VIA EMAIL

January 5, 2011

D. Solaiman Tehrani
Zoning Investigator
Department of City Planning
City of Los Angeles
200 North Spring Street, Room 763
Los Angeles, CA 90012

RE: ZA-2009-2026-ZV-ZAA; 1100-1102 Stearns Drive

Dear Mr. Tehrani,

This letter is submitted with reference to the above-referenced Zoning Administrator case, which is scheduled for public hearing on Monday, January 10th at 2:30 p.m. I am writing on behalf of the owners and occupants of the property located at 1108 Stearns Avenue—the house immediately adjacent to the Applicant's property --to oppose the request.

Staff Investigator Report

My clients have reviewed the Staff Investigator Report ("Report") issued on December 28, 2010, and have a few comments regarding the contents thereof:

First, the Report characterizes the area as being improved with single family homes and duplexes. However, as noted above, all of the properties on Stearns Drive are developed as single-family homes with the exception of the fourplex and the Applicant's property. While, as the Report notes, there may be other duplexes in the area, this is a natural function of the fact that the Applicant's property is one block east of Crescent Heights Boulevard, one block north of Packard (zoned R2), one block west of Hi Point (zoned R2), and one block south of Olympic Boulevard, all of which are zoned and developed at a higher density. The R1-zoned portion of Stearns Drive, in contrast, is almost entirely improved with single family homes.

Second, the Report notes that Whitworth Drive is governed by parking district number 52. This fact supports my client's concern that the area is already fairly heavily parked for an R1-zoned area, such that granting of the parking variance is not appropriate. Moreover, the parking restrictions on Whitworth Drive are likely to push cars onto Stearns Drive.

Third, the Report indicates that the prior Certificate of Occupancy permitted the addition of the one-story accessory room added to the garage, "turning it into another dwelling unit." Actually, the Certificate of Occupancy does not characterize the addition as a dwelling unit but as a recreation room. Thus, the Certificate of Occupancy does not help the Applicant's case -- the variance request does not seek to legalize the use of this room as a recreation room (an already legal use), but as a dwelling unit.

Finally, there may be a mistake in the Certificate of Occupancy insofar as it states that the use is accessory to an R3 occupancy. If the R3 occupancy refers to the zone density, this is an error because the then-applicable zone was R2.

Sacks Real Estate Consulting
Office (310) 876-0924 Facsimile (310) 943-3322 sacks@sacksconsulting.net Cell (310) 500-6282

The Request

The Applicant has requested the following collection of variances and adjustments:

- Variance to allow the legalization of a 3rd dwelling unit in a single-family zone;
- Adjustment to allow a rear yard 3 ½ - 5 ½' deep in lieu of the 15 feet required – in other words, less than 1/3 the depth required;
- Variance to allow the 3rd dwelling unit to be legalized without the required parking space;
- Variance to allow a driveway serving more than two dwelling units on a street that is not a major or secondary highway;
- Determination to allow an overheight fence in the required front and side yard of the property.

For the reasons set forth below, my clients respectfully submit that none of the required variance findings can be made in this case, such that the variance requests must be denied.

Proposed Variance Findings

As set forth in L.A.M.C. §12.27 D, the Zoning Administrator must make five separate findings in order to grant the variance. Specifically, the Zoning Administrator find that a variance to permit a third dwelling unit in the R1 zone without code-required parking must satisfy the following requirements:

1) The strict application of the provisions of the Code would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the zoning regulations;
2) That there are special circumstances applicable to the subject property that do not apply generally to other property in the same zone and vicinity;
3) 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;
4) That the granting of the variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in the same zone or vicinity in which the property is located; and
5) That the granting of the variance will not adversely affect any element of the General Plan.

Furthermore, L.A.M.C. §12.27 D provides: "A variance shall not be used to grant a special privilege or to permit a use substantially inconsistent with the limitations upon other properties in the same zone and vicinity. The Zoning Administrator may deny a variance if the conditions creating the need for the variance were self-imposed."

In this case, none of the required findings can be made. Rather, granting of the variances would constitute just the sort of "special privileges" specifically prohibited by §12.27 D. Finally, any hardship that might occur here is entirely self-imposed.

A. Application Of Code Requirements To Deny The Variance Would Not Result In "Unnecessary Hardships" Inconsistent With The Intent Of The Code.

With respect to the first finding, the Applicant's main argument here is that he purchased the property without knowing that the third dwelling unit was not legal or permitted. However, the

legality of the improvements and the zone limitations are easily ascertainable on the City's website, not to mention the title report he surely received when the property was in escrow. The attached printout from Zimas reflects the City's and the County Assessor's records, and shows that the improvements of record are two three-bedroom, 2-bath units built in 1931. (Please see Attachment A.) There is no reference to a third unit.

