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CALIFORNIA



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March 9, 2007

Abby Diamond (A)(R)  
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No Home Depot Campaign  
P.O. Box 123  
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Department of Building and Safety

CASE NO. DIR 2006-9072(BSA)  
BUILDING AND SAFETY APPEAL  
8040 West Foothill Boulevard  
Sunland-Tujunga-Lake View Terrace-  
Shadow Hills-East La Tuna Canyon  
Planning Area

Zone : (Q)C2-1VL, (Q)P-1VL

D. M. : 204B193

C. D. : 2

CEQA : Exempt

Fish and Game : Exempt

Legal Description : Fractional Lots 2  
and 3, Tract 18980

Pursuant to the provisions of Section 12.26-K of the Los Angeles Municipal Code, I hereby  
FIND:

that 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, is not a "Project" or a "Significant Project", as defined in the Foothill Boulevard Corridor Specific Plan, and therefore not subject to its regulation, and

that the action of the Department of Building and Safety is herein reversed, and

that construction activity is herein determined to be a "Project" that shall be subject to Project Permit Compliance Review with the provisions of the Foothill Boulevard Corridor Specific Plan, pursuant to Section 11.5.7-C of the Los Angeles Municipal Code, and

that 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.

The appeal is hereby APPROVED.

### FINDINGS OF FACT

After thorough consideration of the statements contained in the appeal, the information submitted by the Department of Building and Safety, the report of the Zoning Analyst thereon, and the statements made at the public hearing on March 14, 2006, and written material received through January 19, 2007, all of which are by reference made a part hereof, as well as knowledge of the property and surrounding district, I find as follows:

#### BACKGROUND

The property, comprised of two lots and split-between the (Q)C2-1VL and (Q)P-1VL Zones, is an irregular-shaped, interior, approximately 11 acre parcel of land with frontages on the south side of Foothill Boulevard and the west side of Woodward Avenue. The property is a leveled, cut-and-fill lot, with surrounding topography generally sloping upward to the east and south. Along the southeastern side of the property the finished grade is below the level of the adjacent right-of-way, and along the western side the finished grade is elevated above the west adjoining property. There is a 10-foot wide storm drain easement across the width of the property, located toward the rear, and one-half of a 10-foot wide public utility easement along the rear property line; neither is affected by the request.

The property is largely zoned (Q)P-1VL, with a small 448 square-foot portion along the property frontage zoned (Q)C2-1VL and a much larger portion of the property, toward the rear, also zoned (Q)C2-1VL, roughly corresponding to the existing commercial building and associated loading dock areas. The property is located within the Sunland-Tujunga-Lake View Terrace-Shadow Hills-East La Tuna Canyon Community Plan area, Major Activity Area No. 2 of the Foothill Boulevard Corridor Specific Plan area, a High Wind Velocity Area, a Hillside Grading area, a fault zone, and a Liquefaction zone. There are "Q" Conditions imposed on the property, but the appeal is not affected.

The property is developed with a one-story, approximately 94,000 square-foot commercial retail building, including approximately 4,875 square feet of automotive repair and storage use, and associated 592-space surface parking lot. Presently, the existing improvements are undergoing renovation.

Surrounding properties are zoned and developed for commercial and residential uses. Properties to the north, across Foothill Boulevard, are zoned C2-1VL and are developed with one- and two-story commercial retail and service uses. The property to the northeast, at the intersection of Foothill Boulevard and Woodward Avenue, is zoned C2-1VL and is developed with a telecommunications switching station. Properties to the east, across Woodward Avenue, are zoned R1-1 and are developed with one- and two-story single-family dwellings. Properties to the south are zoned R1-1 and OS-1XL and are developed with single-family dwellings and a concrete flood control channel. Across the channel the properties are zoned R1-1 and are developed with single-family dwellings. Properties to the west are zoned RMP-1 and are developed with a mobile home park.

Foothill Boulevard, adjoining the property on the north, is a designated Major Highway, Class II, that is dedicated a variable width of 95 to 100 feet and is improved with asphalt roadway, concrete curb, gutter, and sidewalk.

Woodward Avenue, adjoining the property on the east, is a designated Secondary Highway that is dedicated a variable width of 63 to 66 feet and is improved with asphalt roadway, concrete curb, gutter, and sidewalk.

Previous zoning related actions on the site include:

Case No. DIR 2005-0319(SPP) – On October 10, 2006, a request for Project Permit Compliance for the demolition of an existing retail building and the construction of a new retail building was terminated for lack of progress on the application.

Permit No. 06016-10000-03354 – Issued on July 24, 2006, by the Department of Building and Safety, for work described as:

“Conversion of an existing Kmart building into a Home Depot. Remove existing 2nd floor to make the structure 1-story building.”

Case No. ZA 98-0168(CUB) – On June 15, 1998, the Zoning Administrator approved a Conditional Use to permit the sale and dispensing of beer and wine only for off-site consumption, in conjunction with an existing department store/variety store (K-Mart), having hours of operation from 8 a.m. to 10 p.m. daily.

Case No. ZA 98-0167(CUB) – This case is unrelated to the subject property, and refers to 7125 Reseda Boulevard.

Case No. CPC 86-0608(GPC) – On February 20, 1989, Ordinance No. 164,330 (Subarea 1960) became effective, resulting in a change from Height District No. 1 to Height District No. 1VL.

Case No. ZA 88-0524(CUZ) – On September 14, 1988, the Zoning Administrator approved a Conditional Use to permit the installation, use and maintenance of a satellite communications system, including a wall-mounted 6-foot in diameter dish antenna extending 5 feet above the roof, having a maximum height of 24 feet above finished grade.

Case No. CPC 25215 – On November 25, 1976, Ordinance No. 148,929 became effective, resulting in a change of Zone from M1-1 and R1-1 to (Q)C2-1 and (Q)P-1, and the imposition of “Q” Qualified Conditions. (Note: There does not appear to be any substantial difference between the concurrent Ordinance and Ordinance No. 148,679, adopted and effective only several months prior. The only difference appears to be the introduction of a typographical error in Condition No. 3, which now refers to “Woodman Ave”, not the adjoining “Woodward Ave”.)

Affidavit No. AFF 42392 – On September 14, 1976, a Covenant and Agreement to Hold Property as One Parcel (lot tie) was filed with the County of Los Angeles, Recorder’s Office, involving Lots 2 and 3 of Tract 18980.

Affidavit No. OB 13937 – On September 14, 1976, a Covenant and Agreement Regarding Maintenance of Yards for Over-Sized Building was filed with the County of Los Angeles, Recorder’s Office, as Document No. 3287, requiring the maintenance of 60-foot in width yards along the north, south, and west sides of the building, and a 30-foot in width yard along the eastern side of the building.

Case No. CPC 25133 – On September 7, 1976, Ordinance No. 148,679 became effective, resulting in a change of Zone from M1-1 and R1-1 to (Q)C2-1 and (Q)P-1, and the imposition of “Q” Qualified Conditions.

Case No. ZA 13359 – On April 7, 1955, the Board of Zoning Appeals affirmed and modified (BZA 882) the decision of the Zoning Administrator, resulting in a Conditional Use to permit the expansion of an existing drive-in theater onto the rear 3-1/2-acre portion of the property located within the R1-1 Zone.

Case No. YD 4729 – On December 21, 1949, the Zoning Administrator approved a Variance to permit the construction of a motion picture screen structure for a drive-in theater, observing a maximum height of 70 feet in lieu of the maximum 45 feet otherwise permitted, on property located within the M-1 Zone. On February 14, 1950, the Board of Zoning Appeals dismissed an appeal (BZA 492) upon information from the City Attorney's Office indicating that a screen having a maximum height of 125 feet was permitted within the M-1 Zone without the necessity of a variance.

Affidavit No. AFF 4853 – This document is not related to the subject property, and refers to 1334 Vernon Avenue.

The Sunland-Tujunga-Lake View Terrace-Shadow Hills-East La Tuna Canyon Plan Map designates the property for Community Commercial land uses with corresponding zones of CR, C2, R4, and RAS3 and Height District No. 1VL. There is a symbol on the Plan Map for a Community Center either on or adjoining the property.

The property is within Major Activity Area No. 2 of the Foothill Boulevard Corridor Specific Plan. The Specific Plan contains the following two definitions that are pertinent to the subject Appeal:

**Project.** The construction, erection, structural alteration of, or addition to, any building or structure, including architectural projections attached to the exterior walls or roof structures, which requires the issuance of a building permit or a change of use permit on a lot located in whole or in part within the Specific Plan area. A Project does not include interior remodeling of a building which does not increase the floor area, or single-family dwellings.

**Significant Project.** New buildings or structures or a Project in which the aggregate value of the work in any twelve month period exceeds 50 percent of the replacement value of the existing building. The valuation shall be determined by the Department of Building and Safety.

