMENTS OF THE COMMUNITY.

Objective 1-5 To promote and insure the provision of adequate housing for all persons regardless of income, age, or ethnic background.

- Policy 1-5.1** Promote greater individual choice in type, quality, price, and location of housing.
- Policy 1-5.3** Ensure that new housing opportunities minimize displacement of the residents.

The project would preserve and expand the number of restricted income units, creating a greater choice in housing typology and affordability. In addition, the reinstallation of recreational amenities in the rear yard would improve the quality of the existing housing, while the conversion of previously underutilized storage spaces would create new units without displacement of any residents.

4. *The project is consistent with and implements the affordable housing provisions of the Housing Element of the General Plan*

The City's Housing Element for 2013-2021 was adopted by City Council on December 3, 2013. The project is consistent with the following goals, objectives, and policies:

GOAL 1: *A City where housing production and preservation result in an adequate supply of ownership and rental housing that is safe, healthy and affordable to people of all income levels, races, ages, and suitable for their various needs.*

Objective 1.2: Preserve quality rental and ownership housing for households of all income levels and special needs.

- Policy 1.2.1** Facilitate the maintenance of existing housing in decent, safe and healthy condition.
- Policy 1.2.2** Encourage and incentivize the preservation of affordable housing, including non-subsidized affordable units, to ensure that demolitions and conversions do not result in the net loss of the City's stock of decent, safe, healthy or affordable housing.
- Policy 1.2.7** Strengthen the capacity of the development community to preserve and manage affordable housing.

The project is consistent with the above goals, objectives and policies of the Housing Element by ensuring the continued preservation and addition of affordable units, extending the period of affordability for existing units, and the conversion of existing unused space for additional housing without a reduction in on-site amenities. Currently, the thirty-year affordability period for the four legally permitted affordable units required under CPC-1984-235-DB would be set to expire in 2016. By approving the density bonus request, a new Covenant Agreement would be required, preserving these units at affordable rental rates until 2045. In addition, ground floor areas previously used for building storage would be converted to provide two new affordable units. In previous floor plans for the site, one of the storage rooms was identified as a recreation room, and a swimming pool used to occupy a portion of the rear surface parking area, but has since been removed. Although open space areas were not required as part of the original 1987 construction of the building, as part of this approval the applicant will be required to replace the previous recreational amenity through the installation of an outdoor patio area within the rear yard portion of the site. This addition would improve habitability and quality of life for the building's residents.

5. *The development contains the requisite number of affordable and/or senior citizen units as set forth in California Government Code Section 65915(b).*

California Government Code Section 65915(b) is the State of California's Density Bonus Law. Under Government Code Section § 65915(a), § 65915(d)(2)(C) and § 65915(d)(3), the City of Los Angeles complies with the State Density Bonus law by adhering to adopted density bonus regulations and procedures as codified in Section 12.22 A.25 of the Los Angeles Municipal Code. Section 12.22 A.25 also creates a procedure to waive or modify zoning code standards which may prevent, preclude or interfere with the effect of the density bonus by which the incentive or concession is granted, including legislative body review.

The applicant proposes the conversion of two existing ground floor storage rooms to studio apartment units, which would result in a total of 20 residential dwelling units on-site and a 42% density increase above the 14 dwelling units permitted by-right. The Municipal Code requires a minimum of 20% (i.e. 3 units) of pre-density units (i.e. 14 units) to be set aside for Moderate Income Households for a period of 30 years in order to be granted a maximum 35% density increase (i.e. 5 units for a total of 19 units). Any density increase above the 35% requires a Conditional Use approval (LAMC Section 12.24.U.26), with no further standards set for the minimum number of affordable units. Since the property has historically been required to provide affordability for four of the 18 legally existing units, and has also previously been granted the increase to 20 units contingent on a requirement for six affordable units on-site, a similar requirement for six affordable units will exceed the current minimum requirements. As found in this report, the project otherwise complies with Sections 12.22 A.25 and 12.24.U.26. Therefore, the project exceeds the requisite number of affordable and/or senior citizen units as set forth in California Government Code Section 65915(b) and local city ordinances.