Zimas also shows that the zoning is R1. Had the Applicant, when a prospective buyer, asked anyone at the City's Planning Counter what was permitted on his property, he would have quickly found out that the R1 zone permits one unit per 5,000 s.f. of lot area, and does not permit multifamily dwellings. The 1990 downzoning of the area from R2 to R1 is irrelevant, because the illegal improvements were made in 1992, subsequent to the downzoning, and would not have been permitted even under the prior zone designation -- the R2 zone only permits one unit per 2,500 s.f. of lot area, and the total lot area is approximately 7185 s.f., enough for two units.

In fact, the manner in which the surrounding properties are developed should have put the Applicant on notice as well. A visit to the area reveals that most of the properties are developed as single-family homes, and, with the exception of the one fourplex built in 1929 (1123 Stearns Drive), developed at a far lower density than the Applicant's. As a result, even the legal improvements on the Applicant's property, which were built in 1931 and grandfathered in, are much denser than most of the other properties in the vicinity.

Thus, the Applicant's problems do not stem from a change in zone or excusable ignorance, but rather from a failure to do the amount of due diligence that a reasonable purchaser of property would do. This does not constitute an "unnecessary hardship" -- the hardship is entirely of his own making. However, the intent of the Zoning Code is to give property owners some assurance that the surrounding properties will be built and maintained in a reasonably consistent and predictable manner. My clients and the other neighbors purchased their property knowing that the property was zoned R1 and that the surrounding uses were primarily single family houses. To grant the Applicant the requested variance would be unfair to them and to others who reasonably expect to be able to rely on the zoning.

With respect to this variance finding and the fact that no parking is proposed to be provided for this third unit, the Applicant has not offered any justification.

Thus, denial of the variance would not result in unnecessary hardships inconsistent with the general purpose and intent of the zoning regulations, but would effectuate its purpose and intent. Thus, we respectfully submit that this required variance finding cannot be made and the variance request should be denied.

B) <u>There Are No "Special Circumstances" Applicable to the Subject Property That Do Not Apply Generally to Other Property in the Same Zone and Vicinity.</u>

To attempt to justify the variance request in regard to the "special circumstances" variance finding, the Applicant states that "the immediate area surrounding the subject Property consists of a variety of properties which have different sizes and configurations." Actually, a visit to the area reveals that most of the properties are developed as single-family homes, most of which are single-story and, with the exception of the property built in 1929 (1123 Stearns Drive), developed at a far lower density than the Applicant's. The Applicant's property is already overbuilt in relation to the other properties in the vicinity. Legalization of this third unit, which is supposed to be a recreation room, will set a precedent which will undermine the R1 zone designation. The Applicant's failure to do a reasonable amount of due diligence prior to purchasing the property is not a "special circumstance" that can be used to justify this finding.

With regard to the requested parking variance, the Applicant apparently believes that the fact that the property has been used illegally in this manner for years is a "special circumstance." As noted above, this is not an adequate justification for this finding to be made. In addition, the Applicant states that there is sufficient street parking and minimal traffic flow, but the street is in fact fairly heavily parked. If other properties on the block were permitted to have additional units and not provide on-site parking for them, the block would be quite congested. In any case, the Code requires property owners to supply required parking for their improvements on-site, and the Applicant should not be treated differently in this regard.

Thus, we respectfully submit that there are no special circumstances applicable to the subject property that do not apply generally to other property in the same zone and vicinity, and the variance findings cannot be made in this regard either.

C) The Requested Variance Is Not Necessary for the Enjoyment of a Property Right Generally Possessed by Other Property in the Same Zone and Vicinity.

The justification the Applicant provided for this finding is that 3 three-unit buildings and 6 four-unit buildings exist within a 1000-foot radius from the property such that he would be treated unfairly if he were not allowed to legalize his third unit. According to Zimas, there are approximately 433 properties in a 1000 foot radius of the Applicant's property. (Please see Attachment B, which is a list generated from Zimas of the addresses within 1000 feet of the Applicant's property.) This means that fewer than 2% of the properties in a 1000 foot radius are developed with three or more units. Moreover, this 1000 foot radius pulls in properties on Crescent Heights and Olympic Boulevards, as well as a few that front Fairfax Avenue—far busier streets than Stearns Drive. (Please see Attachment C, which is a map generated from Zimas showing the area within 1000 feet of the Applicant's property.) This 1000 foot radius also includes a number of blocks that are zoned R-2, whereas the Applicant's property is zoned R1.

