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FAX COVER SHEET

Date: September 11, 2013

<u>To</u>	<u>Fax No.</u>
Los Angeles City Council c/o City Clerk	(213) 978-1040

From: Victor I. Marmon

Number of Pages (including cover): 8

Enclosure:

Declaration of Michael J. Piszker for Council File 13-0804-S1

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1 **DECLARATION OF MICHAEL J. PISZKER FOR COUNCIL FILE 13-0804-S1**

2 I, MICHAEL J. PISZKER, declare:

3 1. I know the facts stated herein to be true of my own personal knowledge. If
4 called upon to do so, I could and would testify competently thereto.

5 2. I am a licensed professional civil engineer in the State of California and have
6 held my license in good standing for over 20 years. I am a development consultant
7 serving both public and private sector clients, and providing services in entitlement,
8 planning, engineering, design, construction-phase activities, code appeals and project
9 management. I am a former member of the U.S. Army Corps of Engineers and, as a
10 consultant, also address matters involving jurisdictional waters of the United States
11 and the State of California such as Stone Canyon Creek (Creek), with various wildlife
12 and regulatory agencies including California Department of Fish and Wildlife (CDFW),
13 the Regional Water Quality Control Board, and the Federal Emergency Management
14 Agency (FEMA).

15 3. I have reviewed the files of the City of Los Angeles (City) in connection with the
16 request for a 50-foot height variance for 360 North Stone Canyon Road (subject
17 property), Case Number ZA-2012-1395-ZV (Case), including, without limitation City
18 reports, submissions by the applicant to the City, submissions by members of the
19 public to the City, findings made by the Zoning Administrator (ZA), findings made by
20 the West Los Angeles (WLA) Area Planning Commission (APC), tapes of hearings, and
21 other items elaborated below. I have attended the following hearings by the City
22 concerning this Case: the hearing held by the ZA, the two hearings held by the WLA
23 APC, the City Council meetings on July 3, 2013 and August 27, 2013, and the
24 hearing held by the City Council's Planning and Land Use Management Committee
25 on September 10, 2013.

26 4. I testified before the ZA on January 9, 2013 in opposition to any changes in the
27 conditions or language of the parcel map conditions adopted by the WLA APC in
28 December 2006 and in opposition to the 50-foot height variance at the subject

1 properly (requested height variance). During the ZA hearing, I pointed out that:

2 A. The 10-foot buffer zone (established as a condition of the City's approval
3 in December 2006 of Parcel Map AA-2005-3998-PMLA would have been required
4 as protection of jurisdictional riparian area by CDFW had the City not required
5 the buffer on each side of the Creek. Furthermore, I recommended to the ZA that
6 a solar and shadowing study be prepared and submitted to CDFW for their review,
7 and that proper analysis of impacts be performed in accordance with the
8 California Environmental Quality Act (CEQA). My opinion is that the house is
9 poorly situated within the site too close to the Creek, that a shadowing study
10 would likely show that the proximity of the house would have adverse impacts on
11 the Creek, and that granting of the requested height variance would only worsen
12 the impacts. The permitted 36-foot high house is located at the edge of the buffer
13 zone, ten feet from the Creek.

14 B. I had reviewed the files and believe the calculations for height do not
15 accurately reflect pre-grading conditions.

16 C. Some of the height variance cases cited by the applicant were from other
17 communities and the few that were from Bel Air had very different conditions.

18 5. On March 19, 2013, the ZA issued his letter of determination denying the
19 requested height variance. None of the required five findings were made nor was
20 there evidence put before the ZA to support the requested height variance. The
21 determination was appealed by the applicant and heard before the WLA APC on June
22 5, 2013, and then again by the WLA APC on August 7, 2013, after the City Council
23 vetoed the June 5 decision of the WLA APC. In both hearings of the WLA APC I spoke
24 in opposition to the appeal and addressed the applicant's assertions. For the second
25 APC hearing, I submitted two letters, the second of which highlighted errors in the
26 declaration of the applicant's engineer, Leonard Liston, including specifically pointing
27 out that the applicant's engineer had submitted to the City an altered version of the
28 1960 Santa Monica Mountains Topographic Map in an attempt to persuade decision

1 makers of a higher natural grade than the actual condition.

2 6. On August 27, 2013, the City Council asserted jurisdiction over the appeal and
3 passed a motion to refer the appeal to the Planning and Land Use Management
4 (PLUM) Committee, which heard the case on September 10, 2013 and recommended
5 that the City Council grant the applicant's appeal of the denial of the requested
6 height variance. The PLUM Committee considered and relied on inaccurate
7 testimony by both the applicant's representative and the representative of City
8 Council District 5 and subsequently issued its Proposed Findings for Zone Variance
9 Application for Height Variance (Pursuant to Los Angeles Municipal Code Section
10 12.27) for 360 North Stone Canyon Road, Los Angeles, CA 90077 (Proposed
11 Findings), which contain many flaws and inaccurate information. Information
12 contained in my past testimonies and correspondence is used below to address the
13 many issues contained in the Proposed Findings. Except as otherwise noted, page,
14 paragraph and line references are to the Proposed Findings.

15 A. Page 1, paragraph 3, lines 1-3. There has been no evidence provided
16 that supports a finding that the applicant would experience any practical
17 difficulties or unnecessary hardships with regard to the already-permitted,
18 14,000+ square foot house, on a 2 + site. The site is larger and flatter than most
19 within the vicinity and would allow for a larger house with more yard amenities
20 than most properties in the vicinity.

21 B. Page 1, paragraph 3, lines 3-7. There are no special circumstances
22 applicable to the subject property that do not apply generally to other property in
23 the same zone and vicinity with the Creek running through it. The buffer is only
24 10-feet applied to each side of the Creek, and not the dimensions called out in the
25 Proposed Findings.

