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September 16, 2024

Planning Commission
City of San Diego
1222 First Avenue, MS 501
San Diego, CA 92101

VIA Webform

RE: 10715 Sorrento Valley Road, Agenda Item #1

Dear Planning Commission,

Austin Legal Group represents Sorrento Valley Investment Group, the applicant and property owner, in connection with the extension of a conditional use permit ("CUP") for a cannabis outlet at 10715 Sorrento Valley Road ("Premises" or "Project"). We write to address the appeal filed by Richard Ormond ("Appellant"). As detailed below, the Appellant's claims lack merit and appear to be a last-ditch effort to create leverage with the property owner to allow the operator, Sure Felt, back on the Premises. The applicant respectfully urges the Planning Commission to affirm Staff's determination, deny the appeal, and approve the CUP extension, as all necessary findings can be made.

GENERAL BACKGROUND

The property owner leased the Premises to Sure Felt, LLC, which is wholly owned by MM CAN USA ("MedMen"), to operate a cannabis retail facility. MedMen defaulted on \$350 million in debt to a third party and is currently under a receivership overseen by Richard Ormond. The goal of this receivership is to liquidate MedMen's assets to pay off its creditors. Without the property owner's approval, the receivership installed new cannabis operators at the Premises, operating for the benefit of the receivership. These operators, like their predecessors, failed to remit the mandatory gross receipts tax to the City.

On April 16, 2024, the City notified both Sure Felt and the property owner of a potential revocation of the Cannabis Operating Permit and non-renewal of the CUP. Upon learning that Sure Felt had defaulted on its tax obligations to the City, the property owner immediately initiated eviction proceedings, filing an unlawful detainer complaint on April 17, 2024. The property owner also revoked Sure Felt's authority to process the CUP amendment and provided updated documentation to the City to continue processing the renewal. On June 3, 2024, the court issued a judgment for possession in favor of the property owner. However, Sure Felt refused to vacate the Premises, continued selling cannabis, and further defaulted on its tax payments to the City, which now exceed \$150,000.

Due to Sure Felt's refusal to vacate the Premises, the property owner immediately sought the assistance of the San Diego County Sheriff to remove Sure Felt from the Premises and restore possession to the property owner. Although the Sheriff's department is currently facing delays of 3-4 months in executing writs of possession, possession of the Premises was finally returned to the property owner on September 10, 2024. During the intervening time between June 3, 2024 and September 10, 2024, Sure Felt either through

its attorney or through the Receiver, Richard Ormond, attempted on three separate occasions to obtain court relief from the judgment and/or to stay the eviction. Each attempt was denied by the court with the court frequently citing to Sure Felt's failure to pay both city and state taxes.

DISCUSSION

I. APPELLANT'S GROUNDS FOR APPEAL ARE UNRELATED TO THE CUP FINDINGS AND MUST BE DISMISSED

The appeal statements are inaccurate, unrelated to land use, and ultimately have no bearing on the Project's compliance with the CUP findings. For example, the first ground for appeal states that "Sure Felt LLC was the valid applicant for the CUP Amendment." This unsupported assertion is what the Appellant wishes to be true rather than a statement based upon facts and evidence. An appeal of a Process Two decision is only an appeal of the decision that was made¹. The decision that was made by Staff was to approve the CUP extension. Sure Felt's aspirations to be the applicant are irrelevant to this appeal and the CUP findings. This appeal is merely a veiled attempt by Sure Felt to contest the property owner's authority to remove its authorization, effectively holding the property owner hostage by refusing to sign the CUP².

Likewise, the Appellant's third ground for appeal³ claims that "the decision maker's stated findings to disapprove the permit for Sure Felt LLC and approve the permit for Sorrento Valley Investment Group are not supported by the information provided to the decision maker." This mischaracterizes the Staff decision. The SDMC clearly establishes that a CUP is a covenant that runs with the land⁴. The appeal is not an appeal of the change in applicant. The municipal code unequivocally allows for the appeal only of the Staff decision to approve or deny the Project. The Project in question is the 5-year extension of the CUP. The court in *Engebretson v. City of San Diego* explained that the City's ordinances ensure that "conditional use permits will only be granted to individuals having the right to use the property in the manner for which the permit is sought."⁵ The property owner was within its rights to remove Sure Felt's authority to act on behalf of the property owner once it breached its lease. The City, in accordance with the court's holding in *Engebretson*, was required to accept and process the property owner's decision to change the applicant to itself. The change of applicant is simply not the decision being appealed.

Appellants final ground for appeal is similarly without merit. Appellant inaccurately asserts that the City decided to "approve the permit for Sorrento Valley Investment Group and deny the permit for Sure Felt LLC." This is simply not true and is a further attempt by Sure Felt to fiat into existence a decision by the City that simply didn't occur. There were not two projects before the City in which it could approve one and deny the other. Rather, the only decision being reviewed by the Planning Commission is whether or not the findings can be made to approve the 5-year extension of the previously issued cannabis outlet CUP.

¹ SDMC §112.0510 (a)(3)

² A Conditional Use Permit requires the signature of the property owner and applicant.

³ The second basis for appeal states "New information in available that was not available through reasonable efforts or due diligence at the time of the decision." However, no further information or analysis was provided.

⁴ SDMC 126.0302(c) "The privileges and conditions of a Conditional Use Permit are a covenant that runs with the land and, in addition to binding the permittee, bind each successor in interest."

⁵ *Engebreisen v. City of San Diego, 2016 Cal. App. Unpub. LEXIS 8548* citing SDMC §§ 112.0102, subd. (a), 113.0103.

