

CITY OF LOS ANGELES
CALIFORNIA



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07-2351

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August 16, 2007

Lucinda Starrett
Latham & Watkins, LLP
633 W. Fifth Street, Ste. 4000
Los Angeles, CA 90071

Councilmember Greuel
City Attorney
City Planning Department
Attn: Mark Lopez
cc: Director of Planning
cc: Office of Zoning Administration
Attn: Michael Lo Grande & Gary Booher
Department of Building and Safety
c/o Zoning Coordinator
cc: General Manager

Abby Diamond
[REDACTED]
[REDACTED]

Sunland-Tujunga Alliance, Inc.
Abby Diamond
P.O. Box 123
Tujunga, CA 91043

RE: AN APPEAL OF THE ZONING ADMINISTRATOR'S DETERMINATION RELATIVE TO THE
CONVERSION OF AN EXISTING K-MART INTO A HOME DEPOT FOR PROPERTY AT 8040 WEST
FOOTHILL BOULEVARD

At the meeting of the Council held AUGUST 15, 2007, the following action was taken:

Attached report adopted	_____
Attached motion (-) adopted	_____
Attached resolution adopted	_____
FORTHWITH	_____ X _____
Mayor concurred	_____
To the Mayor FORTHWITH	_____
Motion adopted to approve communication recommendation(s)	_____
Motion adopted to approve committee report recommendation(s)	_____ X _____
Ordinance adopted	_____
Ordinance number	_____
Findings adopted	_____ X _____

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TO THE COUNCIL OF THE
CITY OF LOS ANGELES

FILE NO. 07-2351

Your

PLANNING AND LAND USE MANAGEMENT

Committee

reports as follows:

PLANNING AND LAND USE MANAGEMENT COMMITTEE REPORT relative to an appeal of the Zoning Administrator's determination relative to the conversion of an existing K-Mart into a Home Depot for property at 8040 West Foothill Boulevard.

Recommendations for Council action:

1. ADOPT the FINDINGS of the Zoning Administrator as the Findings of the Council.
2. RESOLVE TO DENY APPEAL filed by Ann Jerhoff, Esq. Home Depot U.S.A., Inc. (Patricia Keane Tegart, Esq., Latham & Watkins, Representative), from the decision of the Zoning Administrator, pursuant to provisions of Section 12.26-K of the Los Angeles Municipal Code (LAMC), AND THEREBY AFFIRM:
 - (a) The Department of Building and Safety did err and abuse its discretion in its determination (Report No. DBS-06001-DCP), that the construction work permitted by Building Permit No. 06016-10000-03354 for the conversion of an existing K-Mart into a Home Depot located at 8040 West Foothill Boulevard did not constitute a "Project."
 - (b) The conversion is a "Project" or a "Significant Project" as defined in the Foothill Boulevard Corridor Specific Plan, and therefore is subject to its regulation.
 - (c) The construction activity is herein determined to be a "Project" that is subject to Project Permit Compliance Review with the provisions of the Foothill Boulevard Corridor Specific Plan, pursuant to LAMC Section 11.5.7-C.
 - (d) The action of the Department of Building and Safety is herein reversed.
 - (e) The construction activity cannot conclusively be determined to be a "Significant Project" until the Department of Building and Safety provides further justification for calculation of replacement value and total renovation costs.

Protestant/Applicant: Abby Diamond, Sunland Tujunga Alliance, Inc. ZA 2006-9722-SPE-SPP-1A

Fiscal Impact Statement: None submitted by the Office of Zoning Administration. Neither the City Administrative Officer nor the Chief Legislative Analyst has completed a financial analysis of this report.

TIME LIMIT FILE - AUGUST 21, 2007

(LAST DAY FOR COUNCIL ACTION - AUGUST 17, 2007)

(On 7-31-07, the Council adopted Motion [Greuel - Reyes] asserting jurisdiction over the 7-19-07, North Valley Area Planning Commission's action to grant the appeal filed by Ann Jerhoff, Esq. Home Depot U.S.A., Inc., pursuant to Charter Section 245)

Summary:

On August 7, 2007, the Planning and Land Use Management (PLUM) Committee conducted a public hearing regarding an appeal filed by Ann Jerhoff, Esq. Home Depot U.S.A., Inc. (Patricia Keane Tegart, Esq., Latham & Watkins, Representative) from the decision of the Zoning Administrator, pursuant to provisions of Section 12.26-K of the LAMC, that: (a) the Department of Building and Safety did err and abuse its discretion in its determination (Report No. DBS-06001-DCP), that the construction work permitted by Building Permit No. 06016-10000-03354 for the conversion of an existing K-Mart into a Home Depot located at 8040 West Foothill Boulevard, is not a "Project" or a "Significant Project" as defined in the Foothill Boulevard Corridor Specific Plan, and therefore not subject to its regulation; (b) the action of the Department of Building and Safety is herein reversed; (c) the construction activity is herein determined to be a "Project" that is subject to Project Permit Compliance Review with the provisions of the Foothill Boulevard Corridor Specific Plan, pursuant to LAMC Section 11.5.7-C; and (d) the construction activity cannot conclusively be determined to be a "Significant Project" until the Department of Building and Safety provides further justification for calculation of replacement value and total renovation costs.