Section 12.03 of the Los Angeles Municipal Code includes the following pertinent definition:

**Structural Alterations.** Any change which would prolong the life of the supporting members of a building or structure, such as bearing walls, columns, beams or girders.

## **BUILDING AND SAFETY ACTIONS**

On July 24, 2006, the Los Angeles Department of Building and Safety issued Building Permit No. 06016-10000-3354 for a tenant improvement to a new retail tenant, The Home Depot ("Home Depot Permit"). The work description on the permit states, "Conversion of an existing Kmart building into a Home Depot. Remove existing 2nd floor to make the structure a 1-story building." The approved plans provide a more detailed description of the scope of work, as follows:

*The existing building façade is going to be updated with new doors and new glass storefront as a tenant improvement. The interior finishes of the original K-Mart will be removed completely. This includes the partition walls, ceiling systems, existing duct work, office, electrical system and fire protection system. The existing floor slab will be replaced. The exterior of the building is being reused. New doors will replace the existing doors in the current location. The roofing material is being replaced after environmental abatement. The existing HVAC system is being replaced and a new energy efficient evaporative coolers system is designed to meet CA Title 24 requirements. The equipment is being placed on the roof....”*

The Department of Building and Safety (LADBS) considered an appeal of its action to issue a building permit and issued Report No. DBS-06001-DCP, effective October 6, 2006, which states in part:

*...In order to make its determination, the LADBS reviewed the proposed scope of work and concluded that said work did not meet the definition of ‘Project’ because it did not include structural alterations as defined in Section 4 of the Foothill Boulevard Corridor Specific Plan....*

*Furthermore, Los Angeles Municipal Code Section 12.03, defines structural alteration as, “Any changes which would prolong the life of the supporting members of a building or structure, such as bearing walls, columns, beams or girders.*

*The LADBS determined, that based on this definition, none of the work proposed in the application for the Home Depot Permit would prolong the life of the supporting members. Although structural analysis was required for some components of the building, such as for the new slab and the strengthening of roof members to support the new HVAC system, these alterations would not prolong the life of the supporting members of the building. Furthermore, there was no change of use, as both uses are retail and there were no additions or changes to the original footprint of the building evidenced by the plot plans which accompany the K-Mart Permit and the Home Depot Permit (Exhibit E and F).*

*The appellants also claim that the proposed work is also a “Significant Project” as defined in the Foothill Boulevard Specific Plan....*

*The value of the work in the Home Depot Permit is \$3,500,000.00 (Exhibit C). The replacement values of the building was estimated by the LADBS to be \$7,587,510.00, based on an average unit cost of \$70.00 per square foot, for a retail building of Type V construction (Exhibit G). The total area used also included the second floor area as this was part of the existing building. Therefore, based on this definition, the work did not constitute a ‘Significant Project’.*

*Subsection A of Section 5 of the Foothill Boulevard Corridor Specific Plan, prohibits LADBS from issuing a building permit for a “Project” unless it complies with the regulations contained therein. Inasmuch as the LADBS determined that the proposed work does not meet the criteria to be considered a “Project”, or a “Significant Project”, the LADBS did not err or abuse its discretion in issuing the Home Depot Permit. Furthermore, because a discretionary approval was not required for the proposed work, it was exempted from the California Environmental Quality Act requirements.*

*All other issues raised by the appellants assume that the work is subject to the Specific Plan. However, the LADBS and the DCP both reviewed the scope of the work and both agencies concurred that said work did not meet the criteria to require compliance with the regulations of the Foothill Boulevard Corridor Specific Plan, and therefore not subject to its regulations:*

*The LADBS did not err or abuse its discretion in its determination that the construction work permitted by Building Permit No. 06016-10000-03354, for the conversion of an existing K-Mart into a Home Depot is not a 'Project' or a 'Significant Project', as defined in the Foothill Boulevard Corridor Specific Plan, and therefore not subject to its regulations:*

*The proposed work does not prolong the life of the supporting members of the building.*

*The proposed work does not increase the floor area of the building.*

*The proposed work does not change the use of the building.*

*The proposed work does not exceed 50% of the replacement cost of the existing building.*

*The proposed work was reviewed by the Department of City Planning and deemed not to constitute a "Project".*

### **APPEAL OF BUILDING AND SAFETY DETERMINATION**

As provided under Section 12.26-K of the Los Angeles Municipal Code, the appellant appealed the determination of the Department of Building and Safety to the Director of Planning. The appellant contends that the Department of Building and Safety (LADBS) erred and abused its discretion in determining that the work associated with the conversion of an existing retail building into a warehouse-type retail construction materials store (Home Depot) was not a "Project" or "Significant Project" as defined in the Foothill Boulevard Corridor Specific Plan, and therefore not subject to the regulations under the Plan. In summary, the issues under consideration for the appeal are:

The work involves structural alteration(s), and as such, should be considered a "Project" as defined by the Specific Plan.

According to the appellant:

*A Foothill Boulevard Corridor Specific Plan 'Project' is defined as 'the construction, erection, structural alteration of or addition to any building or structure including architectural projections attached to the exterior walls or roof structures, which require the issuance of a building permit.' This means any structural alteration that prolongs the life of any structure. Obviously, the purpose for these Specific Plan definitions is to prevent and discourage owners from investing in the remodeling of inconsistent structures that will cause such inconsistent structures to last longer, as Home Depot is doing.*

*Although [Report No. DBS-06001-DCP] admits some structural analysis was performed on the new slab and the strengthening of the roof members, LADBS did not provide any details of that structural analysis, engineering data/report, or even a Uniform Building Code section to substantiate their claim that the new stronger floor slab or re-enforced roof is not a structural alteration.*

*LADBS ignores the extensive changes in the exterior appearance of the roof.*

*LADBS ignores the extensive changes to the exterior ramps.*

*LADBS ignores the overbuilding of the ADA compliance requirements.*

*LADBS misses the critical point about prolonging the life of a structure or use. Even though they may doubt the new, stronger, multi-million dollar floor or roof system 'strengthens' a support beam, column or wall, the new longer-lasting floor and the stronger roof clearly 'prolongs the life' of this 30 year old structure. The replacement of the concrete floor slab is voluntary and not required by or subject to any City or State regulation.*

*The replacement of the floor slab also indicates a major expansion and intensity of use of the structure and the site.*

The appellant argues that the reinforcements necessary to install the new, heavier, rooftop HVAC systems constitute a "structural alteration".

Further, the appellant states that a de facto change of use will occur, resulting in an after-the-fact application of Specific Plan regulations. A portion of the former discount retail store included an automotive repair use. Though the use has been discontinued in excess of a year, the use of the space for any use other than automotive repair would require a change of use, resulting in the application of the "Project" definition under the Specific Plan. Examination of the plans reveals that Home Depot does contemplate future use of the automotive repair area for various uses including offices, storage, meeting rooms, point-of-sales area, etc., however, under the present permit, it has been indicated that the area will remain vacant, without even incidental use.

The appellant does not believe that Home Depot is willing to indefinitely maintain no use in this space, and will eventually file for a change of use. However, by the time the change is applied for, Home Depot will have been operating, and review under the Specific Plan at that later time may not be able to address the larger impacts of the then existing use.

The work is being piecemealed in order to circumvent the "Significant Project" definition of Specific Plan.

According to the appellant:

*Section 4 of the Foothill Boulevard Corridor Specific Plan regards 'Significant Project' ... as follows: "New buildings or structures or a Project in which the aggregate value of the work in any twelve month period exceeds 50 percent of the replacement values of the existing building. The valuation shall be determined by the Department of Building and Safety."*

*The replacement value of the building was estimated by the LADBS to be \$7,587,510.00.*

*Five permit applications have been submitted since the original permit was issued on July 24, 2006.*

*Application No. 06043-10000-02040 – 07/29/06 Fire Sprinkler  
Application No. 06016-10000-18635 – 09/10/06 Installation of Storage Racks  
Application No. 06041-10000-21552 – 09/23/06 Electrical  
Application No. 06044-10000-09142 – 09/27/06 HVAC  
Application No. 06042-10000-22340 – 10/02/06 Plumbing”*

*These five additional permit applications will increase the value of the work, which LADBS has already estimated to be \$3.5 million for just Building Permit No. 06016-10000-03354 alone, for an aggregate value of more than 50% of the replacement value of the existing building.*

According to the appellant, and as stated previously, the later filing of a change of use for that portion of the building utilized for automotive repair appears as another method by which the present work is circumventing the appropriate application of the Specific Plan regulations prior to the establishment of the use. As the plans already indicate an intent to utilize the automotive repair area for other uses, withholding a request for a change of use at the present time in order to prevent application of the Specific Plan regulations should be considered “piecemealing” of the conversion.