The only options before Planning Commission are to affirm, reverse, or modify the staff decision to approve the 5 year extension of the CUP⁶. There is simply no facts provided and no evidence submitted that provide any justification to reverse or modify the Staff decision. Therefore, the applicant requests the Planning Commission affirm Staff's decision to grant the 5-year extension of the CUP.

II. THE CUP FINDINGS CAN BE MADE

Section 126.0305 of the SDMC provides the required CUP findings for project approval. Each of these findings can be made for this Project. Appellant makes no argument that the CUP findings cannot be made but rather urges Planning Commission to substitute its name as the permittee despite its failure to pay its required taxes and despite the fact that it is not authorized to utilize the Premises. The property owner concurs with Staff's findings in Attachment 5 of the Staff Report.

In light of the above, the applicant respectfully requests that the Planning Commission affirm Staff's decision to grant the 5-year extension of the CUP and deny the appeal.

Sincerely,
AUSTIN LEGAL GROUP, APC



Gina M. Austin, Esq.

⁶ SDMC §112.0504 (a)(6)

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Via Electronic Mail

September 18, 2024

Kelly Moden, Chairperson
Matthew Boomhower, Vice-Chairperson
Ted Miyahara, Commissioner
Farah Mahzari, Commissioner
Dennis Otsuji, Commissioner
Ken Malbrough, Commissioner
City of San Diego
1222 First Avenue, 5th Floor
San Diego, California 92101

**Re: September 19, 2024 Planning Commission Hearing
Agenda Item No. 5 – Adelante Townhomes (PRJ-1073585)**

Honorable Chairperson Moden, Vice-Chairperson Boomhower,
Commissioners Miyahara, Mahzari, Otsuji and Malbrough:

This letter is submitted on behalf of the applicant, Pelican Venture, LP (“Applicant”), of the Adelante Townhomes project (“Project”). Previously, my office provided a letter, dated October 5, 2023, that outlined the Project’s requested incentives and waivers. Since that time, the list has been modified so this letter is intended to clarify the pending requests to ensure the Planning Commission has the most up to date information.

The Project, which requires a Coastal Development Permit and Tentative Map, will demolish an existing office building and construct a two-story multifamily residential building with 13 units, approximately 1,060 square-feet of retail space, as well as a basement level, 15 covered parking spaces, and roof decks totaling 16,366 of total square footage (the “Project”) at 5575 La Jolla Boulevard (“Property”) in the City of San Diego (“City”).

The Property is located in the La Jolla Planned District (“LJPD”)-4 Zone of the La Jolla Community Plan Area, and allows a base density of 29 dwelling units per acre (“du/acre”). The Property is approximately 0.296 acres, such that the base density calculation is 8.7, rounded to 9 base units. The Applicant will dedicate one unit for sale to a very low income household. By providing one very low income unit at 11% of base density, the Project will earn a 35% density

bonus or 3.15 units, rounded to 4 bonus units, as well as two incentives and unlimited waivers. The Applicant intends to use one incentive pursuant to San Diego Municipal Code (“SDMC”) section 143.0740 and nine waivers pursuant to SDMC section 143.0743. The specifics of each request are outlined below.

Incentive Request

The requested incentive would modify the ground floor and street frontage requirements pursuant to SDMC section 159.0306 due to the identifiable and actual cost savings associated with providing residential units on the ground floor rather than building out that space for commercial use in satisfaction of the street frontage requirements. Attached as Exhibit A is a cost estimate prepared by Murfey Company, Inc. showing the additional expense that would be required in order to satisfy the otherwise applicable development standard, as compared to the reduced expense associated with building residential units in that location. There is no evidence that granting the incentive would have a specific, adverse impact on public health or safety that could not be mitigated, and the Property is not listed on the California Register of Historical Resources. Granting the incentive would not violate state or federal law. As a result, there is no basis for denial pursuant to Government Code section 65915(d) or SDMC section 143.0740. The Applicant reserves the right to a second incentive if needed in the future.

Waiver Requests

The Applicant first seeks a waiver to allow an increased floor area ratio (“FAR”). SDMC section 159.0307(c)(1) imposes a maximum of 1.0 FAR, or 12,890 square feet. The Project as designed would reach 1.27 FAR, or 16,366 square feet. Imposition of the FAR requirement from SDMC section 159.0307(c)(1) would physically preclude construction of the Project, which is a qualifying density bonus project. The Legislature expressly identifies FAR requirements as development standards subject to waiver in Government Code section 65915(o)(2). Granting the waiver would not violate state or federal law, and the Property is not listed on the California Register of Historical Resources. Moreover, there is no basis for a determination that the waiver would result in a specific adverse impact upon health or safety that could not be mitigated. As a result, the waiver must be granted pursuant to Government Code section 65915(e) and SDMC section 143.0743.

The Applicant next requests a waiver to eliminate the Street Façade Envelope requirement in SDMC section 159.03.07(e), which states that a street facade envelope shall be created along any property line adjacent to any public street. The envelope shall be measured 20 feet vertically and at the top thereof, shall slope back at a 45-degree angle toward the interior of the lot. The Project proposes eliminating this requirement since imposition of the street façade envelope requirement would physically preclude construction of the Project, which is a qualifying density bonus project. Granting the waiver would not violate state or federal law, and the Property is not listed on the California Register of Historical Resources. Moreover, there is no basis for a determination that the

Kelly Moden, Chairperson
September 18, 2024
Page 3

waiver would result in a specific adverse impact upon health or safety that could not be mitigated. As a result, the waiver must be granted pursuant to Government Code section 65915(e) and SDMC section 143.0743.