Nor does the Applicant's purported justification address the parking issue.

Thus, the requested variance is not necessary for the enjoyment of a property right generally possessed by other property in the same zone and vicinity. Rather, granting of a variance would be the granting of a special privilege to the Applicant, and would permit a use substantially inconsistent with the other uses in the vicinity. For these reasons as well, we respectfully submit that the variance findings cannot be met and the variances should not be granted.

D) The Granting of the Variance Will Be Materially Detrimental to the Public Welfare and Injurious to the Property or Improvements in the Same Zone or Vicinity in Which the Property Is Located.

Granting of the variance would be materially detrimental to the public welfare and injurious to the property or improvements in the same zone or vicinity in which the property is located because it would set a bad precedent, permit an inconsistent and overly dense use, and undermine the integrity of the zoning code. The neighborhood is zoned R1; almost all of the properties in the neighborhood (with the exception of the one fourplex built in 1929) comply with the R1 zone; and the Applicant already has grandfathered rights to have double the units and density of virtually everyone else on Stearns Drive. Granting the Applicant's variance here would encourage people to make illegal improvements then seek variances after the fact. The fact that one rental unit would be lost is beside the point – it would be the loss of a unit that was never permitted in the first place. Approval of the requested variances would undermine the purpose of the zoning ordinance, hurt the property values of the surrounding properties, and

create a bad precedent. For these reasons, we respectfully submit that this variance finding cannot be made either, and the variances should not be granted.

E) The Granting Of The Variance Will Adversely Affect An Element Of The General Plan.

As the Applicant states, the applicable portion of the General Plan, the Wilshire Community Plan ("Plan"), "designates the property for low density residential with corresponding zones of RS, R1, RD6 and RD5 and Height District No. 1." However, the density the Applicant seeks to legalize, three units on a 7185 s.f. lot, would be consistent with RD2 zoning (one unit per 2000 s.f. of lot area), a denser zone designation than is permitted within the Plan. The property is legally developed (because of grandfathered rights) at an R2 density, a density that already exceeds this Plan designation. Thus, granting of the requested variances would create a land use that is inconsistent with the Plan, contrary to the intent of this finding. For this reason as well, we respectfully submit that the requested variances should not be granted.

Proposed Adjustment

The Applicant has also requested an adjustment to allow a rear yard varying in depth from 3'6"-5'6" in lieu of the 15 feet required, in conjunction with the third dwelling unit. The fact that this request was filed as an adjustment rather than a variance is confusing given that L.A.M.C. §12.28, the applicable Code provision, permits only a 20% deviation from the standard. As a result, according to §12.28 A and B, this appears to require a variance rather than an adjustment. Regardless, the findings that the Zoning Administrator must make are as follows:

a) That the granting of an adjustment will result in development compatible and consistent with the surrounding uses;
b) That the granting of an adjustment will be in conformance with the intent and purpose of the General Plan;
c) That the granting of an adjustment is in conformance with the spirit and intent of the Zoning Code;
d) That there are no adverse impacts from the proposed adjustment or any adverse impacts have been mitigated;
e) That the site and/or existing improvements make strict adherence to zoning regulations impractical or infeasible.

For the reasons to be set forth below, my clients do not believe that these findings can be made, such that the requested Adjustment should not be granted.

a) The Granting Of An Adjustment Will Result In Development Incompatible And Inconsistent With The Surrounding Uses.

With respect to the first finding, the Applicant argues that the granting of the adjustment will result in development compatible and consistent with the surrounding uses. However, this statement is disingenuous because the Site is, along with the fourplex from 1929, by far the densest in the immediate area.

Moreover, the adjustment is not needed to maintain the building in its current configuration. It is needed to use the building as a third dwelling unit in a single-family zone. This is not consistent with the current R1 zoning nor with the previous R2 zoning. As noted above, most of the properties are developed as single-family homes, and, with the exception of the one fourplex, developed at a far lower density than the Applicant's. As a result, even the legal improvements

on the Applicant's property, which were built in 1931 and grandfathered in, are much denser than most of the other properties in the vicinity.

Thus, we respectfully submit that granting of the adjustment would result in development that is incompatible and inconsistent with the surrounding uses, and should be denied on this basis.

b) The Granting Of An Adjustment Will Not Be In Conformance With The Intent And Purpose Of The General Plan.