In conclusion, the appellant states:

*Good planning requires that the ultimate project be evaluated at the earliest point in the process. The applicant should present the project in its entirety at the outset. Piecemealing is supposedly not allowed, yet LADBS and DCP have allowed it by having approved Home Depot’s permits.*

*The City should look at substance over form using logic and common sense. The repackaging and labeling of the Project as only involving tenant improvements is simply a deceitful ploy to avoid legally required environmental review and any public hearing to allow input by the residents impacted. The Home Depot’s plans include “structural alterations” that rise to the level of a “Project” under the Specific Plan. We believe logic and common sense show that two of the sides (floor and roof) of this 30 year-old structure will be strengthened and/or replaced, and as a result, the permitted work will prolong the life of the structure.*

*The Foothill Boulevard Corridor Specific Plan is the foundation, along with the Community Plan, for all development in the Sunland-Tujunga community. A project of this magnitude will have an enormous impact on the Sunland-Tujunga community. It reduces the Foothill Boulevard Corridor to industrial and warehouse uses which violate the Foothill Boulevard Corridor Specific Plan and the intent of the business community and residents of the area.*

*The City should make every effort to view the facts and interpret its own codes and regulations to uphold the Specific Plan and find for a Project Permit Compliance Review, a discretionary action. The determination by LADBS and DCP that the work*



*described in this matter did not constitute a 'Project' or a 'Significant Project' was an error and abuse of discretion.*

The appellant has submitted reports from Richard L. Pozzo, P.E., who reviewed several iterations of drawings proposed for the conversion. In letters dated March 10, June 5, and July 18, 2006, Mr. Pozzo made the following statements:

[The proposed new floor slab is] *...not normally considered a tenant improvement.*

*Under the Scope of Work, sheet T1, they are basically gutting the interior of the of the building, which may be considered as a Tenant Improvement; however, items such as removal of the entire existing floor slab, the major reinforcement of the roof, and site work repairs proposed consist of repaving the asphalt parking lot are over and above what is normally considered 'tenant improvement'.*

*It is our contention that modifications to the roof structure and floor slab constitute structural alterations to the building. Additionally, the work shown in total, would appear to meet the 50% threshold, since all that really remains of the "K-Mart" use is the roof structure (which is modified under the Home Depot proposal), the exterior perimeter masonry walls and the foundation. Home Depot proposes to accomplish the structural modifications shown on the roof, all new plumbing, HVAC, fire sprinkler, electrical, new floor slab, new roof surface, pneumatic tube system, and the traditional 'tenant improvements' at the offices, restrooms and employee areas.*

The appellant has submitted numerous documents, communications, and exhibits to substantiate their position, including communications from various elected officials and public servants, and mention of a petition against the proposed Home Depot containing in excess of 3,800 signatures.

### **STAFF INVESTIGATION**

Staff spoke with Senior Structural Engineer Lincoln Lee, who verbally clarified that total valuations are based on the cumulative value of all issued permits associated with a project (tenant improvement); that separate permits are routinely issued for electrical, plumbing, fire sprinklers, etc., because they have different plan check and inspection processes, and that this does not constitute "piecemeal". Mr. Lee further indicated that no use other than automotive repair could be conducted within the automotive repair use portion of the building; he also speculated that due to the length of time that the automotive repair use has been discontinued, that even this use could not be conducted without a new Conditional Use permit.

Staff spoke with Planning Assistant Anita Cerna who regularly reviews plans for compliance with the Foothill Boulevard Corridor Specific Plan, and who was familiar with the instant case. At that time, it was verbally indicated that in matters of "structural alteration" and work valuations, staff relies on LADBS to indicate if a work under review involves "structural alteration" as defined by the Specific Plan, and/or if the work exceeds the 50 percent replacement value of the existing building; Planning staff does not make an independent assessment in these matters. Further, she had a full set copy of plans previously approved; examination revealed that certain of the pages are stamped and signed by Principal City Planner Daniel Scott, and dated July 21, 2006.

On Friday, January 5, 2007, staff conducted an unannounced on-site observation of the property and the surrounding community. At that time, it was observed that the entire floor slab of the interior of the building had been removed and that grading activities were occurring in a rear portion of the interior of the building; that the exterior walls of the building were shored up with braces, and that a portion of the roof in the southwestern corner of the building had been removed. It was noted that there did not appear to be any changes or alterations to that portion of the building designated as automotive repair. It was observed that the walls, ceiling and floors all appeared intact.

At that time, staff spoke briefly with the on-site construction supervisor, who allowed staff to see the set of construction plans being used. It was observed that certain of the pages were stamped and signed by Principal City Planner Daniel Scott, and dated July 21, 2006.

### **SUPPLEMENTS TO APPEAL**

Prior to the public hearing, the appellant submitted a "Supplement to Appeal for Issuance of Building Permit Number 06016-10000-03354 (dated January 16, 2007 and attached to file) that states in part:

*...The history of this project and the events leading up to Home Depot's current permit application for "tenant improvements" are indicative of Home Depot's ultimate intention for a Project with considerable structural modification and the expansion of the former K-Mart structure. Home Depot has labeled the gutting of a 30 year old 90,000 square-foot structure, landscaping and parking lot improvements at a cost of over \$3.5 million dollars, as just "tenant improvements."*

*Home Depot and the Los Angeles Department of Building and Safety maintain these significant modifications to the property and structure is not a Specific Plan "Project", but an over the counter by-right project only subject to the Los Angeles Municipal Code. We strongly disagree with both of their claims.*

*First, for the following reasons they are clearly a Specific Plan Project:*

- 1. The only detailed findings in the record by a structural engineer are that "structural alterations" are part of the plans and are being implemented to the roof and to other supporting members of the building which "prolong the life" of those supporting members;*
- 2. In the field observations of actual work clearly show exterior walls are being modified and roof (a "support member") has been structurally altered to the point it or the wall might collapse and, thus, will require to be strengthened to allow a safe occupancy.*
- 3. A portion of the roof has been opened, removed and replaced, which is enough to have this structure be deemed a "new building", and*
- 4. No evidence or justification whatsoever has been presented by the Los Angeles Department of Building and Safety to support their decisions, which detailed justifications are necessary to prevent those decisions from being arbitrary acts and in violation of the Department's own policy.*

*Second, as far as we can determine the other Home Depot's in the City of Los Angeles are on manufacturing zoned land, not in a C2 Zone. ...*

*The detailed or supported findings supplied by the appellant, from qualified experts, are the only evidence in the record and establish that "structural alterations" are part of the plans and being implemented to the roof, slab and other portions of the K-Mart store structure, which "prolong the life" of its supporting members. ...*

*Mr. Seb J. Ficcadenti, a structural engineer and Principal with Ficcadenti & Waggoner, Consulting Structural Engineers, Inc. has carefully reviewed the Home Depot plans and visited the site to observe the actual scope and nature of the work being performed [see Exhibit "B", attached to file]. He has articulated specific facts, principles and conclusions, and some of the critical findings being:*

- 1. Roof support or framing beams are being structurally altered and strengthened. No one in this matter disputes that there have been changes and strengthening of roof framing to support the heavier and new loads of the numerous added and upgraded HVAC units.*
- 2. Roof removal and replacement. Significant portions of the entire roof are being removed and replaced in order to install the new framing and skylights.*
- 3. Portions of the walls are being strengthened. The openings on the masonry walls are being reinforced and strengthened with steel tubes and lintels.*
- 4. New slab provides necessary structural support for rack system. The first floor slab on grade is being removed and replaced because the existing 3.5 inch non-structural slab on grade is inadequate to provide foundation support for the storage racks required for the new store. A new 6.0 inch thick fiber reinforced foundation mat over 4 inches of base is being installed to provide the necessary structural support.*
- 5. The extent of this work is so great building exterior walls have been braced during construction. ...*

*Field observations of actual work show exterior walls being strengthened with temporary support members clearly showing structural alterations to the roof have weakened the structure to the point the walls might collapse and the building's supporting members must be strengthened for any safe future occupancy; and, a portion of the roof has been opened and replaced deeming this a "new building".*

*A visit to the site indicates: (1) an exterior wall over the loading dock has been modified and removed; and (2) significant portions of the roof sheathing have been and are being removed and replaced with a new roof, basically in order to install the new roof beams or framing necessary to support added weight of numerous roof mounted air conditioned units. Tenant improvements must only consist of "interior remodeling" all within the structure, which has been ignored in the actual on-site work. The magnitude and extend of the roof and beam removal is so great that the buildings exterior walls are being braced during the construction. ...*

*This is a "Significant Project" as no analysis was performed to determine the entire work for a 12 month aggregate value (not limited to just work authorized by the*

*permits), nor the actual condition of the 30 year old building necessary to determine its "replacement value". ...*

*We are informed a "Change of Use" has occurred in the auto repair area with the removal of hydraulic lifts / auto repair fixtures and disturbance of potential toxic materials without a "Change of Use" permit, environmental review and appropriate mitigation measures.*