The Applicant requests a waiver to eliminate the requirement in SDMC section 159.0309(d) for at least 150 square feet of Private Exterior Open Space per unit. The Project provides private open space for 10 of the 13 total units. Imposition of the requirement would physically preclude construction of the Project, which is a qualifying density bonus project. Granting the waiver would not violate state or federal law, and the Property is not listed on the California Register of Historical Resources. Moreover, there is no basis for a determination that the waiver would result in a specific adverse impact upon health or safety that could not be mitigated. As a result, the waiver must be granted pursuant to Government Code section 65915(e) and SDMC section 143.0743.

The Applicant also requests a waiver to eliminate the requirement in SDMC section 159.0409 for an on-site loading area of at least 600 square feet. Imposition of the typical loading area regulations would physically preclude construction of the Project, which is a qualifying density bonus project. Granting the waiver would not violate state or federal law, and the Property is not listed on the California Register of Historical Resources. Moreover, there is no basis for a determination that the waiver would result in a specific adverse impact upon health or safety that could not be mitigated. As a result, the waiver must be granted pursuant to Government Code section 65915(e) and SDMC section 143.0743.

The Applicant seeks a waiver to reduce the Minimum Dimensions for Automobile Parking Aisles in SDMC section 142.0560(c). The minimum dimensions for one-way and two-way circulation, which are shown in SDMC section 142.0560(c) Table 142-05L, require 24-feet of aisle width for two-way circulation. The Project proposes a 19-foot-wide entry access aisle into the parking garage. Imposition of the typical parking aisle dimensions would physically preclude construction of the Project, which is a qualifying density bonus project. Granting the waiver would not violate state or federal law, and the Property is not listed on the California Register of Historical Resources. Moreover, there is no basis for a determination that the waiver would result in a specific adverse impact upon health or safety that could not be mitigated. As a result, the waiver must be granted pursuant to Government Code section 65915(e) and SDMC section 143.0743.

The Applicant requests a waiver to eliminate the requirement in SDMC section 131.0456 that the Project provide at least 300 square feet, or 25 square feet per dwelling unit, whichever is greater, of Common Open Space. The Project proposes 13 dwelling units, which equates to 325 square-feet. Compliance with the common open space requirement would physically preclude construction of the Project, which is a qualifying density bonus project. Granting the waiver would not violate state or federal law, and the Property is not listed on the California Register of Historical Resources. Moreover, there is no basis for a determination that the waiver would result in a specific adverse impact upon health or safety that could not be mitigated. As a result, the waiver must be granted pursuant to Government Code section 65915(e) and SDMC section 143.0743.

Kelly Moden, Chairperson
September 18, 2024
Page 4

The Applicant next seeks a waiver to eliminate the requirement for a Street Corner Lot Setback in SDMC section 159.0307(b)(6)(a). The SDMC states that a building on a street corner lot shall be set back behind an imaginary line that connects a point on each of the street front property lines, which is distant from the corner by a length equal to 20 percent of the parcel frontage along that street, or 20 feet, whichever is less. The Project proposes to reduce this requirement from a 20 foot triangle to an 8 foot triangle. Compliance with the setback requirement would physically preclude construction of the Project, which is a qualifying density bonus project. Granting the waiver would not violate state or federal law, and the Property is not listed on the California Register of Historical Resources. Moreover, there is no basis for a determination that the waiver would result in a specific adverse impact upon health or safety that could not be mitigated. As a result, the waiver must be granted pursuant to Government Code section 65915(e) and SDMC section 143.0743.

The Applicant requests a waiver to reduce the Vehicular Circulation Within Parking Facilities requirement in SDMC section 142.0560(d)(3). The applicable section states that aisles that do not provide through circulation shall provide a turnaround area at the end of the aisle that is clearly marked to prohibit parking and has a minimum area equivalent to a parking space. Compliance with the vehicular circulation requirement would physically preclude construction of the Project, which is a qualifying density bonus project. Granting the waiver would not violate state or federal law, and the Property is not listed on the California Register of Historical Resources. Moreover, there is no basis for a determination that the waiver would result in a specific adverse impact upon health or safety that could not be mitigated. As a result, the waiver must be granted pursuant to Government Code section 65915(e) and SDMC section 143.0743.

Finally, the Applicant seeks a waiver to eliminate the Motorcycle Parking requirement in SDMC section 142.0530(g). The SDMC mandates a ratio of two percent of the number of automobile parking spaces provided or two spaces, whichever is greater. Compliance with the parking requirement would physically preclude construction of the Project, which is a qualifying density bonus project. Granting the waiver would not violate state or federal law, and the Property is not listed on the California Register of Historical Resources. Moreover, there is no basis for a determination that the waiver would result in a specific adverse impact upon health or safety that could not be mitigated. As a result, the waiver must be granted pursuant to Government Code section 65915(e) and SDMC section 143.0743.

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law

Kelly Moden, Chairperson
September 18, 2024
Page 5

Additional information regarding the Project, and specifically the incentive and waiver requests described above, can be found in the Report to Planning Commission, dated September 12, 2024. In addition, the Applicant and its consultant team will be present at the Planning Commission hearing on September 19, 2024, and will be happy to answer any questions at that time.

Thank you in advance for your consideration.