As noted above, the applicable portion of the Plan "designates the property for low density residential with corresponding zones of RS, R1, RD6 and RD5 and Height District No. 1." However, the density the Applicant seeks to legalize, three units on a 7185 s.f. lot, would be consistent with RD2 zoning (one unit per 2000 s.f. of lot area), a denser zone designation than is permitted within the Plan. The property is legally developed (because of grandfathered rights) at an R2 density, a density that already exceeds this Plan designation. Thus, granting of the requested adjustment would create a land use that is inconsistent with the Plan, contrary to the intent of this finding. For this reason as well, we respectfully submit that the requested adjustment should not be granted.

c) The Granting Of An Adjustment Is Not In Conformance With The Spirit And Intent Of The Zoning Code.

The granting of the adjustment here would be inconsistent with the spirit and intent of the zoning code. As discussed above, the Applicant's "need" for this adjustment does not stem from a change in zone or excusable ignorance, but rather from a failure to do the amount of due diligence that a reasonable purchaser of property would do. This is not an appropriate basis for the granting of the request. The intent of the Zoning Code is to give property owners some assurance that the surrounding properties will be built and maintained in a reasonably consistent and predictable manner. My clients and the other neighbors purchased their property knowing that the property was zoned R1 and that the surrounding uses were primarily single family houses. When the recreation room was initially built, my clients were aware of it and acquiesced in the neighbor's request. They trusted their neighbor's statements at that time that it would "only" be a recreation room – clearly a mistake in retrospect. To allow the Applicant to further expand upon the previous grant and permit a triplex in a single family zone is unfair to my clients and to others who reasonably expect to be able to rely on the zoning code. Because granting of the adjustment would not be in conformance with the spirit and intent of the Code, we respectfully submit that this finding cannot be made either.

d) There Are Adverse Impacts From The Proposed Adjustment That Cannot Be Mitigated.

The Applicant states that he has "communicated with all available surrounding neighbors concerning this application, and has received the support of those he was able to meet with." However, the Application was filed on June 29, 2009, and it is now early 2011. Clearly, the Applicant has received the support of the only neighbors, four in all, from whom he was able to obtain it.

Granting of the adjustment would cause adverse impacts that cannot be mitigated. The adjustment is required in order to legalize the use of the property as a triplex, in the middle of a single family zone. My clients have the right to not live next door to a triplex. The parking spaces provided may be adequate in number for the duplex, though probably substandard in size by current requirements, but the number of spaces required is not adequate for a triplex. The Applicant references the ability of the Zoning Administrator to condition the approval in a

manner that will mitigate any adverse impacts, but does not offer any to address the impact of an underparked triplex in an R1 zone. Therefore, we respectfully submit that there are adverse impacts from the proposed adjustment that cannot be mitigated, and the Adjustment should be denied on this basis as well.

e) The Site And/Or Existing Improvements Do Not Make Strict Adherence To Zoning Regulations Impractical Or Infeasible.

The Applicant states, in effect, that granting of the variance to permit the third dwelling unit without granting the adjustment would require the demolition of a portion of the third unit and a portion of the duplex. However, the use of the rear area as a recreation room, as previously approved, would not trigger the need for either an adjustment or demolition of these parts of the structure. It is only the proposed use as a triplex that triggers this need. Therefore, the existing improvements do not make strict adherence to the zoning regulations impractical or infeasible. On the contrary, strictly adhering to the zoning regulations and denying the variance requests needed to legalize a third unit will ensure that strict adherence to the zoning regulations is practical and feasible. For this reason as well, we respectfully submit that the necessary findings to grant an adjustment cannot be made.

Proposed Zoning Administrator Determination for Over-height Fence

The Applicant has also requested a Zoning Administrator Determination for an overheight fence pursuant to L.A.M.C. §12.24 X 7. My clients have no opinion regarding this request.

Conclusion

For the reasons set forth above, my clients, the neighbors immediately adjacent to the Applicant's property, object to the requested Variances and Adjustment. The findings that the Zoning Administrator must make to grant these very substantial departures from the requirements applicable to this zone cannot be met here. Rather, the Applicant is asking that the City grant him official permission to continue a use that any reasonably diligent purchaser of property would have known was not permitted in the first place. The Code does not permit variances to be granted based on self-imposed hardships, nor to grant a special privilege or permit a use substantially inconsistent with the limitations upon the neighboring properties. For all of the above reasons, my clients respectfully submit that the requested variances and adjustment cannot be granted here.

Sincerely,

Valerie Sacks
On behalf of Matt and Donna Chazanov

Sacks Real Estate Consulting
Office (310) 876-0924
Facsimile (310) 943-3322
sacks@sacksconsulting.net
Cell (310) 500-6282