Councilmember Wendy Greuel, representing Councilmember for Council District Two and the subject site, provided testimony at the hearing. She first thanked her Council colleagues for asserting jurisdiction over this matter. She further stated that the real question is whether the conversion is a "Project" or "Significant Project" as defined in the LAMC, and in the Foothill Corridor Specific Plan. Councilmember Greuel reported that she believes that the conversion is a project, not a tenant improvement, as defined in the LAMC and Specific Plan definitions. She further elaborated on the definitions to support her view. The Councilmember suggested that, if the conversion/alteration is deemed a project, then the project will be subject to Project Permit Compliance and environmental review. This review will then require that the applicant mitigate any identified negative impacts to the surrounding community. Councilmember Greuel reported, of the 22 appeals received by the Building and Safety Department, 12 were also filed by Business property owners in the area.

The Zoning Administrator present at the hearing provided a chronology of events relative to this project and summarized that the sole issue is the issuance of a Building Permit without further review pursuant to the Specific Plan. The Zoning Administrator in his determination, reports that the conversion is a project, as defined in the Specific Plan and due to structural alterations that occurred, as defined by the LAMC. The conclusion that Structural Alteration occurred was based on the following evidence, presented by the Zoning Administrator:

- The slab floor is being replaced with a significantly thicker floor that will support a heavier rack system.
- The slab floor will be tied to the foundation and become a "supporting member" for an integrated functional structure.
- Roof support or framing beams are being structurally altered and strengthened in order to support a new roof and more Heating, Ventilation and Air Conditioning (HVAC) equipment.
- The roof is being replaced and strengthened to support more HVAC equipment.
- Exterior doors have been removed and portions of exterior walls have been opened.

Approximately 75 speaker cards were submitted at the hearing, with other interested persons in attendance on this item. The appellants, and other speakers providing testimony on their behalf and in support of the Zoning Administrator's decision, submitted photographs and other written documentation for the record. These speakers contended that the conversion is a project. Some reasons provided at the hearing to justify this position were as follows:

- The conversion included exterior alterations, including new steel beams on the loading dock and new fencing for the Garden Center.
- 110 new, 28-foot long, 16" beams would be added to the roof.
- A secondary structural alteration was provided to support existing members of the building, and that LAMC 12.03 does not make a distinction between primary and secondary structures.
- The cost of the replacement would be \$5.6 million, which exceeds the \$3.3 million (or 50% of the replacement value).

It was also reported that Home Depot U.S.A did not attempt to obtain input from the community, and that the site is located near a school in the area. Other specific details related to arguments supporting the Zoning Administrator's decision are attached to Council File No. 07-2351. In addition, several other speakers provided testimony in support of the Zoning Administrator's decision.

The applicant and representative who provided testimony in support of the Building and Safety determination, reported that the conversion of an existing K-Mart into a Home Depot, is not a "Project" or a "Significant Project." Some reasons provided by the representative for Home Depot are as follows:

- The definition of Structural Alteration in the LAMC is also used to describe discretionary approvals.
- Relative to the lack of community input, the Department of Building and Safety considered over seven hours of testimony from the community, and the North Valley Area Planning Commission thoroughly reviewed the record and technical issues involved in making its decision.
- The permit(s) requested by Home Depot are similar to other discretionary permits requested for projects in the City all the time.
- The opponents of the improvements, who contend that the alterations are a project, have provided no substantial evidence to overturn the decision of the Department of Building and Safety.

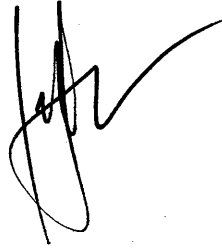
The representative for the applicant further reported that Home Depot is a good employer and neighbor, which has provided over 3,300 jobs with benefits, Citywide. It was contended that a competitor, "Do it Center" was opposed to competing hardware stores in Southern California. In addition, it was reported that the conversion should be categorically exempt. One speaker reported contended that the primary member of the structures will not be modified, and that the floor slab is not connect to the foundation. It was further contended that, the modifications to the roof were required by the Code for safety, and do not prolong the life of the building. In addition, it was reported that the some of the modifications were to provide structural support for the HVAC System, and were needed to comply with the American with Disabilities (ADA) requirements. Other specific details related to arguments supporting the Department of Building and Safety's determination are attached to Council File No. 07-2351. In addition, several other speakers provided testimony in support of the Department of Building and Safety's determination.

After careful consideration of the documents, charts and photographs, and of the testimony provided by the Zoning Administrator and speakers in attendance, the Committee recommended that Council deny the appeal filed by the Applicant/Protestant, and adopt the findings of the Zoning Administrator.

Respectfully submitted,

PLANNING AND LAND USE MANAGEMENT COMMITTEE

<u>MEMBER</u>	<u>VOTE</u>
REYES:	YES
HUIZAR:	YES
WEISS:	ABSENT



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8-9-07
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ADOPTED
MOTION ADOPTED TO APPROVE COMMITTEE REPORT RECOMMENDATION
AUG 15 2007

LOS ANGELES CITY COUNCIL
FINDINGS ADOPTED

FORTHWITH