6. *The development project addresses the policies and standards contained in the Affordable Housing Incentive Guidelines approved by the City Planning Commission.*

The City Planning Commission approved the Affordable Housing Incentives Guidelines (CPC-2005-1101-CA) on June 9, 2005. These were subsequently approved by City Council on February 20, 2008, (CF 05-1345) as a component of the City of Los Angeles Density Bonus Ordinance. The Guidelines describe the density bonus provisions and qualifying criteria, incentives available, design standards, and the procedures through which projects may apply for a density bonus and incentives. The City of Los Angeles Housing and Community Investment Department (HCIDLA) utilizes these Guidelines in the preparation of Housing Covenants for Affordable Housing Projects. On April 9, 2010 the City Council adopted updates to the City's Density Bonus Ordinance (CF 05-1345-S1, Ordinance 181142). However, at that time the Affordable Housing Incentives Guidelines were not updated to reflect changes to the City's Density Bonus Ordinance. Where there is a conflict between the Guidelines and the current Density Bonus Ordinance, the Density Bonus Ordinance prevails.

While many of the Guidelines are embedded within the City's Density Bonus Ordinance, there are some unique Guidelines, including design and location of affordable units to be comparable to the market rate units, the equal distribution of amenities, HCIDLA monitoring requirements, affordability levels, and procedures for obtaining HCIDLA sign-offs for building permits. As conditioned, the applicant will execute a covenant to the satisfaction of HCIDLA who will ensure compliance with the Guidelines. Therefore, the project will address the policies and standards contained in the Guidelines.

B. AFFORDABLE HOUSING INCENTIVES PROGRAM

Pursuant to Section 12.22.A.25(g)(3)(i)c (Off-Menu Incentives) of the LAMC, the Commission shall approve a Density Bonus and requested Incentives unless the Commission finds that:

1. *The incentives are not required to provide for affordable housing costs as defined in California Health and Safety Code Section 50052.5 or Section 50053 for rents for the affordable units.*

The record does not contain substantial evidence that would allow the Commission to make a finding that the requested incentives are not required to provide for affordable housing costs per State Law.

A list of on-menu incentives in LAMC 12.22 A.25 were pre-evaluated at the time the Density Bonus Ordinance was adopted to include types of relief that minimize restrictions on the size of the project. As such, the density bonus on-menu incentives are required to provide for affordable housing costs because the incentives by their nature increase the scale of the project. However, this list of on-menu incentives would not provide the needed relief from the Municipal Code that would be needed to legalize the two ground floor units within the proposed project. Therefore, the applicant has applied for two off-menu incentives for a reduced passageway width and for reduced side yard setbacks.

Due to the existing design of the building, the existing passageway access from Nordhoff Street to the rear ground floor unit is insufficient in width per the Municipal Code. In addition, any new habitable room within the ground floor level shifts the ground floor classification from a "basement" to a "story", resulting in an increased requirement for the side yard setback. Therefore, any new habitable space on the ground floor requires relief from the code requirements for passageways and side yard setbacks along the western and eastern property edges.

Without the incentives, in order to use the two ground floor storage areas as living spaces, the building would have to be reconstructed to reduce the building width by one foot on both the west and east side yard of the building, and to double the passageway width to ten feet for street access to the rear unit. The reconstruction of the building to meet these code requirements would make it economically infeasible to repurpose these ground floor storage spaces for habitable purposes. Without these two additional units, the existing building would remain as-is, and no additional affordable units would be made available within the building, directly preventing the entrance of two affordable units into the rental market.

2. *The Incentives will have a specific adverse impact upon public health and safety or the physical environment, or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactory mitigate or avoid the specific adverse Impact without rendering the development unaffordable to Very Low, Low and Moderate Income households. Inconsistency with the zoning ordinance or the General Plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.*

There is no evidence that the proposed incentives will have a specific adverse impact. A "specific adverse impact" is defined as, "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete" (LAMC Section 12.22 A.25(b)).

