LAW OFFICE OF
Valerie L. Sacks

5900 WILSHIRE BOULEVARD • SUITE 2900
LOS ANGELES, CALIFORNIA 90036
SACKS@SACKSCONSULTING.NET
(310) 876-0924 O / (310) 943-3322 F

SUMMARY OF ARGUNENT IN OPPOSITION TO VARIANCE

FOR TRIPLEX ON R-1 ZONED LOT AT 1100 STEARNS DRIVE

CITY COUNCIL FILE NO. 11-1156

A. THE REQUIRED VARIANCE FINDINGS CANNOT BE MADE IN THE AFFIRMATIVE.

1. "Strict application of the Code would NOT result in practical difficulties or **unnecessary hardships** inconsistent with the general purpose and intent of the zoning regulations"

- THERE IS NO HARDSHIP – IGNORANCE OF READILY ASCERTAINABLE FACTS IS NOT GROUNDS FOR A VARIANCE
  - **ALL the relevant public records show that this is a duplex**:
    - ZIMAS
    - Navigate LA
    - County Assessor's office
    - City building permits
  - **Appellant** Eric Hammerlund **is in the architecture and design field** and knew or should have known how to read these documents
  - Appellants would have gotten a **title report upon purchase**, which **would have shown** that it was **a legal duplex**
  - Appellants claim the MLS said otherwise, but have not presented corroborating evidence
    - This might give them cause to sue the seller or realtor, but is not grounds for a variance;
  - APPLICANTS CAN LEAVE THE UNIT AS A RECREATION ROOM OR STORAGE AND DO NOT NEED TO DEMOLISH IT.
  - The Applicant has still failed to produce an explanation as to how this finding can be made in the affirmative with respect to either the parking issue or the use of a driveway for multiple dwelling units.

2. **THERE ARE NO special circumstances** applicable to the subject property such as **size, shape, or topography that do not apply generally** to other property in the **same** zone and vicinity;
   - Applicants claim their property is unique by deceptively citing a variety of duplexes, triplexes, and fourplexes that are nearby but NOT IN THE SAME ZONE
     - Almost every example Appellants cite is located in a different zone

Location	# of units	Zone
Stearns Drive S. of Packard	Multiple	R2
Point View Dr. between Whitworth and Packard	Multiple	R2

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1178 Hi Point	Triplex	R2
1167 Crescent Heights	Triplex	R2

- Applicants distort the facts and ignore crucial distinctions:
  - In their revised findings, they state: "Multiple 3 unit properties currently exist in the R2 zone in the immediate areas surrounding the properties." BUT THEIR PROPERTY IS **NOT IN THE R2 ZONE.** Therefore, these other properties are irrelevant.
  - Appellants state that most of the other properties on the block "are 1000 s.f. smaller." (p. 3, revised findings.) **NOT TRUE:** All the properties on the same side of the street are only about 600 s.f. smaller. Regardless, the minimum lot size per dwelling unit in the zone is 5000 s.f. – they could not have even TWO units if they were not grandfathered. They could not have 3 units on their 7100 s.f. lot even if this were still zoned R2. (See Chart.)
  - Applicants claim their property is unique by deceptively citing a variety of duplexes, triplexes, and fourplexes that are nearby but NOT IN THE SAME ZONE
  - The Applicant has still failed to produce an explanation as to how this finding can be made in the affirmative with respect to either the parking issue or the use of a driveway for multiple dwelling units.

3. **The variance is NOT 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;
   1. The 2002 APC case is not controlling precedent:
      a. *Stolman v. City of Los Angeles* requires the precedential cases to be in the same zone and vicinity, not 15 miles away. (8 Cal. Rptr.3d at 188)
   2. The case cited by the ZA is controlling precedent, not Webster.

Address	1100-1102 Stearns	445 N. Croft	1729 Webster
Location	S of Olympic, E of Crescent Heights	W of Crescent Heights, N of Beverly	Silver Lake
Distance from Site	n/a	2.14 miles (1.6	**8 miles**
Community Plan area	**Wilshire**	**Wilshire**	**Silver Lake-Echo Park-Elysian Valley**
Zone at time of request	R1	R1	R1
Prior zone	R2	R2	R2
Legal use	Duplex	Duplex	Duplex

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Request-density	Permit recreation room to be used as a rental unit	Permit storage space to be used as a rental unit	Permit unpermitted space to be used as a rental unit
Request-parking	To allow 0 parking spaces for 3rd unit	To allow 0 parking spaces for 3rd unit	
Size of lot	7100 s.f.	6500 s.f.	6620 s.f.
Total habitable space if triplex permitted	4146 + 790	4,153 s.f.	3283 s.f.
Shape of lot	Rectilinear	Rectangular	Irregular; hillside
Mansionization ordinance precludes legalization of floor area for 3rd unit	Yes	yes	No (because request preceded ordinance's effective date)

4. 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.
   - The Applicants would have this Council think it's a popularity contest. That's not what the law says.
   - The Applicants have over 40 letters from project opponents.
   - The South Carthay Neighborhood Association opposes it.
   - The case never went before the official Neighborhood Council never.
   - The Chair of the homeowners' group that purportedly supports the variances made her decision without giving the neighbors notice or an opportunity to be heard.
   - As the Chair of the Area Planning Commission stated, permitting this space to be used as a dwelling unit when it has many improvements which have not been reviewed by a building inspector may mean the City's approval of an **unhabitable and unsafe unit.**
   - To permit cars for 3 units to back out onto a street as busy as Whitworth is **dangerous**.

5. The granting of the variance **will adversely affect** any element of **the General Plan**.
   - The Wilshire Community Plan designates the property **for low density residential with corresponding zones of RS, R1, RD6 and RD5 and Height District No. 1**.
   - **To permit a third unit here would create a land use that is inconsistent with the Plan-** A General Plan Exception must be requested in order to legalize a triplex here.

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B. EVEN IF THE FINDINGS FOR THE THIRD UNIT COULD BE MADE, THE CITY STILL CANNOT ALLOW THIS USE BECAUSE OF OTHER LEGAL IMPEDIMENTS.

1. Applicant Still Has Not Presented Findings for Parking and Backing Out- The Applicant's attorney has still provided only the vaguest of findings in support of the parking variance and the variance from the code section prohibiting cars for more than 2 units backing onto Whitworth, which is a moderately busy street rather than just a neighborhood street.

2. Baseline Mansionization Ordinance applies if the recreation room is used as a dwelling unit, triggering the need for an additional round of variances. The Applicant has not applied for these variances.

3. General Plan Exception or Amendment. Approval of a 3rd unit in clear contravention of the General Plan designation requires a General Plan Exception or Amendment. The Applicant has not applied for an Exception or Amendment.

4. CEQA requires at minimum that an Environmental Assessment be filed and an initial study be done. This was never done. Because the proposed use is in conflict with the general plan and would lead to cumulative impacts, an Environmental Impact Report might be required to approve the use.

C. THE CITY JUST LOST AN ANALOGOUS CASE – THE CHABAD CASE – AND THE CITY CAN ILL AFFORD TO WASTE SCARCE HUMAN AND FINANCIAL RESOURCES DEFENDING A MERITLESS VARIANCE CASE SUCH AS THIS ONE.