

September 6, 2011

Donna and Mathis Chazanov
1108 Stearns Drive
Los Angeles, CA 90035

Dear Donna and Mathis,

You have asked me to advise you on the likelihood of your prevailing in Superior Court in the event that the City Council overrides the Central Area Planning Commission's decision denying the requested variance for your neighbor located at 1100 Stearns.

For all the reasons set forth in our prior submissions to the ZA and the Central APC, a variance at this location under these circumstances is clearly not permissible under the City's Zoning Code, Charter, and Administrative Code. It is also clearly impermissible under State law.

I. Controlling Case Law Regarding Variances

The case *Stolman v. City of Los Angeles*, (2003) 114 Cal. App.4th 916, 8 Cal. Rptr. 3d 178, is strikingly apposite because it involves the appeal of a variance granted by the City of Los Angeles to permit the expansion of a nonconforming use. In that case, the Court of Appeal reversed the lower court's decision affirming the grant of the variance, and granted a writ of mandamus directing the zoning administrator to deny the variance.

The Court's decision was based upon the fact that the variance applicant "failed to meet two of the five requirements for the granting of a variance." *Id.* at 180. Specifically, the Court found that the Zoning Administrator's first and third required variance findings "were erroneously made." *Id.* at 189.

A. "Unnecessary Hardships"

With regarding to the first required finding, "that the strict application of the provisions of the zoning ordinance would result in practical difficulties or unnecessary hardships inconsistent with the general purposes and intent of the zoning regulations," the Court found that there was insufficient evidence of unnecessary hardship. *Id.* at 187. As is the case here, the applicant's complaint of "unnecessary hardship" relied upon the economic viability of the use of the property if the variance were not granted. *Id.* at 185-187. Just as your neighbors argued that it would be an economic hardship if they were restricted to the existing, nonconforming use of their property as a duplex, the applicant in the *Stolman* case argued that it would be an economic hardship if they were restricted to the existing, nonconforming use of their property as a gas station. *Id.*

As the Court stated in *Stolman*, "[t]he key question is whether the detailing operation enhances the continued viability of the gasoline station to the extent that (the

Applicant) would face dire financial hardship without the variance, or whether (the Applicant) merely wants the variance in order to increase his existing profits from the sale of gasoline." *Id.* at 186. Likewise, your neighbors' hardship claims rest upon assertions that they cannot retain their property unless they are permitted to operate it as a triplex, but there is ample evidence to support the conclusion that their variance is needed in order to ensure their ongoing profits from the third rental unit.

In both cases, there was evidence to contradict a finding of hardship and little or no evidence to support it. "Given the lack of sufficient evidence of unnecessary hardship," the Court concluded, the zoning administrator's "abused her discretion in making this finding. Because failure to prove any of the matters required by the ordinance must result in a denial of the variance application (citations omitted), she should have denied the application for a variance." (*Id.* at 187.)

B. "Same Zone and Vicinity"

Next, the Court discussed whether the third required finding, "that the variance is necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other property in the same zone and vicinity but which, because of the special circumstances and practical difficulties or unnecessary hardships, is denied to the property in question," could be made in the affirmative. *Id.* at 187. The key issue in *Stolman* was again strikingly similar to the issue here. In *Stolman*, the ZA was unable to find a comparable circumstance in the same zone and vicinity, as required by the finding. Rather than concluding, as she was required to, that this finding could not be made in the affirmative absent evidence from the same zone and vicinity, the ZA "based her comparison upon other similarly situated properties located throughout the City where businesses are permitted to operate pursuant to variance approvals." *Id.* at 188.

The *Stolman* court ruled that this interpretation was unacceptable:

Fairly read, a parcel of property in the 'same zone and vicinity' as the gasoline station on Entrada Drive cannot mean a parcel of property anywhere in Los Angeles. The City of Los Angeles is well over four hundred square miles in size. The gasoline station on Entrada Drive should not be compared to other properties potentially located 20 or more miles away. *Id.* at 188.

In fact, the most similar property the ZA was able to find in support of her grant of the variance was a convenience store over 19 miles away from the property at issue. *Id.* at 188. Again, this situation is strikingly similar to the circumstances here, in which your neighbors seek to rely upon a variance case for a property located in the Silver Lake/Echo Park area. Just as the *Stolman* court found that this was "not only a reach but ... an irrational stretch," and that this finding could not be made, *Id.* at 188, *Stolman* provides compelling authority precluding the grant of a variance on behalf of your neighbors.

II. Superior Court Process

A. *Code of Civil Procedure §1094.5-Writ of Mandamus*

Regarding the process itself, if it becomes necessary to bring this matter in Superior Court, the procedure is relatively simple. Pursuant to California Code of Civil Procedure §1094.5, we would seek a writ of mandamus to overturn the variance on the grounds of abuse of discretion. Given the *Stolman* case, the applicable City law, the proceedings below, the determinations of the ZA and the APC, and other City variance denials, I believe that we would have a high likelihood of prevailing in this matter. Writ cases such as this one are based on the paper trail – the written record and testimony at the administrative hearings before the City. There is no discovery, no new witness testimony, and few of the complexities and costs of general civil litigation.

B. *Code of Civil Procedure §1021.5-Private Attorney General Statute*

Finally, I believe we would be on solid ground to demand attorneys fees and costs for any such proceeding based upon CCP §1021.5, the “private attorney general” statute. That statute states:

Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any. With respect to actions involving public entities, this section applies to allowances against, but not in favor of, public entities, and no claim shall be required to be filed therefore, unless one or more successful parties and one or more opposing parties are public entities, in which case no claim shall be required to be filed therefore under Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code. Attorneys' fees awarded to a public entity pursuant to this section shall not be increased or decreased by a multiplier based upon extrinsic circumstances, as discussed in *Serrano v. Priest*, 20 Cal. 3d 25, 49.

In this case, you would be bringing an action in Superior Court to ensure that the Zoning Ordinance is imposed in a manner which is fair, impartial, and consistent. This is not only in your interest but in the interest of your neighborhood in general and the citizens of the City of Los Angeles as a whole. Therefore, I believe that an award of attorney's fees would be compelled based upon the wording of this statute and relevant case law.

LAW OFFICE OF

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Conclusion

While I hope that your efforts to dissuade the Councilmember's office from intervening in this matter succeed, I believe that your position opposing the variance is very well-grounded in the facts and the law.

Please let me know if you have any additional questions.

Sincerely,



Valerie Sacks
Attorney at Law