Attached to the "Supplement to Appeal" is a letter from Richard M. Pozzo, P.E., Edward M. Pozzo Company (dated January 16, 2007 and attached to file) that states in part:

*I believe the City of Los Angeles has used the incorrect cost in assessing the replacement cost of the old K-Mart Building. The use is a hybrid between a Warehouse Discount Store, Warehouse Showroom Store, and Retail Store, i.e., it contains elements of each. Additionally, the building would be a composite of a Type C, Low Cost as classified in the Marshall & Swift Valuation. Taking these factors into consideration the approximate unit cost would be \$38.50 per square foot. ...*

*The total cost for the building replacement would be:*

<i>Basic Shell</i>	<i>\$4,897,035</i>
<i>Additional Items</i>	<i>496,185</i>
<i>Additional Slab Thickness</i>	<i>104,125</i>

*Home Depot has provided the Paddleford cost of @2,771,190.71; however, some of the above costs need to be added in order to get the true cost of the project. ...The revised total would be \$3,196,500. This amount exceeds 50% of the replacement cost by \$947,828.00. ...*

Subsequent to the public hearing, the appellant submitted an "Authorized 2nd Supplement of Appellant Sunland-Tujunga Alliance, Inc. – No Home Depot Campaign – Responses to January Submittal by Latham & Watkins" (dated February 2, 2007 and attached to file) that states in part:

*We have thoroughly reviewed the Latham & Watkins submittals dated January 16, 2007 and January 18, 2007. In response to our structural engineers' numerous factual findings (added loads to roof, newly installed beams, seismic and engineering calculations, stronger slap tied to footings of bearing walls, etc.), Latham & Watkins, on behalf of Home Depot, provides a simple one page letter from Mr. Lee of CASCO (the construction manager). A key point is that Mr. Lee agrees and admits structural changes are being made, but those alterations and new beams are "secondary structural components" of the building. The fatal flaw with Home Depot's claim and labeling is that no such distinction or qualifier is found in the definitions of a "Project" or "Structural Alteration, nor does such an exception make sense in view in the intent of the Specific Plan.*

*In place of a Los Angeles Department of Building and Safety justification for its decision, Latham & Watkins avoids a meaningful or detailed response and uses boiler plate response, like the "LADBS Report fully addresses all issues raised," which it clearly failed to do. Due to the vast magnitude of this work, the significant cost, the change of use from auto repair to sales, the indisputable fact that*

*alterations are being made to structural components of the building, the serious new safety concerns and the public policy goal and the importance of implementing the Specific Plan, the public needs and deserves a detailed, analytical, and logical justification for this possibly unsafe building and the circumventing of the Foothill Boulevard Corridor Specific Plan standards. Mr. Bookbinding, a California licensed Structural Engineer, with many years of experience and who is well aware of the Los Angeles Building Code, has now noted many details and technical facts indicating this is a "Project". See attached Findings.*

*In the meantime, we hear a portion of the roof has collapsed! However, we have not received any information about what was going on in that area of the building or why the roof was structurally compromised. If the roof collapsed with no additional equipment being added, it obviously now must be made stronger by structural alterations. In the absence of any reasonable justification, the safety reasons set forth in this appeal, and without the required Project Permit Compliance Review, the work or any occupancy must be placed on hold or stopped. ...*

*The only technical claims made are in two letters from Casco, which misinterpret the definition of "Structural Alteration" and create a new exception under the Specific Plan.*

- 1. Roof alterations necessary to support 55 new HVAC units. ...*
- 2. The new stronger floor is necessary to support the racking system. ...*
- 3. New slab tied to foundation, is a "supporting member" for the walls. ...*
- 4. The 55 exterior HVAC units on the roof are not screened. ...*
- 5. Drastically under-estimated cost of work; Extra-ordinary costly floor. ...*

*No City required "Change of Use Permit" has been requested or issued even though plans show a change of use from auto repair to pick-up and pro-desk. ...*

*There is no LADBS justification in the record for their decision – only extensive hearsay, conclusionary and non-technical allegations by Latham & Watkins. ...*

*Many serious building safety concerns now discovered. ...Home Depot is trying to avoid various seismic upgrades and retrofit obligation triggers that will run up their cost and trigger this clearly a significant project, but such antics must be overlooked when the public's safety is drawn into question. ...*

*Any bad faith is on Home Depot's side. The record shows the initial Home Depot application proposed their normal and expected Home Depot facility with demolition of the old K-Mart store. However, due to our opposition and the need for a City Project Permit Compliance Review for consistency under the Specific Plan, those prior plans were dropped as a scheme was conceived to have a new set of repackaged plans under the dubious label "tenant improvements", all without the public's review and to avoid the City's Project Permit Compliance Review process. The No Home Depot Campaign appeal with the City was delayed for many weeks at different junctures of the process due to the City bureaucracy. The No Home Depot Campaign requested a Stop Work order on several occasions since the Home Depot began construction. Home Depot, well experienced in these adverse community reactions and aware of our contemplated challenge, continued to press forward and begin construction; it has assumed all risks of an eventual finding that this is a "Project" under the Specific Plan.*

Conclusion

*All parties now agree that a change of use has occurred and some type of structural alterations were, and are being made. The Appellant believes based on the intent of the City's rules and Specific Plan, no matter whether such alterations are labeled "minor" or to "secondary support members", the work qualifies as a Project under the Specific Plan, which is a discretionary action and requires careful environmental review and compliance with CEQA.*

Attached to the "Authorized 2nd Supplement" are the "Findings of Arnold Bookbinder of Home Depot Plans and Work (dated February 2, 2007 and attached to file), summarized as follows:

*I, Arnold Bookbinder, a California licensed Structural Engineer (SE 1448) with many years of experience in that profession and well aware of the Los Angeles Building Code and the Home Depot plans for the 30 year old former K-Mart store at 8040 Foothill Boulevard, Sunland, find and state:*

*No "Secondary" support member distinction in concept of "Structural Alterations" under Section 12.03. ...*

*New slab on grade, tied to foundation, is a "Support Member" to walls and structural component that prolongs the life of the building's floor.*

*Indisputable that new slab on grade is a structural support member and component for racking system and fork lifts. ...*

*55 exterior HVAC units on roof are not effectively screened for views from Foothill Boulevard; and such roof equipment must be screened from all sides, not just Foothill Boulevard. ...*

*There are serious building safety concerns.*

- A. Actual "dead load" on roof. ...*
- B. Correct seismic factor. ...*
- C. No continuous continuity ties. ...*
- D. New roof openings weaken roof. ...*
- E. Weaker nails used. ...*
- F. Lack of expansion joints in masonry walls. ...*

*The Adverse Affect – ...Even if I am in error by 10% or more on the dead load estimate, the existing roof is exceedingly over stressed. I cannot understand how the City of Los Angeles Department of Building and Safety structural engineers are willing to ignore the above discrepancies and significant structural analysis defects.*

*Replacement value of the non-upgraded existing building is too high. ...*

PLANNING DEPARTMENT COMMUNICATIONS

A letter from Robert H. Sutton, Deputy Director, Department of City Planning, to Wendy Greuel, Councilmember, Second District (dated August 25, 2005 and attached to file)

describes matters of possible relevance per the Specific Plan, Q Conditions, and Environmental Review for a proposed Home Depot, and further states regarding use and the zoning:

*...Zoning. The site is located in a C2 Zone, which allows retail uses. According to the Department of Building and Safety, Home Depot is considered a retail use because it sells goods in small quantities directly to the consumer. Although these specific retail products are different from the previous tenant, K-Mart, the Department of building and Safety categorizes both uses as retail. Since the existing Certificate of Occupancy is retail (issued on June 21, 1977) Home Depot would not be required to apply for a change of use. Therefore, Home Depot would only be required to apply for a building permit to make tenant improvements, as long as the permit did not include any increase in square footage or façade changes. ...*

A "Valley Community Planning" memorandum from Robert Z. Duenas, Senior City Planner, Department of City Planning, to Sergio D. Valdez, Transportation Engineer, Department of Transportation, entitled "Response to Traffic Assessment for the Proposed Home Depot Located at 8040 Foothill Boulevard, Sunland, ENV-2005-0319-MND" (dated February 16, 2006 and attached to file), questions the assessment that compares the traffic generation/trips of a proposed 123,505 square-foot home improvement store to that of a 99,330 square-foot retail building. The last communication from Latham & Watkins, representing Home Depot U.S.A., Inc. (dated February 2, 2007 and attached to file) responds: "This memorandum relates to the traffic assessment letter prepared in connection with the original application to develop a new structure on the property and, therefore, is not directly related to the current approved plans to reuse the existing building."

