

# DAVID MOSS & ASSOCIATES, Inc.

Permitting / Development Consultation / Environmental Compliance

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Via E-mail

May 3, 2021

Jennifer Driver, Planner  
Pasadena Planning & Community Development  
Planning Division  
175 N Garfield Ave  
Pasadena, CA 91101

Re: Request for Continuance – CUP No. 6848 – Futures Academy  
35 N Lake Ave, Suite 160, Pasadena, CA 90211

Dear Jennifer,

## **Concern Regarding Staff Report, Noticing, and Site Posting**

We are in receipt of the staff report and hearing notice. The Applicant's third-party mapmaker picked up the notice boards and posted the site a minimum of 14 days prior to the scheduled May 5, 2021 hearing.

Upon review of staff report and hearing notice late Friday and earlier today we see that both documents have the same misinformation in them. And upon review of the hearing notice board – the same information is contained therein on all three documents.

This information pertains to the size of the outdoor space for which the applicant has requested a variance. Please note the following:

1. All documents provided as part of the request - including the plans, application, Application Attachment and responses to four months of staff comments state that the maximum number of students to be onsite at any one time is 34. All three documents mentioned above base the amount of outdoor recreation space incorrectly on the estimated maximum enrollment of 60- students. And, the staff report incorrectly analyzes required parking based on estimated student enrollment and not on maximum students onsite at any one time.
2. Generally, Fusions Academy is not asked to provide maximum enrollment estimates in CUP applications because the focus and future conditioning of the application by the discretionary decision-making body is based on the maximum number of students to be onsite at any one time. The maximum enrollment has no nexus to parking demand or queuing, or circulation issues related to drop-off/pickup.
3. The size of the outdoor recreation area from which the applicant is seeking a variance should only be based on the maximum number of students to be onsite at any one time – 34 – and not on the purely speculative maximum enrollment estimated during Covid by the applicant's marketing team. In fact, Futures should be free to have "enrollment" of matriculating students and tutors without limit – because estimated enrollment has no nexus to the goal of the city to mitigate potential land use impacts of parking, circulation, queuing, or noise.
4. The size of the area for which a variance is requested based on 34 students is 2,550 sq ft. The size listed in the three documents is incorrectly stated as 4,500 sq ft.
5. Equal accommodation for 2,550 sq ft of outdoor recreation area that cannot be provided due to unique aspects of the site is discussed in one or more of the responses to staff's comments. The public should not be led to believe that the variance is for 4,500 sq ft.

**Request for Continuance to a Date Certain**

A continuance is warranted in this matter to ensure that the public is accurately informed on all matters relating to the scope of the discretionary entitlement requests. And so that the applicant is afforded due process and avoids a false start to the hearing process that involves considerable time delays and cost to resolve. The granting of a continuance is necessary to correct the error, confusion or misinformation discussed herein.

On behalf of Futures Academy, we respectfully request a continuance to June 16, 2021 – which we believe provides adequate time for the three documents to be corrected. Further rationale for this date, is that the Futures Academy Project Manager has a tedious family health matter to attend to over the course of several weeks in May – that should resolve on or before May 28, 2021.

We look forward to hearing back that staff will support this request. Please let us know if prior to the hearing you can verify that the applicant need not present extensive testimony because either (i) staff can authorize the continuance and/or (ii) that the Hearing Officer is authorized to open the hearing and continue to a date certain without extensive testimony.

Sincerely,



David Moss, President



Joseph Pangilinan, Planner

# DAVID MOSS & ASSOCIATES, Inc.

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Via E-mail

May 5, 2021

Luis Rocha, Senior Planner  
Jennifer Driver, Planner  
Pasadena Planning & Community Development  
Planning Division  
175 N Garfield Ave  
Pasadena, CA 91101

Re: Continuanace Considerations – CUP No. 6848 – Futures Academy  
35 N Lake Ave, Suite 160, Pasadena, CA 90211

Dear Luis and Jennifer,

## **Telephone Call Overview and Implications**

Thank you for hosting an in-depth call yesterday to discuss the applicant's concerns outlined in the letter requesting a continuance dated May 3, 2021 (the "Continuance Letter").

During that call, staff outlined the reasons why they advocate for holding the hearing. We understand the following:

1. CUP Findings: Staff would have supported and recommended to the HO the issuance of a CUP for the proposed Private School based on meeting the CUP Findings if a Variance was not requested for outdoor recreation area – a codified development standard. Staff is aware that there are no comments from the public against the CUP and Variance as filed, nor any indication that operation of the land use – previously defined as Personal Services and now requested as Private School – would have unmitigated land use impacts.
2. Variance Findings: Staff is relatively confident that the HO will be making a decision that is not impacted by the concerns listed in the Continuance Letter because upon request by the Applicant – Staff will prepare a summary for the HO outlining the implications of a scope change if the Applicant agrees to limit "enrollment" to the 34 maximum students/" tutorees" onsite at any one time. Thus, significantly reducing the scope of the Variance request from 4,500 to 2,550 sq ft of outdoor space and agreeing that the project is then compliant for codified parking and classroom development standards.
3. Variance Precedents: After the call yesterday, Staff provided the Applicant with copies of portions of the 1981 Variance for the over height subject office building and two additional exceptions. These documents in our opinion demonstrate there were and continue to be "extraordinary [site specific] circumstances or conditions" that do not apply to other sites and that staff could have relied on to support the current Variance. The City previously granted a much more significant Variance to entitle a height variance and several exceptions to code.

## **Decision Regarding Whether to Request a Continuance.**

The Applicant would like to proceed with the hearing but reserve the right to request a continuance during the hearing based on the following:

1. Enrollment Number: The Applicant is clarifying and agrees with staff that "enrollment" shall be defined as the maximum number of students/tutorees that shall be onsite at any one time and this number is 34. Any conditions of approval shall be based on this number and this understanding.

**Decision Regarding Whether to Request a Continuance (contd)**

2. Staff Report Update Based on Enrollment of 34: Staff will prepare and present an update to the HO that summarizes the Variance request is for 2,550 sq ft of outdoor space – not 4,500, and that parking and classroom numbers provided in the application are compliant with codified development standards based on 34 students/tutorees onsite in the suite at any one time.

**Request to Proceed with Hearing**

The Applicant would request to continue the hearing without providing extensive testimony if and only if after Staff's presentation, the HO feels that a continuance is necessary because of concerns listed in the Continuance Letter. These reasons could include but not be limited to:

- To ensure that the public is accurately informed on all matters relating to the significantly reduced scope of the discretionary entitlement request based on enrollment of 34 compared to what is in the Staff Report, the posting, and the hearing notice, and/or
- To correct any error, confusion or misinformation discussed in the Continuance Letter or identified by the HO after hearing the updated staff report conclusions.

We do hope that the hearing proceeds, and that the Findings can all be made for this local-serving, unique education learning model "school" that has no equal in the City of Pasadena for which the record shows no land use impacts since operations began in 2013 as Personal Services and as a matriculating school in 2017.

Sincerely,



David Moss, President



Joseph Pangilinan, Planner