Very truly yours,



Heather S. Riley

HSR:ptl

cc: Shannon Eckmeyer, Esq.
Mr. Benjamin Hafertepe

Kelly Moden, Chairperson

September 18, 2024

Page 6

EXHIBIT A

PROJECT COSTS:	Corner Retail	All Retail @ LJB
Construction		
Garage	\$ 821,850	\$ 1,109,498
Commercial	\$ 215,629	\$ 616,239
Contingency	\$ 782,437	\$ 871,062
Tenant Improvement Leasing Commissions		
Tenant Improvement Allowance	\$ 185,500	\$ 525,000
Leasing Commissions	\$ 16,695	\$ 47,250
TOTAL PROJECT COSTS:	\$ 2,022,111	\$ 3,169,048
DIFFERENCE WITH ALL RETAIL @ LJB		\$ 1,146,937



The Law Office of
Julie M. Hamilton

September 17, 2024

Chairperson Kelly Modén
San Diego Planning Commission
1222 First Avenue, MS 501
San Diego, CA 92101
planningcommission@sandiego.gov

VIA EMAIL

RE: ITEM 5, ADELANTE TOWNHOMES, PRJ - 1073585

Dear Madame Chairperson:

I represent La Jolla Village Residents Association regarding the Adelante Townhomes project being heard by the Planning Commission on September 19, 2024. This project cannot be approved as currently proposed. The project is not consistent with the La Jolla Planned District Ordinance (“PDO”). The PDO is the certified local coastal program for this area of La Jolla. The state density bonus law is subordinate to the Coastal Act. (*Kalnel Gardens, LLC v. City of Los Angeles* (2016) 3 Cal.App.5th 927, 944.) “Any incentives, waivers, reductions of development standards, and parking ratios to which the applicant is entitled under this section shall be permitted in a manner that is consistent with this section and Division 20 (commencing with Section 30000) of the Public Resources Code.” (Government Code section 65915, subd. (m).) The LCP embodies the state policies of the Coastal Act. Essentially, any conflict with the certified LCP is a conflict with the Coastal Act. (*Kalnel Gardens, LLC, supra*, 3 Cal.App.5th at 940.) Therefore the requirements of the PDO supersede state housing law and the municipal code.

The findings approving a coastal development permit cannot be made because the project conflicts with the clear, objective policies of the PDO. As the staff report states, the project site is in Zone 4 of the PDO. Zone 4 includes neighborhood commercial areas and the development standards are intended to maintain the retail community serving and visitor-serving uses. The applicant is proposing the development of 13 condominium units with one very low-income unit and 1,060 sf of retail space. The applicant is requesting a housing density bonus allowing an additional four units above the allowed density based on the provision of one affordable unit.

Incentives and Waivers

As discussed above, the applicant is not entitled to incentives and waivers that are not consistent with the PDO. The PDO is the LCP and the LCP supersedes Government Code section 65915 and precludes the use of any more lenient policies of the municipal code.¹

Ground Floor Retail

The PDO requires 50% of the ground floor area and 50% of the street frontage must be retail uses. (SDMC §159.0306.) The applicant has not specified the ground floor gross floor area, LJVRA assumes 50% of the gross floor area is the ground floor gross floor area based on the applicant's representation there are two floors.² The project plans show a gross floor area of 16,489 sf; LJVRA assumes a ground floor area of over 8,000 sf. This project must provide a minimum of 4,000 sf of retail space with a minimum of 118 feet of street frontage [the street frontage must include Forward Street as well]. The applicant is relying on an incentive to provide 1,060 sf of retail space with a street frontage of 79.5 feet.

Because this project is located in an area controlled by an LCP; incentives that conflict with the LCP are not allowed. Failing to require the minimum retail not only conflicts with specific PDO regulations, it defies the purpose of Zone 4 to “maintain the retail community serving and visitor serving uses and encourage the development of some community serving offices, and residences.” (SDMC §159.0301(f).) In the first part of this century, this section of La Jolla Boulevard went through an extensive street improvement designed to slow down traffic and encourage pedestrian activity. The community expended hundreds of volunteer hours to form a Maintenance Assessment District to enhance the pedestrian experience along La Jolla Boulevard. Allowing a residential project to be built with minimal retail uses is a trend that will defeat the purpose of the community's improvement of La Jolla Boulevard in the Bird Rock neighborhood.

Floor Area Ratio

The applicant and staff relied on the calculation of gross floor area in the municipal code rather than relying on the definition of gross floor area contained in the PDO. The PDO specifies that gross floor area shall include all horizontal area within the surrounding walls, including shafts and enclosed stairwells at all levels. (SDMC §159.0111.) Sheet A201 (p. 9 of the plans) shows that each unit has a storage area and enclosed stairwell in the garage, some of these enclosed areas also include a washer and dryer for that unit. Under the gross floor area definition of the PDO; those areas must be included in the gross floor area.

The PDO does not include provisions to allow a floor area ratio density bonus greater than 1.0, unless the project includes the required ground floor area retail. (SDMC §159.0307(c)(2).) This project does not provide the required ground floor retail; therefore, it is

¹ “Where there is a conflict between the Land Development Code and the La Jolla Planned District, the Planned District applies.” (SDMC §159.0103.)

² LJVRA believes the project is actually three stories.

not eligible for an FAR greater than 1.0. Since the FAR is used in the PDO (SDMC § 159.0307 (c)(1)) to control density, SDMC § 143.0740 (b)(4) does not allow an increase over the maximum as an incentive, let alone a waiver. Violating the FAR requirement results in a bulkier project, inconsistent with the purpose of the PDO to protect the unique character of La Jolla by maintaining the traditional building scale and facades in new commercial developments. (SDMC §159.0101(b)(3).)

Street Façade Envelope

The project also relies on a waiver of the required street façade envelope. SMDC §159.0307(e) requires a street façade envelope that slopes back beginning at 20' vertically. The envelope shall slope back at a 45-degree angle. This provision is meant to break up the bulk and scale of building and maintain the traditional scale of the commercial areas. Not only does this building not maintain the scale of the visitor-commercial area of Bird Rock; the building presents a 6' wall along most of the La Jolla Boulevard Street frontage. (See Sheet A303, p.15 of plans.)



Private Exterior Open Space

The applicant is maximizing the use of the lot in a manner that exploits the community and the potential residents. The waiver requested for private open space violates the PDO and fails to provide the private open space necessary to break up the facades and provide for healthy living. Nowhere is the lack of private open space more evident than on Unit C.1.1 located on the ground floor of the southeast corner of the proposed project. This unit has an entry that opens within a few feet of the trash enclosure. The applicant has stated this will be the affordable unit. (Sheet A307, p. 19 of plans.)