An internal Department of City Planning memorandum entitled "Staff's Recommendation of Home Depot's Proposal to Move into Existing K-Mart Site" (dated April 6, 2006 and attached to file) was attached as Exhibit "A" to the "Supplement to Appeal" submitted by the appellant on January 16, 2007 (attached to file). This memorandum suggests, after an informal preliminary review of the early plans submitted at that time, that construction activity may be considered a "Project" and describes how the provisions of the Specific Plan may apply.

Several months later, the subject building permit was cleared by the Department of City Planning for building plans that were submitted at that later time. Two copies of the building permit "Clearance Summary Worksheet 06016-10000-03354" are contained in the file (both dated July 21, 2006 and attached to file), one with original signature by Daniel Scott and the other being a print-out of the electronic clearance by City Planning staff. The relevant clearance is for "Approval for Specific Plan: Foothill Boulevard Corridor". The clearance is accompanied by the following comment on both copies: "This building permit application does not constitute a "project" under the definition of project contained in the Foothill Blvd. Specific Plan."

### **PUBLIC HEARING**

A public hearing was held on January 19, 2007, attended by the appellant and representatives of Home Depot, Council District No. 2, and the Sunland-Tujunga Neighborhood Council. Also attending were residents and business operators on nearby properties in the community, plus representatives of allied Neighborhood Councils and

other interested persons.

No staff from either the Department of Building and Safety or the Department of City Planning testified at the public hearing.

Wendy Greuel, Councilmember, Council District No. 2, spoke first and made the following points:

- Together with the Sunland-Tujunga community, I have been fighting Home Depot for more than two years because it is a bad land use. The community needs a general store, such as a Target or Kohl's.
- The community also wants a voice as to development of the site. Home Depot has avoided community review through how the site is being developed. As a result, no conditions can be imposed and impacts are not addressed.
- The process has not been re-assuring, with the Department of Building and Safety response being only three pages.
- There are significant alterations to the building, including in the auto center.
- The use is being changed because Home Depot has a significant wholesale operation that will have greater impacts than a retail operation.
- Structural changes are being piecemealed, as indicated by portions of the building that are shown as "not a part", but which may later have further alterations.
- The cost of the remodel exceeds 50% if all factors are considered.
- There is more information occurring daily that suggests alternation of the building.
- Any one of these factors could trigger review pursuant to the Specific Plan.
- Urge that the project be reviewed pursuant to the provisions of the Specific Plan.
- Submitted a letter of opposition and concerns (attached to file).

The appellants, Sunland-Tujunga Alliance, Inc. – No Home Depot Campaign, described the nature of the appeal of the Department of Building and Safety action and made the following points:

- The Secretary for the No Home Depot Campaign said that the Appeal is supported by additional written evidence that has been submitted to the case file.
  - Concerned about the effect of the structural alterations and a Home Depot on the Quality of Life for the community.
  - Letters of opposition will be submitted from the community.
  - The site is supposed to be a community center that is neighborhood-serving.



- The site is undergoing a change of use that is subject to review by the Specific Plan.
- Also, there are environmental impacts that should be addressed pursuant to the California Environmental Quality Act (CEQA).
- The Department of Building and Safety has erred in many ways, including:
  - No permit was issued for removal of the auto repair equipment (no one knows why it was removed).
  - The site is within 500 feet of an elementary school.
  - There are significant new roof structures.
  - No Haul Route was approved.
  - A new floor slab has been installed to support the heavier equipment and goods in a Home Depot.
  - A drainage easement underneath the building was not addressed pursuant to CEQA,
- An Attorney for the Appellant stated that the General Plan should be prominent in guiding development and land use in a community, and the Building Permit does not match the General Plan.
  - The burden of evidence is on the Department of Building and Safety as to why a building permit should be issued without Specific Plan review.
  - The test is whether there is a "Project":
    - Easy test of whether the alterations are prolonging the life of the building.
    - At least \$3.5 million is being spent to strengthen and alter the building.
    - Building and Safety only looked at an average cost basis, rather than the specific costs for replacement of this building.
    - The structure is a nonconforming use that is scheduled for phase-out.
    - There have been repeated changes to the building plans that suggest further alterations.
- A Licensed Structural Engineer for the Appellant stated that the structural slab has been strengthened to support new features of the building and to withstand twice the building load and new mechanical equipment.
  - The building is now greatly compromised. There is now greater vertical load.

- The building was built in 1975 and prior to the more stringent Code provisions that were enacted after the Northridge earthquake.
- Mechanical equipment platforms should be shown on the drawings, and are not.
- Bracing of the exterior walls has occurred.
- The building needs a complete new structural analysis.
- Building and Safety has not performed an adequate analysis of all changes to the building and resulting costs.
- A Licensed General Contractor and Civil Engineer stated that Home Depot is both a retail and wholesale operation, and therefore a change of use with different impacts.
  - There is a letter in the file as to costs involved. Many cost items were not included in the calculations. Over \$4 million has been added, and therefore exceeds the 50% threshold of replacement costs.
  - The garden area is not in the same area as the original footprint of the building permit.
  - The square footage of the structure has ranged from 94,500 to 187,000 square feet on different documents.

Attorneys representing Home Depot, from the firm of Latham & Watkins, made the following points:

- Home Depot is not the property owner but the leaseholder for 20 years, with provisions for extension.
- Request to view the CD that the appellants have placed in the file.
- Home Depot wants a high quality store at this site.
- The applicant bent over backwards to follow City regulations, which involved many meetings with the Department of Building and Safety and other City departments.
- Revisions were made to ensure that alterations would be a Tenant Improvement.
- The alterations are being done as a ministerial action as a Tenant Improvement.
- There are no major alterations.
- Standard tables and formulas were used for replacement cost calculations.
- The alterations are only 34% of replacement costs.
- The piecemealing argument is not valid, because future alterations are not known and therefore cannot be evaluated.

- There is no change of use, as the use will be from retail to retail.
- The auto repair area is not part of the current plans.
- The flood control was sufficiently re-located outside the site and does not affect the structural component of the building.
- Temporary stabilizers are permitted pursuant to State Law, and do not pro-long the life of the building. The stabilizers were needed during the installation of a new floor slab.
- The collapsed roof is being replaced per the original plans.
- The garden center was always part of the original plans.
- Submitted a letter (attached to file).

The President of the Sunland-Tujunga Neighborhood Council and the Chair of its Design Advisory Committee made the following points:

- The Design Advisory Committee and the Neighborhood Council have taken an active role for evaluating site activity.
- Piecemeal changes have occurred to construction in order to avoid adequate environmental review for a large project, while the City more intensively reviews smaller projects.
- The project should have a full environmental review pursuant to the provisions of the California Environmental Quality Act (CEQA).
- Safety hazards are already occurring, such as collapse of the roof and the use of temporary stabilizers.
- The stamped, approved plans have been changed at least four times.
- The site is intended for commercial retail, not industrial and wholesale with forklifts.
- Traffic congestion will result from trucks on the changed use.
- There is a nearby school that will be impacted.
- The site is in a residential area, not an industrial area.
- The Home Depot will threaten the Quality of Life for the community, which contrasts with the Home Depot slogan "Do the Right Thing". This is not the right thing.
- Submitted letters from the Neighborhood Council and Design Advisory Committee (attached to file).

The Vice President of the Sun Valley Neighborhood Council expressed concern about the Department of Building and Safety bending over backwards to help Home Depot avoid project review pursuant to the Specific Plan.

A representative of the Northridge West Neighborhood Council stated that it voted unanimously to support the Sunland-Tujunga Neighborhood Council and Councilmember Greuel in fighting the location of a Home Depot at this site. The corporation is forcing itself on the local community. Further, construction activity is extending the life of the building for a change of use.

A representative of the Van Nuys Neighborhood Council (and a Transportation Engineer) said that there should be a traffic impact study for the entire project, including addressing the impact of trucks and construction traffic versus the proximity of elementary schools and potential earthquake hazards.

Other interested persons in the community made the following points:

- A professional city planner and former city manager said that the construction activity would not be a tenant improvement under his watch in other cities.
- A parent at a local school said that environmental waste management is a problem in the area, and that the site is within the 500-foot safety zone for elementary schools, thereby endangering the safety of students.
- Traffic safety will be imperiled.
- Home Depot should comply with the environmental review requirements of CEQA.
- There is only a minimal distance separation from an adjoining trailer park.
- The use will be different with lots of trucks and forklifts that will impact the surrounding community.
- Noise will impact the community.
- Need a general merchandise store.
- The community is upset, while the attorneys for Home Depot only make vague statements that they "believe"....
- The Department of Building and Safety should go back to evaluating the total nature of the project, and its cumulative costs and impacts and how they have changed since the original evaluation.
- Home Depot has not been cordial with the community, because it is not amenable to anything but having its own way.

Representatives for Home Depot responded:

- An attorney for Latham & Watkins said that Home Depot stores are located not just in manufacturing zoned areas, but also in commercial zones in the City.
- The flood control matter was only a paper easement rather than an improved and functional flood control channel.