Municipal Code standards for setbacks and passageway widths are intended to ensure adequate buffering and safe access into buildings. The existing side yard setbacks have been sufficient to provide for appropriate buffering and separation from the adjacent buildings. According to the Municipal Code definition of "building story", including any new habitable rooms to a ground floor within the project, would technically change the number of building stories from two to three, necessitating an additional one-foot increase in the side yard setback requirement, even though the actual height of the building remains the same. The Municipal Code also requires a minimum ten-foot wide passageway from residential entrances to the street, and does not consider alleyways as "streets". Therefore, although the proposed ground floor unit at the rear of the building direct has direct access from the rear alley and is connected via an existing five-foot wide passageway in the side yard to Nordhoff Street for sufficient fire and police access, this conversion would not meet Municipal Code standards.

Since the incentives will not result in any physical changes to the existing building, and appropriate access will be maintained, the incentives will not create a specific adverse impact upon public health and safety. The proposed project was also found to be exempt from environmental review under the California Environmental Quality Act Guidelines as a non-significant repurposing of uses within an existing building, meaning that the project will not result in any potential environmental impacts. In addition, no historical resources have been identified on the site or in the affected vicinity. Therefore, there is no substantial evidence that the requested Incentives will have a Specific Adverse Impact on the physical environment, on public health and safety, or on property listed in the California Register of Historical Resources.

DENSITY BONUS LEGISLATION BACKGROUND

The California State Legislature has declared that "[t]he availability of housing is of vital statewide importance," and has determined that state and local governments have a responsibility to "make adequate provision for the housing needs of all economic segments of the community." Section §65580, subds. (a), (d). Section 65915 further provides that an applicant must agree to, and the municipality must ensure, the "continued affordability of all low and very low income units that qualified the applicant" for the density bonus.

With Senate Bill 1818 (2004), state law created a requirement that local jurisdictions approve a density bonus and up to three "concessions or incentives" for projects that include defined levels of affordable housing in their projects. In response to this requirement, the City created an ordinance that includes a menu of incentives (referred to as "on-menu" incentives) comprised of eight zoning adjustments that meet the definition of concessions or incentives in state law (California Government Code Section 65915). The eight on-menu incentives allow for: 1) reducing setbacks; 2) reducing lot coverage; 3) reducing lot width, 4) increasing floor area ratio (FAR); 5) increasing height; 6) reducing required open space; 7) allowing for an alternative density calculation that includes streets/alley dedications; and 8) allowing for "averaging" of FAR, density, parking or open space. Alternatively, an applicant may request an off-menu incentive under City Planning Commission review for any other deviation from the Municipal Code not listed in the pre-determinate list. In order to grant approval of an incentive, the City utilizes the same findings contained in state law for the approval of incentives or concessions.

Under Government Code Section § 65915(a), § 65915(d)(2)(C) and § 65915(d)(3) the City of Los Angeles complies with the State Density Bonus law by adopting density bonus regulations and procedures as codified in Section 12.22 A.25 of the Los Angeles Municipal Code. Section 12.22 A.25 creates a procedure to waive or modify zoning code standards which may prevent, preclude or interfere with the effect of the density bonus by which the incentive or concession is

granted, including legislative body review. The Ordinance must apply equally to all new residential development.

In exchange for setting aside a defined number of affordable dwelling units within a development, applicants may request up to three incentives in addition to the density bonus and parking relief which are permitted by right. The incentives are deviations from the City's development standards, thus providing greater relief from regulatory constraints. Utilization of the Density Bonus/Affordable Housing Incentives Program supersedes requirements of the Los Angeles Municipal Code and underlying ordinances relative to density, number of units, parking, and other requirements relative to incentives, if requested.

For the purpose of clarifying the Covenant Subordination Agreement between the City of Los Angeles and the United States Department of Housing and Urban Development (HUD) note that the covenant required in the Conditions of Approval herein shall prevail unless pre-empted by State or Federal law.

C. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

1. *Environmental.* A Notice of Exemption was filed as ENV-2013-1003-CE on June 6, 2014. The subject proposal has been determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article III, Section 1 of the City CEQA Guidelines under Class 1, Category 22 as the granting or renewal of a variance or conditional use for a non-significant change of use in an existing facility.