2 SOUTHEAST PERSPECTIVE

Street Corner Lot Setback

The purpose of the street corner lot setback requirement in the PDO is again to maintain the character of the commercial area of La Jolla/Bird Rock. Corner setbacks allow for adequate visibility and provide spaces for people to gather and creates a pedestrian-friendly environment. This violation of the PDO disrupts the commercial vitality of this area by building the project on the setback at a corner with a roundabout. The applicant has provided a small 8' of corner setback on this vital corner in Bird Rock. Although the plans depict a plaza area with multiple tables in this location, there is no space for this and the perspectives show the reality of a minimal corner setback.



③ NORTHWEST PERSPECTIVE- 2

Sheet A309, p.21 of Plans.



Sheet A305, p. 17 of Plans.

Three Stories Are Not Allowed in Zone 4 of the La Jolla PDO

The applicant has gone to great pains to modify the original the project so the first floor is no longer more than 6 feet above grade. It is now exactly 5.9 ft above grade as shown on Sheet A301 to comply with SDMC §113.0261 (d). However, the applicant has not provided the required topographic map or grading plan clearly depicting existing grade and proposed grade. In addition, the PDO and the municipal code show this development is technically three stories. SDMC §113.0261 (a) requires the first floor be within 2.5 ft of grade. It is not. SDMC §159.0110 (m) defines the ground floor as that the floor which is closer to street grade. In this case it is the garage floor. These combined requirements show this is a three-story structure and is why the La Jolla Blvd “first floor” is six feet from the sidewalk grade and above the heads of most pedestrians. It violates SDMC §159.0307 (d)(2)(B) which requires no more than two stories in PDO Zone 4. The Zone 4 two story limit has been tested at least once in superior court and was upheld by that litigation.

Thank you for your time and consideration of the issues raised in this letter. I remain available for questions or if additional information is needed.

Regards,



Julie M. Hamilton
Attorney for
La Jolla Village Residents Association

From the Desk of Keith B. Jones

Keith B. Jones
6010 Folsom Drive
La Jolla, Ca 92101
619-233-6624
9/18/24

Planning Commission
City Administration Building, 12th Floor
202 C Street
San Diego, California 92101

Dear Members of the Planning Commission,

I am writing to express my full support for the Adelante project, a 13-unit townhome development located at 5575 La Jolla Boulevard. As a homeowner, resident of this neighborhood, and lifelong resident of San Diego, I believe this project will contribute positively to the area in several important ways.

First and foremost, Adelante offers much-needed housing in a region where demand continues to outpace supply. With rising housing costs and a shortage of available homes, especially for young families and professionals, this development will provide an opportunity for more people to live and thrive in our beautiful community. Increasing the supply of housing in a responsible and thoughtful manner, as this project does, will help alleviate some of the pressure on our local housing market.


The design and scale of the Adelante townhomes are in harmony with the character of our neighborhood. The project blends seamlessly into the existing fabric of La Jolla Boulevard, preserving the coastal charm while adding a modern yet respectful aesthetic. The developers have taken care to ensure that the height and density are appropriate for the area, maintaining a sense of balance between new development and the existing homes around it.

It is worth noting that the Adelante project reflects the City's broader goals of creating more sustainable, high-density housing near urban centers. By focusing growth in areas like La Jolla Boulevard, we can reduce the environmental impact of sprawl and better utilize our existing infrastructure.

I ask that you support the approval of the Adelante project. It represents responsible development that will enhance our community, provide much-needed housing, and promote long-term sustainability. I encourage the Planning Commission to approve this project and allow it to move forward for the benefit of our neighborhood and future generations of residents.

Thank you for your time and consideration.

Sincerely,



Keith B. Jones
Homeowner, La Jolla, Ca

September 17, 2024

Planning Commission
City of San Diego

Via: Email: planningcommission@sandiego.gov

Re: September 19, 2024 Planning Commission Hearing
Agenda Item 5: ADELANTE TOWNHOMES - 5575 La Jolla Blvd.
PRJ-1073585
COASTAL DEVELOPMENT PERMIT and TENTATIVE MAP

Dear Planning Commissioners,

The required finding for a Coastal Development Permit that:

§126.0708 Findings for Coastal Development Permit Approval

An application for a Coastal Development Permit may be approved or conditionally approved only if the decision maker makes all of the *findings* in Section 126.0708(a) and the supplemental *findings* in Section 126.0708(b) that are applicable to the proposed *development*.

(a) Finding for all Coastal Development Permits

- (3) The proposed *coastal development* is in conformity with the certified *Local Coastal Program land use plan* and complies with all regulations of the certified Implementation Program.

cannot be made because the proposed project is **not in conformity** with the *La Jolla Community Plan and Local Coastal Program Land Use Plan* or the *La Jolla Planned District Ordinance (San Diego Municipal Code, Chapter 15, Article 9)*.

The **COMMUNITY LAND USE MAP** on page 3 of the *La Jolla Community Plan and Local Coastal Program Land Use Plan* designates the site at 5575 La Jolla Blvd as 'Commercial/Mixed Use'



Legend	
	Very Low Density Residential (0-5 DU/AC)
	Low Density Residential (5-9 DU/AC)
	Low Medium Residential (9-15 DU/AC)
	Medium Residential (15-30 DU/AC)
	Medium High Residential (30-45 DU/AC)
	Commercial/Mixed Use
	Parks, Open Space
	Schools
	Cultural
	Community Facilities

But contrary to the *La Jolla Community Plan and Local Coastal Program Land Use Plan* the proposed Adelante Townhomes project contains less than the require amount of Commercial Use

San Diego Municipal Code, Chapter 15, Article 9, La Jolla Planned District Ordinance (LJPDO),

Per the La Jolla Planned District Ordinance (LJPDO), San Diego Municipal Code, Chapter 15, Article 9, Divisions 1 through 4, the project is located in Zone 4 of the La Jolla Planned District.