- A Tenant Improvement is not subject to a preparing a Traffic Study.
- The Zoning Investigator's Staff Report and Dale Thrush have both confirmed that there is no change to the auto center area.
- An corporation executive for Home Depot said that they have the signatures of 475 persons who support the location of a Home Depot at this site.

The appellant responded:

- The simple test of "structural alterations" is evidenced by the installation of a new roof, new air conditioning equipment, and new floor slab.
- Submitted a Navigate LA map that shows the water flow under the building.
- Has had not had time to review the latest submittal from the law firm of Latham & Watkins, representing Home Depot.

At the conclusion, the Zoning Administrator announced that the public hearing was closed for further oral testimony. After consulting the appellants, Home Depot, and Council office, the Zoning Administrator further announced that the matter would be taken under advisement for two weeks, during which time period the written record would remain open for receipt of written communications to the case file.

#### WRITTEN COMMUNICATIONS

Hundreds of written communications have been submitted to the case file in the form of petitions and personal and form letters (attached to file). The appellant has provided bound copies of the following:

- "Personal & Form Letters Opposing Home Depot in Sunland – 214 Letters Gathered in 2007"
- "Petition Opposing Home Depot in Sunland – 2,027 Signatures Gathered in 2006"
- "Pledge to Boycott Home Depot in Sunland – 3,878 Signatures Gathered in 2005"

Incorporated into the case file are other innumerable letters, petitions and documents, some of which may be duplicative of the letters bound and submitted by the appellant. The substance of most of these written communications are not germane to the issue before the Zoning Administrator.

Prior to the public hearing, a letter was received from Wendy Greuel, Councilmember, Council District No. 2 (dated January 17, 2007 and attached to file) that states in part:

*Together with the Sunland-Tujunga community, I have been fighting the Home Depot project for more than two years. I will be attending the Home Depot building permit appeal on January 19, 2007, but I wanted to give you a preview of my thoughts as well as a little history of this case before the hearing.*

*The threshold issue is whether a Home Depot store on this site is consistent with good land use policy. I have been opposed to this Home Depot store since I first*

*learned about it in October, 2004, because I believe we can make much better use of the site. For example, the Sunland-Tujunga community has a real need for a general merchandise store such as a Target or a Kohl's. Currently, Sunland-Tujunga residents must drive many miles to purchase basic clothing and house wares. On the other hand, Sunland-Tujunga already has more than enough hardware and building supply stores to meet its needs. Thus, to the extent this is a policy discussion, I would argue that a Home Depot store is not an appropriate use for this site and that every effort should be made to locate a general merchandise store on it.*

*Early on, I was informed by the Planning Department that if Home Depot chose to move into the existing K-Mart building without making significant changes to it, the Sunland-Tujunga community and I would have no voice in the matter (I understand that similar remodeling permits were issued yesterday for the former K-Mart store in Glassell Park). However, if Home Depot made significant changes to the building, it could be deemed a "Project" under the Foothill Boulevard Corridor Specific Plan (the Plan), and we would be entitled to an environmental review on issues such as traffic, air quality, and noise before building permits were issued. The key question in this appeal, therefore, is whether the remodeling work proposed by Home Depot meets the definition of a "project" as set forth in the Plan.*

*"The construction, erection, structural alteration of, or addition to any building or structure, including architectural projections attached to exterior walls or roof structures, which requires the issuance of a building permit or a change of use permit on a lot located in whole or in part within the Specific Plan area. A Project does not include interior remodeling of a building which does not increase the floor area, or single-family dwellings." (Foothill Boulevard Corridor Specific Plan, Section 4, page 4)*

*I strongly believe that the appeal documents before you demonstrate that the remodeling work is a Project. I urge you to adopt that conclusion and grant the appeal. To date, the process followed in this appeal followed has not contributed to public confidence in its results. The original appeal document was about 30 pages in length and contained voluminous detail as to why the remodeling work meets the definition of a Project. Unfortunately, Los Angeles Department of Building and Safety's response consisted of three pages and virtually no detail. All the more frustrating is the fact that permits continue to be issued while this appeal is pending.*

*Over the course of this process, I have sent several letters outlining my position to the Director of City Planning, Los Angeles Department of Building and Safety, the City Attorney and Home Depot. I am attaching the following letters for your review:*

- February 15, 2005 letter to Home Depot stating my strong opposition to their new building proposal.*
- July 19, 2005 letter to Con Howe, former Director of City Planning, inquiring as to what Home Depot can do "by-right" on the site.*
- January 20, 2006 letter to the City Attorney requesting advise as to whether strategies used in a Wal-Mart case may apply to the Sunland Home Depot case.*

- *March 7, 2006 letter to Gail Goldberg and Andrew Adelman stating that I believe the remodeling work is a Project and requesting that they coordinate the efforts of their Departments to reach a joint conclusion on that issue.*
- *July 24, 2006 letter to the City Attorney requesting a review of the determination by the Planning Department and Los Angeles Department of Building and Safety that the Home Depot remodeling work is not a Project.*
- *October 30, 2006 letter to Gail Goldberg requesting that she address each and every issue raised in the Home Depot in detail.*
- *November 8, 2006 letter to Gail Goldberg requesting that she consider several specific issues that were raised at the November 6 community meeting.*

*On November 6, 2006, there was a community meeting at my Sunland-Tujunga field office that was attended by more than 300 people. For five hours, community members and I spoke about our concerns with the project. During the meeting, the following claims were made about the project, and I believe that these claims must be considered when you decide the appeal:*

- *The auto-repair area is being converted to retail use without the necessary Change of Use permit. As you know, a change of use creates a Project and triggers a Specific Plan review.*
- *Some of Home Depot's sales are wholesale which may affect Los Angeles Department of Building and Safety's conclusion that Home Depot's use category is "retail" and may be a basis for a Specific Plan review.*
- *The original appeal to Los Angeles Department of Building and Safety was based on a set of plans that was changed before the issuance of building permits. Accordingly, appellants should be allowed to submit additional materials which address the final plans.*
- *The fact that the new floor slab is physically connected to structural walls requires that structural calculation be done for the entire building in order to determine if the proposed tenant improvements included "structural alterations" that would trigger a Specific Plan review.*
- *The relocation and re-compaction of the flood control easement on the property was not documented sufficiently to establish that "structural alterations" have not occurred in the new floor slab.*
- *The cost of the remodeling work exceeds 50% of the building's replacement cost, thereby creating a "significant Project" and requiring a Specific Plan review.*

*The final issue relates to reports from community observers that construction activities at the site raise additional concerns about whether the remodeling work is a Project:*

- *Customer entrance doors appear to have been enlarged, creating the possibility that "structural alterations" have occurred.*
- *Temporary stabilizers were attached to the outside of the building, lending support to the theory that interior alterations are structural and not merely tenant improvements.*
- *Large holes have been observed in the roof, suggesting that "structural alterations" have been made.*
- *The outside wall to the south of the loading docks appears to have been lowered by several feet. Such exterior work may well fit the Specific Plan's definition of a "Project" and require a Specific Plan review.*

*I ask you to pay particular attention to the testimony on these issues and to find in our favor that a Specific Plan review is absolutely required in this case.*

A letter was submitted at the public hearing from Cindy Cleghorn, Chairperson, Sunland-Tujunga Neighborhood Council (dated January 17, 2007 and attached to file) that states in part:

*Prior to the closing of the former K-Mart store in October 2004, the Sunland-Tujunga Neighborhood Council has taken a lead role in the future use of the site. Many in the community stepped forward with concern and became involved in the process. The Sunland-Tujunga Neighborhood Council has taken two surveys; hosted several community meetings with City representatives and Councilmember Wendy Greuel. The Sunland-Tujunga Neighborhood Council has worked to keep the community informed through print, e-mail, web site and open public meetings.*

*The Sunland Tujunga Neighborhood Council voted to support eh No2Home Depot Campaign/Sunland-Tujunga Alliance, Inc. and their related documents submitted to the City. The first case in 2005 for a complete tear down of the existing site required the "project" determination and full environmental review. Later, "tenant improvements" permits only were issued by the Department of Building and Safety which have outraged our knowledgeable and active community.*

*The Department of Building and Safety has erred in issuing the tenant improvement permits on several points as described in the Sunland-Tujunga Neighborhood Council's letter of December 14, 2006 (see attached). These include change of use, inconsistent use of the existing auto repair area and the structural alterations not being called a "project". The inconsistencies indicate an intent to "piecemeal" the building permits so as to avoid the Foothill Boulevard Corridor Specific Plan Review. The community is frustrated to see so much work being done to hold up the walls and the sunshine through the gutted out, open roof building. A project of this magnitude cannot and should not move forward through the City's process without a thorough environmental review. The quality of life in Sunland-Tujunga is at serious risk, especially for our seniors and our children.*

