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CARMEN A. TRUTANICH
City Attorney

REPORT NO. R 13 - 0090
MAR 29 2013

REPORT RE:

**COURT-ISSUED WRIT COMMANDING THE CITY COUNCIL TO SET ASIDE AND
RECONSIDER ITS OCTOBER 4, 2011 DETERMINATION GRANTING VARIANCES
AND AN ADJUSTMENT FOR 1100-1102 STEARNS DRIVE**

CHAZANOV v. CITY OF LOS ANGELES, et al.
LASC CASE NO. BS 135382 (COUNCIL DISTRICT 5)

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 11-1556

Honorable Members:

We are presenting to you for your action, consistent with its terms, a court-issued writ in *Chazanov v. City of Los Angeles, et al.*, LASC Case No. BS135382. A copy of the writ is attached. The writ of mandate commands the City Council of the City of Los Angeles to set aside and reconsider its October 4, 2011, determination granting three variances and an adjustment for 1100-1102 Stearns Drive, in light of the Court's January 17, 2013, order in this case.

Background

Eric Hammerlund and Terrence Villines, Real Parties In Interest in the lawsuit, purchased the property at 1100-1102 Stearns Drive on December 27, 2005. The property was improved with a duplex, a garage and a separate recreation room in a single-family residential neighborhood, zoned R1. The Los Angeles Housing Department issued an Order to Comply to the Real Parties for illegal use of the

recreation room as a third dwelling unit. On June 29, 2009, Real Parties sought three variances and an adjustment in order to legalize the recreation room as a dwelling unit. Specifically, the application sought a variance to allow use of the recreation room as a dwelling unit; a variance to forgo the required parking space for the third unit; a variance to allow automobiles to back out of the garage onto the street; and an adjustment to allow a smaller rear yard than the required 15 feet. The Zoning Administrator denied the requests for the variances and adjustment. The Real Parties appealed the Zoning Administrator's determination to the Central Area Planning Commission (APC). The APC denied the appeal and sustained the Zoning Administrator's determination. The APC determination was mailed August 30, 2011.

On September 13, 2011, the City Council asserted jurisdiction over the matter pursuant to Charter provision 245. On October 4, 2011, the City Council voted to grant the variances and the adjustment.

On January 9, 2012, the Chazanovs initiated a writ petition against the City of Los Angeles and Real Parties in Interest Hammerlund and Villines in the matter entitled *Chazanov v. City of Los Angeles*, LASC Case No. BS135382. After holding a hearing and considering the briefing of the parties, the Court issued a decision and order finding that the City Council abused its discretion in granting the three variances and adjustment, and granted the Chazanovs' request for a writ. The Court held that substantial evidence did not support the first and third elements for granting a variance to use the recreation room as a dwelling unit.

The first element requires a finding that a variance is necessary because strict application of the zoning ordinances would result in practical difficulties or unnecessary hardships inconsistent with the purpose of the zoning ordinance. The Court explained that there was insufficient evidence that the Real Parties would suffer unnecessary financial hardship unless the variances were granted. No evidence was presented that Real Parties would not be able to pay their mortgage, taxes or insurance unless they continued to receive rental income from the illegal third dwelling. The Court also held that the City Council's finding that the Real Parties' tenant and the City would suffer a hardship due to a decrease in rental housing stock unless the variances were granted was neither relevant as a matter of law nor supportable as a matter of fact. The Court emphasized that the first element looks only to burdens placed upon the variance applicant, not the applicant's tenant or other third parties.

The third element requires a finding that the variance is necessary for enjoyment of substantial property right which, because of special circumstances and practical difficulties, is denied to the property in question. The Court held that the City Council's acknowledgement that, "No other similarly situated zoned properties in the same vicinity have been granted any variances to allow for conversion of more units beyond those which are currently permitted by the zoning or those which were permitted by prior

zoning," was fatal to the Real Parties' application, as it demonstrated there were no special circumstances for 1100-1102 Stearns Drive.

In conclusion, the Court noted that some City Council "members made eloquent and compelling statements about the need for the City to preserve and increase its housing stock. These laudable public policy goals, however, may not be used by the City Council to dismantle the City's zoning scheme in a piecemeal fashion."

The writ issued on February 15, 2013. The writ commands the City Council to set aside and reconsider its October 4, 2011, determination granting the three variances and an adjustment, in light of the Court's January 17, 2013, decision and order, within 90 days of the date of the writ's issuance. The writ is transmitted with this Report.

Recommendation

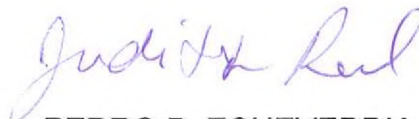
We request your action consistent with the enclosed court-issued writ, to set aside and reconsider the City Council's October 4, 2011, determination in light of the Court's decision and order.

If you have any questions regarding this matter, please contact Deputy City Attorney Amy Brothers at (213) 978-8069. She or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By



PEDRO B. ECHEVERRIA
Chief Assistant City Attorney

PBE:AB:gl
Attachment

RECEIVED
City Attorney
Land Use/Real Property

MAR 05 2013

RECEIVED
CITY CLERK'S OFFICE

2013 MAR -4 PM 4:13

CITY CLERK

BY EGG
PLS PROPERTY

REFERRED TO CITY ATTORNEY
FOR DISPOSITION
MAR -5 2013 @ 7:30am

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DONNA CHAZANOV, an individual;)

MATHIS CHAZANOV, an individual)

Petitioners)

vs)

CASE NO. BS135382

CITY OF LOS ANGELES, etc, CITY)

COUNSEL OF THE CITY OF LOS)

ANGELES, et al)

WRIT OF MANDATE

Respondents)

ERIC HAMMERLUND, an individual,)

TERRENCE VILLINES, an individual)

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TO THE CITY OF LOS ANGELES AND THE CITY COUNCIL OF THE CITY OF LOS ANGELES, Respondents:

WHEREAS a judgment on petition for writ of mandate having been entered in this action, ordering that a writ of mandate be issued from this Court,

YOU ARE HEREBY COMMANDED immediately upon receipt of this writ to set aside the determination of the City Council of October 4, 2011, to grant Real Parties In Interest's application for three variances and an adjustment and to reconsider your actions in light of the Court's decision and order in this case. Nothing in this writ shall control the discretion legally vested in the Respondent in accordance with Code of Civil Procedure Section 1094.5(f).

YOU ARE FURTHER COMMANDED to file a return to this writ not later than ninety days after the date of issuance.

LET THE FOREGOING WRIT ISSUE.

John A. Clarké

Kelly Encinas

DATED: FEB 15 2013



[Handwritten signature of Kelly Encinas]

CLERK OF THE SUPERIOR COURT