SDMC Sec. 159.0301(f) states the intent of Zone 4 is to “... maintain the retail community serving and visitor serving uses, and encourage the development of some community serving offices and residences.”

(f) ZONE 4: Pearl Street and La Jolla Boulevard

This zone includes neighborhood commercial areas characterized by small retail shops. Development in this zone is dominated by community serving and visitor service retail uses. This area, unlike the other zones, is automobile oriented because of its location along major streets. Development standards for this zone are intended to maintain the retail community serving and visitor serving uses, and encourage the development of some community serving offices, and residences.

To maintain community serving retail use in Zone 4, LJPDO Sec. 159.0306(a) states that a minimum of 50% of the Gross Ground Floor Area shall be Retail use:

§159.0306 Ground Floor and Street Frontage Requirements

- (a) Retail - Retail uses are required on the ground floor as shown in Table 159-03A.

Table 159-03A

Retail

Zone	Minimum Percent of Gross Ground Floor Area	Minimum Percent of Structure's Street Frontage Length
1	50% ⁽¹⁾	75%
2	No minimum required	No minimum required
3	50%	50%
4	50%	50%
5	Not applicable	Not applicable
6	Not applicable	Not applicable

Contrary to the **50% minimum** Retail requirement of LJPDO Sec. 159.0306(a) above, and according to the architect's Development Summary on Dwg. No. A001 and the Building Area Summary on Dwg. No. A104, of the project's 7,900 s.f of Ground Floor Gross Floor Area only 1,060 s.f (**13.4 %**) is Retail use.

Additionally, LJPDO Sec. 159.0306(c) says Residential uses on the ground floor are not permitted within the front 50% of the lot.

- (c) Residential - Residential uses shall be restricted on the ground floor as shown in Table 159-03C.

Table 159-03C

Residential

Zone	Restriction
1	Not permitted within front 50% of lot
2	No restriction
3	Not permitted within front 50% of lot
4	Not permitted within front 50% of lot
5	No restriction
6	Not applicable

Contrary to LJPDO Sec. 159.0306(c) where Residential use is **not permitted within the front 50 percent** of the Ground Floor, the proposed Residential uses as depicted on Sht. No. A101 **occupy more than three quarters of the front 50 percent of the Ground Floor.**

Adelante Townhomes Project Exceeds the Maximum Allowed Gross Floor Area and FAR for the Zone

The project is in Zone 4 of the La Jolla Planned District. The *La Jolla Community Plan* designates the allowed land use as Neighborhood Commercial. La Jolla Planned District Ordinance SDMC Sec.159.0307(c)(1) limits the Commercial Maximum Base Zone Floor Area Ratio (FAR) to an FAR of 1.0.

(c) Floor Area Ratio

- (1) Maximum Base Density. Except as provided in Section 159.0307(c)(2), the maximum development density shall be as indicated in Table 159-03D.

159-03D

Maximum Base Density

Zone	Maximum Base Floor Area Ratio (FAR) Permitted Per Lot	Maximum Office FAR or Area Permitted Within Maximum Base FAR ⁽¹⁾
1	1.3	0.5 or 5,000 gross sq.ft., whichever is less
2	1.3	1.0 or 5,000 gross sq. ft., whichever is less
3	1.3	0.7 or 5,000 gross sq.ft., whichever is less
4	1.0	0.5 or 5,000 gross sq. ft., whichever is less
5	1.5	Not applicable
6	No restriction	Not applicable

SDMC Sec.159.0307(c)(2)(A) increases the Maximum Floor Area Ratio for **Residential / Retail Use** projects (with no offices) to **1.3**, provided a minimum of 16 percent of the total gross floor area is in retail use.

(2) Maximum Bonus Density

(A) A residential/retail mixed use project (with no office uses), shall contain a minimum of 16 percent to a maximum of 50 percent of the total gross floor area in retail use, and the remainder of the total gross floor area in residential use, the maximum building floor area ratio shall be as described in Table 159-03E. The ground floor requirements for retail use, as set out in Section 159.0306(a) shall apply.

Table 159-03E

Residential/Retail Use Projects

Zone	Maximum Building Floor Area Ratio (including bonus)
1	1.7
2	1.7
3	1.7
4	1.3
5	Not permitted
6	Not permitted

According to the architect's Development Summary on Sht. No. A001, and the Building Area summary on Sht. No. A104 the project has a Gross Floor Area of 16,366 s.f. of which only 1,060 s.f. is Retail use. The Retail Use is only **6.4 percent** of the total Gross Floor Area.

Because the proposed project only provides 6.4 percent of total Gross Floor Area as Commercial Use. (1,060 s.f. Commercial / 16,366 s.f. Gross Floor Area = **6.4%** Commercial) the project **does not qualify** for a Residential / Retail FAR density bonus. As such the project is limited to a Maximum Base Zone FAR of **1.0**.

Contrary to the maximum allowed FAR of 1.0, according to the architect's Development Summary on his Drawing No. A001, not including portions of the partial subterranean garage to be included in the Gross Floor Area, the project proposes a Gross Floor Area 16,366 sq. ft. resulting in a Floor Area Ratio (FAR) of 1.27 (16,366 s.f. / 12,890 s.f. = 1.27) for a project with little Retail Use. As such the proposed gross floor area exceeds the maximum allowed Gross Floor Area and FAR by 27%

The proposed project is clearly not in compliance with the La Jolla Planned District Ordinance.