*The commitment of the Sunland-Tujunga Neighborhood Council has covered three Neighborhood Council boards. I have compiled some copies of various correspondence from stakeholders, surveys taken and other communication of interest including support form our neighboring Councils.*



*By unanimous vote, the Sunland-Tujunga Neighborhood Council adopted the following Community Impact Statement: The Sunland-Tujunga community is a community of households with children, seniors and small business located in the mountains adjacent to the Angeles National Forest.*

*The Sunland-Tujunga Neighborhood Council, represents family neighbors, supports development in keeping with the rural nature that is in keeping with our Community Plan, Scenic Preservation Plan and Foothill Boulevard Corridor Specific Plan.*

*The impact of a proposed Home Depot on our community is devastating being totally opposite in focus to our history, rural lifestyle, community, scenic and commercial corridor plans. The Sunland-Tujunga Neighborhood Council demands that all permits issued to Home Depot be immediately revoked due to the "piecemealing" of the project, incomplete and inconsistent plans and the avoidance of all environmental review. ...*

Subsequent to the public hearing, a letter was received from Wendy Greuel, Councilmember, Council District No. 2 (dated February 2, 2007 and attached to file) that states:

*As a supplement to my letter of January 17, I wanted to bring to your attention a couple of issues that I learned about after your January 19 hearing.*

*The first matter relates to a partial collapse of the roof and the resulting repair work. Apparently, a vehicle involved in preparing the ground for the new floor slab knocked over a column, causing a portion of the roof to collapse. I understand that the repairs were made without permits and that Home Depot is in the process of "legalizing" the repairs by applying for permits after the fact. My concern is that the repairs may constitute a "structural alteration" within the meaning of the Foothill Boulevard Corridor Specific plan, resulting in the creation of a "Project" and the need for a Specific Plan review.*

*The second issue relates to welding activity on the roof of the loading dock. I understand that the remodeling permits are for interior work only, except for the Federally required Title 24 work on a portion of the parking lot. The loading dock area is on the building's exterior, so work in that area may create a "Project" and may require a Specific Plan review.*

A letter was received from Glenn Striegler, Environmental Assessment Coordinator, Los Angeles Unified School District, Office of Environmental Health and Safety (dated February 7, 2007 and attached to file) that states in part:

*The Los Angeles Unified School District (LAUSD) would like to express our concerns with the proposed Home Depot development at 8040 West Foothill Boulevard in Sunland, California. It has come to our attention that Home Depot is in the process of redeveloping a former K-Mart facility and has been exempted from preparing an Environmental Impact Report (EIR) based on not fully demolishing structures at the site. The City has determined that the project is a redevelopment and not new construction, and therefore, it does not qualify as a Project under the Foothill Boulevard Corridor Specific Plan. Hence, no EIR was required. The Office of Environmental Health & Safety has not received notifications related to the site's*

*development activities and therefore has not had an opportunity to comment on the project's impacts on our schools.*

*The site is located about 450 feet north of Apperson Elementary School and school pedestrian routes along Woodward Avenue pass adjacent to the east side of the development. Since the project may have a significant impact on the environmental integrity of our school facility, we believe that all of the potential environmental impacts related to the project need to be fully evaluated to ensure the health and safety of our students and staff. ...*

No further written communications have been received from staff of either the Department of Building and Safety or the Department of City Planning.

### **HOME DEPOT RESPONSE**

A letter and supporting documents were received from Patricia Tegar, Latham & Watkins LLP, representing Home Depot U.S.A., Inc. (dated January 16, 2007 and attached to file) that states in part::

*...The appeal lacks merit: ...*

*The Proposed Home Depot is not a Project under the Specific Plan. Because the proposed improvements constitute interior remodeling, are not "structural alterations," and do not otherwise qualify as a "Project," the Permit is ministerial. Accordingly, the City properly issued the Permit and LADBS' determination is correct.*

*The Proposed Tenant Improvements are not a "Significant Project" under the Specific Plan. ...Home Depot is not proposing to construct a new building or structure, and the value of the proposed tenant improvements does not exceed 50 percent of the replacement value of the existing building. In fact, as shown on the estimate of the tenant improvement costs attached as Exhibit D, the proposed tenant improvements represent approximately 34 percent of the estimated replacement cost of the existing building.*

*As shown in the LADBS determination, Home Depot originally estimated the value of the proposed tenant improvements at \$3.5 million. Since the original estimate, however, Home Depot scaled back the proposed tenant improvements. The revised estimate values the proposed improvements at approximately \$2.71 million. See Exhibit E. The original calculation of the existing structure's replacement value has been revised as well at the request of the community to include the additional costs for fire sprinklers and mechanical systems, which were not included in the original valuation. LADBS calculated the revised replacement value at \$8,123,976.00. This estimate was based on an average cost of \$70 per square foot for a retail building of Type V construction, plus the additional costs for fire sprinklers and mechanical systems. ...*

*Home Depot is not "Piecemealing" its tenant improvements. ...Home Depot, however, is following the City's standard procedures for permitting its tenant improvements. ...The Appellant's arguments of piecemealing rely on speculation that at some indeterminate time in the future, Home Depot will apply for those improvements and that such speculative action will somehow make the ministerial*

*improvements a discretionary project. Speculation that Home Depot might apply for other improvements at some unknown future time does not render the current tenant improvement invalid on piecemealing grounds. ...*

*Home Depot's proposed retail use is not a change of use from the existing building's previous retail use. ...The property is zoned C2, which permits retail and commercial uses. The current Certificates of Occupancy for the property, which was issued to Kmart on June 21, 1977, provides for retail use of the existing building. As explained in a letter from the Planning Department dated August 25, 2005, because the existing Certificate of Occupancy for the property is retail and because Home Depot is considered a retail use, Home Depot's reuse of the existing building would not constitute a change of use under the Zoning Code. A copy of the letter is attached as exhibit G [Robert H. Sutton letter dated August 25, 2005, attached to file]. Home Depot's proposed reuse of the existing retail building also does not constitute a change of use under the applicable Building Code provisions. As shown in the letter from Jon Traw, a Building Code expert, which is attached as Exhibit H, the use of a building that was designed and approved for retail/mercantile use for the same category of use does not constitute a change of use under the Building*

*Code. Moving from one retail use to another, therefore, does not constitute a change of use under either the Zoning Code or the Building Code. ...*

*The Permit does not propose any changes to the former auto repair area. The appellant wrongly asserts that Home Depot plans to use the existing auto repair area for a "Pro-desk" and the loading of building materials. Home Depot's approved Permit plans to not include any reuse of the existing auto repair area for any purpose, let alone a "Pro-desk" and the loading of building materials. As the Permit does not modify the auto repair area, Home Depot's reuse of the remainder of the building does not constitute a change of use.*

*Home Depot's proposed reuse of the existing building is not subject to CEQA. ...Home Depot's proposed reuse of the existing retail structure requires only ministerial approvals, and therefore, it is not subject to CEQA. CEQA applies to discretionary projects and does not apply to ministerial actions. ...the proposed tenant improvements do not constitute a "Project" or a "Significant Project" under the Specific Plan and do not otherwise trigger any discretionary approvals. ....*

A letter and supporting documents were received from Patricia Tegart, Latham & Watkins LLP, representing Home Depot U.S.A., Inc. (dated February 2, 2007 and attached to file) that describes the scope of the appeal, standard of review, and further states in part:

*...LADBS did not abuse its discretion in determining that the proposed tenant improvements did not constitute a "Project." ...*

*A. Home Depot's tenant improvements are not a "Project" as defined by the Foothill Boulevard Corridor Specific Plan. ...*

- 1. Home Depot's tenant improvements do not constitute structural alterations. ...*
- 2. Home Depot's proposed retail use does not constitute a change of use under the Municipal Code. ...*

3. *The proximity of a school to the property is immaterial to the question of whether the proposed improvements constitute a "Project." ...*

B. *Home Depot's tenant improvements do not constitute a "Significant Project" under the Specific Plan. ...Even if Home Depot's tenant improvements were a "Project", which they are not, they would not be a "Significant Project." Further, even if Home Depot's improvements were a "Project," they would not be a "Significant Project" because their value does not exceed 50 percent of the replacement cost of the building. ...*

*Because the tenant improvements are not a "Project," the remaining arguments are not applicable to the issue on appeal. ...*

A. *The California Environmental Quality Act does not apply. ...*

1. *The California Environmental Quality act does not apply to ministerial building permits. ...*

2. *Because a new store is not proposed, previous Environmental Review documents relating to a new store are not applicable to this permit. ...*

B. *A Home Depot store on the property is consistent with the Municipal Code and the General, Community, and Specific Plans. ...*

1. *A Home Depot store complies with the LAMC. ...According to the LAMC, Home Depot can reuse the existing building as a retail store by right. The property is zoned C2. The C2 zone permits retail and commercial uses, and Home Depot is a retail use. As noted above, the Planning Department reached this conclusion in its August 25, 2005 letter...*

2. *A Home Depot store is consistent with the General, Community, and Specific Plans. ... The property is zoned C2, with a corresponding General Plan designation of Community Commercial. ...*

C. *An Economic Impact Study was not required for home Depot's reuse of the former Kmart store.*

*Appellants raise additional issues in the record and at the public hearing that do not affect the validity of LADBS's determination. ...*

### **STATUTORY PROVISIONS OF AUTHORITY**

Section 12.26-K of the Los Angeles Municipal Code provides in part, "The Director of Planning shall have the power and duty to investigate and make a decision upon appeals where it is alleged there is error or abuse of discretion in any order, requirement, decision or determination made by the Department of Building and Safety in the enforcement or administration of the provisions of any ordinance creating zoning districts or regulating the use of property in the City..."