Required Finding for a Coastal Development Permit

The Adelante Townhomes Project is seeking a Coastal Development Permit. According to SDMC Sec. 126.0708 a Required Finding for a Coastal Development Permit is:

- (3) The proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program.

Because the proposed project's use is **not in conformity** with the land use designations of the La Jolla Community Plan and Local Coastal Program Land Use Plan; and because the proposed project is **not in compliance** with the La Jolla Planned District Ordinance of the San Diego Municipal Code, the required 'Finding' for a Coastal Development Permit simply **cannot be made**.

Thank you for your consideration of these important issues of non-compliance with the San Diego Municipal Code and the *La Jolla Community Plan and Local Coastal Program Land Use Plan*.

Respectfully.



Philip A. Merten, AIA

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September 18, 2024

Chairperson Kelly Modén VIA EMAIL
San Diego Planning Commission
1222 First Avenue, MS 501
San Diego, CA 92101
planningcommission@sandiego.gov

RE: September 19, 2024 Planning Commission Agenda Item 5, ADELANTE TOWNHOMES, PRJ-1073585

References:

1. P. Merten, "September 19, 2024 Planning Commission Hearing Agenda Item 5: ADELANTE TOWNHOMES – 5575 La Jolla Blvd. PRJ-1073585, COASTAL DEVELOPMENT PERMIT and TENTATIVE MAP," dated September 17, 2024.
2. J. Hamilton, "ITEM 5, ADELANTE TOWNHOMES, PRJ – 1073585," dated September 17, 2024.

Honorable Chair and Commissioners,

The applicants' development project does not meet the required findings for a Coastal Development Permit (Ref. 1) or a Tentative Map. The project proposes multiple violations of the La Jolla Community Plan and Local Coastal Program Land Use Plan (LCP) and the La Jolla Planned District Ordinance. Since the required findings cannot be made, please deny the development project.

This letter includes:

- A description of the project site;
- A description of the proposed development;
- The necessary findings for approval of the proposed development, and
- Some of the unmet requirements of the La Jolla Planned District Ordinance (PDO).

PROJECT SITE

The proposed Adelante Townhomes development is planned for the south east corner of Forward Street and La Jolla Blvd in the Bird Rock neighborhood. The site is on the east side of La Jolla Blvd just north of the BMW place. There is an existing 3,000 sq. ft single story building on the 12,890 sq. ft. site with a 17 space parking lot which provides overflow parking for the adjacent business. The zoning for this site is La Jolla Planned District Ordinance is Zone 4, which **requires** retail and allows office and residential when combined with retail. It is considered visitor and neighborhood serving commercial and allows a *maximum* FAR density of 1.0 with a possible maximum residential density of 29 du/ac subject to the PDO's constraints. A project which meets specific mixed use requirements is permitted a maximum FAR bonus density of 1.3.

This site is in the Transit Area Overlay and the Beach Parking Impact Zones. The site is not on a major transit corridor. To qualify as a major transit corridor, there must be an existing or planned intersection of two bus lines that operate at 15-minute intervals during the morning and evening peak commute hours. La Jolla Boulevard has one bus line, MTS Route 30 that operates at 15 minutes intervals. There is no second line anticipated in the 2021 (current) regional transportation plan. Development on site does not qualify for parking modifications under AB2097 because it is not within ½ mile of a major transit center.

The site is in the Bird Rock Maintenance Assessment District (MAD). The City worked closely with the Bird Rock community to secure funding for implementation of a traffic calming and landscape plan. After thousands of volunteer hours the plan was implemented and the neighborhood formed the MAD achieving the goal of making La Jolla Blvd in Bird Rock safe and walkable for this neighborhood and visitor serving retail zone.

PROPOSED DEVELOPMENT

The proposed development consists of 13 dwelling units and one small retail unit, all for-sale. Five townhomes fronting on La Jolla Blvd are proposed, along with eight, one-bedroom flats stacked at the back of the lot, one of which is an affordable unit, 15 semi-underground parking places for the residential use, one of which is accessible, 2 residential motorcycle spaces, no parking for the retail space, multiple outdoor staircases, 10 roof top decks and one 1,060 sq. ft. retail space at the northwest corner of the site. Excluding the exterior staircases the total square footage is 26,591 sq.ft. The site is adjacent to the alley. There is no on-street parking allowed on the perimeter of the site. There is a semi-underground garage which is accessed only via a private easement from the adjacent property owner. There is no retail use parking or guest parking and the residential parking is inadequate. There is no loading zone and no on-street parking so deliveries and move-in/outs along with ride shares may be difficult and cause traffic issues on La Jolla Blvd and Forward Street. An EMRA is required to accommodate one of the exterior staircases on La Jolla Blvd (Sheet C1.0).

REQUIRED FINDINGS FOR APPROVAL

The proposed development requires approval of a Coastal Development Permit and a Tentative Map. The Land Development Code in San Diego Municipal Code Section (SDMC) 126.0708 (a)(1) gives the required findings for a CDP and SDMC 125.0440 gives the required findings for a TM. The key findings for this discussion are:

- SDMC 126.0708(a)(3) The proposed *coastal development* is in conformity with the certified *Local Coastal Program land use plan* and complies with all regulations of the certified Implementation Program [CDP required finding], and
- SDMC 125.0440(b) The proposed *subdivision* complies with the applicable zoning and development regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code [TM required finding].

Both of these findings cannot be made because the project does not conform to the PDO, and consequently does not conform to the Local Coastal Program Land Use Plan as required by the CDP findings. The project does not comply with the applicable zoning and development regulations of the LDC as defined by the PDO.

REQUIREMENTS OF THE LA JOLLA PDO

The La Jolla PDO was approved by the San Diego City Council in 1983. Its regulations are used to implement the La Jolla Community Plan and Local Coastal Land Use Plan (LCP), and it is included by specific reference in the LCP: "[T]he regulations of the La Jolla and La Jolla Shores Planned District Ordinances which are incorporated herein by reference." (LCP, p.87")

The proposed development is in the Coastal Overlay Zone and the voter-approved California Coastal Act provides special protections for the Coastal Zone. La Jolla is designated as a "special community" of regional and state-wide significance" (LCP, p. 19) under the Coastal Act. Some of the protections of the

Coastal Act have not been considered by the applicant or the City. The State's density bonus laws may conflict with the voter approved Coastal Act and local California Coastal Commission staff have expressed their concern about the development's failure to comply with the retail requirement of the PDO. The conflict between the Coastal Act and the State Density Bonus Law is most likely to be resolved in litigation, not by the City. The State Density Bonus Law is being used by the applicant to in an attempt bust the PDO and violate the LCP.

UNMET PDO REQUIREMENTS

1. 159.0201(a) Must comply with PDO regulations
2. 159.0202(b)(1) "(N)eeds to provide a detailed topographic map showing contours and elevations shall be included."
3. 159.0202(b)(3) Include grading plans
4. 159.0301(f) "Development standards for this zone (Zone 4) are intended to maintain the retail community serving and visitor serving uses ..."
5. 159.0302(a) Permitted uses only subject to ground floor and street frontage requirements of Section 159.0306 and density requirements of 159.0307(c)(1). (Ref. 1)
6. 159.0302(a)(3) Residential development shall be limited to 29 dwelling units per net acre and subject to the development controls of the La Jolla Planned District. Proposed density is 44 du/Ac which violates the PDO.
7. 159.0306(a) Ground floor and street frontage requirements for retail. (Ref. 1)
8. 159.0306(c) Residential uses shall be restricted on the ground floor as shown in Table 159-03C. [For Zone 4 – Residential is not permitted within the front 50% of the lot] (Ref. 1)
9. 159.0307(b)(6)(A) Corner lot street setback (See discussion in Ref. 2)
10. 159.0307(c)(1) Maximum Base Density is 1.0 for Zone 4.
11. 159.0307(c)(2)(A) Maximum Bonus Density residential/retail is 1.3 for Zone 4.
12. 159.0307(d)(1) 30 foot plumb line height requirement
13. 159.0307(d)(2) Two stories limit – See discussion below.
14. 159.0307(e)(1) Street Facade Envelope
15. 159.0307(e)(3) No projections over the PROW. Balcony projecting over the PROW above the retail space.
16. 159.0307(1) Maximum FAR of 1.0 (Ref. 1)
17. 159.0309(d) Private open space requirement
18. 159.0403(a) Plan A for landscaping – does not meet because vegetation in the planters on the roof decks is not visible from the PROW. Applicant does meet the requirements for Plan B landscaping given in 159.0403(b) – without any vegetation in the planters.
19. 159.0409 Minimum 600 square foot loading zone accessed from the alley
20. 159.0111 GFA calculation to include conditioned space in the garage. PDO requirement.
21. Chapter 15, Article 9, Appendix D, Lots less than 150 ft with alley access shall not be permitted new driveways or curb cuts.
22. Chapter 14, Article 2, Division 5 (Parking Regulations) – See Parking Discussion Below.
23. 142.0560(c) Minimum parking aisle width of 20 ft
24. 142.0560(d)(1) All required parking spaces shall have convenient and direct access to a public *street* or *alley*.
25. 142.0560(d)(3) Automobile turnaround in garage without through aisles
26. 142.0560(j)(2) Existing driveways shall be modified to comply with this section when redevelopment occurs after the demolition of the primary *structure* on the *premises*.

27. 142.0560(j)(7) Within the beach impact area of the Parking Impact Overlay Zone...where any new *development* or any *redevelopment* will increase the gross floor area by 50 percent or more on a *premises* abutting an improved alley, the required *off-street parking spaces* shall be accessible from the alley.

PDO TWO STORY LIMIT (Ref. 2)

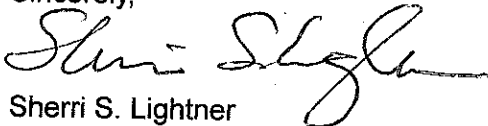
This project is technically more than two stories tall. Using the relevant provisions of the SDMC and the PDO sections of the SDMC, there are definitions for ground floor, basement, and first story and using the existing and proposed grade and street level it can be shown that the garage is the ground floor along La Jolla Blvd. Looking at the rendering or elevation along La Jolla Blvd, the Townhome facade is intimidating and presents as three stories because the front door thresholds are 6 feet up from the sidewalk. The entrances will be above the heads of most folks walking past the development. At the rear the flats' lowest floor elevation is not close enough to existing grade to be the first story. Also, as you look at the south elevation, the rear flats' lowest floor is two feet higher than the lowest floor of the Townhomes. How this gets built should be interesting.

PARKING DISCUSSION

As mentioned above, this project does not qualify for parking modifications under AB2097, because it is not within ½ mile of a major transit center. Using Table 142-05C footnote (1), the "Basic" automobile parking spaces per dwelling units minimum requirements are to be used for the residential portion of the development. As such, the required parking for the site is 22 automobile spaces for residential, 2 to 5 automobile spaces for retail, 4 motorcycle spaces for residential and retail, and 12 spaces for bicycles. The proposed development does not provide the minimum required parking.

In summary, it has been demonstrated that the building violates the PDO and, hence, the LCP. Deny the project. The required findings cannot be made. Please request that the applicant to return with a PDO/LCP compliant project.

Sincerely,



Sherri S. Lightner