## ZONING ADMINISTRATOR DISCUSSION

Extensive oral testimony was heard at the public hearing and extensive and detailed written communications have been received to the case file. The appellant and virtually all other interested persons, except for attorneys representing Home Depot U.S.A., Inc., have clearly indicated that they do not want a Home Depot at this location. Also, many persons and agencies have raised other questions, including the site's proximity to a nearby school and residential area, plus whether there has been adequate environmental review pursuant to the provisions of the California Environmental Quality Act (CEQA).

However, these are not the matters before the Zoning Administrator, acting as the Director of Planning. Instead the matter before the Zoning Administrator is the appeal of the Department of Building and Safety action to issue a building permit for construction activity. As framed by the appeal, and also stated on the hearing notice, the only relevant evidence that can be considered pertains to the question of whether construction activity on the site is considered a "Project" or "Significant Project" as defined in the Foothill Boulevard Corridor Specific Plan. As previously stated herein, the Specific Plan defines these terms as follows:

**Project.** The construction, erection, structural alteration of, or addition to, any building or structure, including architectural projections attached to the exterior walls or roof structures, which requires the issuance of a building permit or a change of use permit on a lot located in whole or in part within the Specific Plan area. A Project does not include interior remodeling of a building which does not increase the floor area, or single-family dwellings.

**Significant Project.** New buildings or structures or a Project in which the aggregate value of the work in any twelve month period exceeds 50 percent of the replacement value of the existing building. The valuation shall be determined by the Department of Building and Safety.

The appeal focuses on whether there is a "Project" because "structural alteration" has occurred for a building permit, or whether there is a "Project" because there will be a "change of use".

The second issue of "change of use" will be considered first. The appellant and others contend that construction activity will result in a change of use from a commercial general retail store to a commercial hardware store engaging in both retail and wholesale trade. Although the two types of retail commercial stores may appear different to the casual observer, neither the Specific Plan nor the Planning and Zoning Code make such a distinction between a retail use and the claimed wholesale use. Although the generally accepted Standard Industrial Classification (SIC) may make such a distinction, the City and the Department of Building and Safety do not rely on such a standard but instead rely on how uses are specifically defined by the Los Angeles Municipal Code, and as further interpreted by the Zoning Engineer of the Department of Building and Safety. As a result, the issue of "change of use" appears to not be supported by relevant evidence, and there is no legal basis for determining that a "change of use" will occur.

The remaining relevant first issue is whether there has been "structural alteration". Although the Foothill Boulevard Specific Plan does not define "structural alteration", Section 12.03 of the Los Angeles Municipal Code includes the following pertinent definition:

**Structural Alterations.** Any change which would prolong the life of the supporting members of a building or structure, such as bearing walls, columns, beams or girders.

The appellant has provided extensive expert testimony and written documentation from structural engineers and other expert observers to suggest that the following is occurring:

- 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 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.

Preparation for construction activity and building permit processing appears to have been a long and evolved process wherein Home Depot USA, Inc. worked extensively and repeatedly with City agencies to attempt what the Department of Building and Safety calls a "tenant improvement" for interior remodel of an existing structure. The documentary evidence suggests that at various times in the past, Planning Department staff was of the opinion that construction activity would be subject to Project Permit Compliance Review with the provisions of the Foothill Boulevard Specific Plan pursuant to Section 11.5.7-C of the Los Angeles Municipal Code. Although difficult to determine how building permit processing evolved for proposed construction activity, it appears that the ultimate conclusion of "no project" resulted from sufficient modifications in the building drawings that may have descended below the threshold for significant structural alterations, as otherwise determined by the Department of Building and Safety.

Nevertheless, regardless of whether or not original construction activity was initially planned to be less and only later evolved into a larger alteration, it appears that the weight of detailed evidence provided by the appellant overwhelmingly supports the conclusion that "structural alterations" have occurred that are beyond that which should be reasonably classified as a "tenant improvements" for an interior remodel. This conclusion is supported not only by detailed expert observations and quantifiable data but also by casual observation of the average person. With a new floor, roof and structural supports, the renovation is changing virtually everything except the mere facade of the walls that have been propped up to keep from falling. The extent of renovation is simply too complex and extensive to be considered a mere tenant improvement.

Although the firm of Latham & Watkins LLP, as attorneys for Home Depot U.S.A., Inc., has attempted to refute the claims of the appellant, the evidence they have submitted lacks the level of specificity provided by the appellant. Again, the weight of evidence by the appellant supports the reasonable conclusion that sufficient "structural alterations" have occurred for a "project" and is therefore subject to Project Permit Compliance Review pursuant to the provisions of the Foothill Boulevard Corridor Specific Plan.

Although the weight of detailed evidence may also suggest that there may be a "Significant Project" because the resulting structure will have an aggregate value that exceeds 50 percent of the replacement value of the existing building, such a conclusion cannot definitively be made by the Zoning Administrator. Structural renovation appears to exceed the specified threshold 50 percent level, but this conclusion cannot be specifically and inarguably determined without contest, based on the evidence submitted by the appellant. Further, such a finding that the renovation is a "Significant Project" is not necessary once it is determined that a "Project" has occurred due to the "structural alterations" already described herein. The determination of a "Significant Project" is only relevant to the application of additional provisions of the Specific Plan for a "Significant Project".

Nevertheless, the Zoning Administrator concludes that the Department of Building and Safety has erred in not providing sufficient justification for its method of calculating replacement value and the total cost of renovations. The many questions raised by the appellant appear to have merit, whereas the Department of Building and Safety has failed to provide further justification for its calculation of both replacement value and renovation costs. This has occurred despite the Specific Plan requirement that the "valuation shall be determined by the Department of Building and Safety." As a result, in order to possibly avoid future litigation regarding this matter, it would be in the City's and the public interest that the Department of Building and Safety consider the evidence and arguments of the appellant regarding this matter and recalculate the replacement value and total renovation costs for all construction activity on the site.

Based on an evaluation of all submitted evidence and the legal issues before the Zoning Administrator, I find that a reasonable conclusion can be determined that construction activity constitutes a "Project" due to significant "structural alterations" and is therefore subject to Project Permit Compliance Review with the provisions of the Foothill Boulevard Specific Plan pursuant to Section 11.5.7-C of the Los Angeles Municipal Code.

As a result, I further find that the Department of Building and Safety did err and abuse its discretion in issuing a building permit because the renovation is a "Project" and shall first be subject to Project Permit Compliance Review with the provisions of the Foothill Boulevard Specific Plan.

Pursuant to the requirements of Section 12.26-K,4, the determination herein will not have a Citywide Impact as the use of the specific property, circumstances and issues are unique to the affected site and will not generally apply to other sites in the City.

#### **APPEAL PERIOD - EFFECTIVE DATE**

The Zoning Administrator's determination in this matter will become effective after MARCH 27, 2006, unless an appeal therefrom is filed with the City Planning Department. It is strongly advised that appeals be filed early during the appeal period and in person so that imperfections/incompleteness may be corrected before the appeal period expires. Any appeal must be filed on the prescribed forms, accompanied by the required fee, a copy of the Zoning Administrator's action, and received and receipted at a public office of the Department of City Planning on or before the above date or the appeal will not be accepted. Forms are available on-line at [www.lacity.org/pln](http://www.lacity.org/pln). Public offices are located at:

Figueroa Plaza  
201 North Figueroa Street,  
4th Floor

Marvin Braude San Fernando  
Valley Constituent Service Center  
6262 Van Nuys Boulevard, Room 251

Los Angeles, CA 90012  
(213) 482-7077

Van Nuys, CA 91401  
(818) 374-5050

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.

S. GAIL GOLDBERG  
Director of Planning



GARY BOOHER  
Associate Zoning Administrator  
Direct Telephone No. (213) 978-1308

GB:lmc

cc: Councilmember Wendy Greuel  
Second District  
Adjoining Property Owners  
County Assessor