26 C. Page 2, paragraph 1. The house to which the requested height variance
27 applies is governed only by the Hillside Ordinance.

28 D. Page 2, paragraph 2, line 1. The applicant has joined two of the lots

1 created by the recorded parcel map, thereby forming an almost square-shaped 2 +
2 acre parcel as the subject property.

3 E. Page 2, paragraph 2, lines 3-13. The presence of the Creek is like any
4 other constraint such as a property line, wall, etc., and the flat area between the
5 Creek and the applicant-constructed retaining walls is approximately 1 ¼ acres,
6 which is more than most properties within a 500-foot radius of the subject
7 property. The findings are factually wrong -- there is not a 50-percent reduction
8 in the buildable area.

9 F. Page 2, paragraph 3, lines 5-7. The flat area of the site that represents
10 60 to 65 percent of the site is not below street grade based on topographic
11 information contained in the applicant's plans, which were part of the record
12 before the ZA and to which I referred in my submittals to the WLA APC. The
13 applicant placed fill, thereby raising the grade of a portion of the site, including
14 much of the footprint of the existing house.

15 G. Page 2, footnote 1. Much of the information contained in the Proposed
16 Findings was not testified to by applicant's engineer at the ZA hearing and was not
17 otherwise made part of the record before the ZA by the applicant's engineer or any
18 other person prior to the ZA's letter of determination.

19 H. Page 3, paragraph 1, lines 1-3. The "downward slope" referenced in the
20 Proposed Findings is actually the bank of the Creek and a slope manufactured by
21 the applicant above the bank. The applicant self-imposed the measurement
22 location by siting the house at the edge of the buffer zone.

23 I. Page 3, paragraph 1, lines 3-5. The applicant's own elevation drawings
24 submitted to the City show that the statement in the Proposed Findings that
25 "[a]pproximately 85 percent of the residence is currently measured at 28 feet . . ."
26 is completely incorrect.

27 J. Page 3, paragraph 2, lines 3-9. The permitted house that is mostly
28 constructed will be one of the largest in the vicinity. It does not require a

1 technical expert, separate from the vast experience of the ZA, to recognize that the
2 house could have been expanded horizontally on the site.

3 K. Page 3, paragraph 3. My letter to the APC dated July 30, 2013 contains
4 attachments that clearly show that over 95 percent of ground covered by the
5 house was raised by the applicant.

6 L. Page 3, paragraph 4. Well over 60 percent of the subject property is flat
7 and easily developable, and the large flat area of approximately 1 1/4 acres is larger
8 than most within a 500-foot radius of the subject property.

9 M. Page 4, paragraph 1. Both the overall shape of the 2+ acre parcel, and
10 the flat 1 1/4 acre area within it are closer to a square than a "long and narrow site".
11 Also, there is neither a "15 foot buffer" nor a "15 foot buffer easement" as stated in
12 this paragraph.

13 N. Page 4, paragraph 2. The subject property is roughly square-shaped,
14 and provides for a much larger useable area than most parcels within the vicinity.
15 (See paragraphs 6. A., D., and E. above.)

16 O. Page 4, paragraph 3. The ZA did not err. He recognized the presence of
17 the Creek and realized it does not pose a constraint when there exists a 1 1/4 acre
18 flat, useable area within the subject property.

19 P. Page 5, paragraph 1. Exhibits provided in my letters to the WLA APC
20 show that about 95 percent of the house is on an area that has been raised.

21 Q. Pages 5-7, finding 3. Since the overall size of the parcel (2+ acres) and
22 the size of the flat useable area (1 1/4 acres) is larger than most properties within a
23 500-foot radius, a variance is not necessary to place this larger, more buildable
24 property in parity with other property in the vicinity.

25 R. Page 6, paragraph 1. Comparison to the 620 N. Stone Canyon variance is
26 not appropriate for the reasons in the record before the ZA.

27 S. Page 6, footnote 2. I communicated with one of the owners, since 1982,
28 of 333 Copa de Oro Road, and she told me that she had no knowledge of a height

1 variance in 2000 or at any other time for that property, nor is there any record of
2 ZA 2000-0559 applicable to 333 Copa de Oro Road on the Zone Information and
3 Map Access System (ZIMAS) of the City's Department of City Planning.

4 T. Page 7, paragraph 1. The Hillside Ordinance, not the Baseline Hillside
5 Ordinance, applies to the house that is the subject of the requested height
6 variance.

7 7. The Proposed Findings rely heavily on a declaration by the applicant's engineer,
8 Leonard Liston. Mr. Liston's declaration of July 26, 2013, has many inaccurate
9 statements that are relied upon in the Proposed Findings. Some of the inaccuracies
10 are noted below:

11 A. Liston Decl., paragraph 4. This paragraph ignores the fact that the
12 subject property is one of the largest, and contains one of the largest flat areas,
13 within a 500-foot radius. Most of the smaller parcels in this vicinity have several
14 amenities, and the applicant's own site plan shows a generous yard, pool, and
15 court areas, which leave room for the house to have been expanded outward
16 rather than upward.

17 B. Liston Decl., paragraph 5. This paragraph incorrectly assumes that a
18 person's view is purely horizontal. The residents at 333 Copa de Oro Road
19 currently enjoy a view of the Creek and the golf course to the west, which view will
20 be reduced with the additional height of the requested height variance.

21 C. Liston Decl., paragraph 6. This paragraph points out building
22 constraints, but does not recognize that the resulting reduced area of 1 ¼ acres is
23 still larger than most of the entire properties within the vicinity of the subject
24 property.

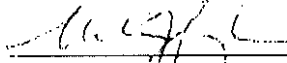
25 D. Liston Decl., paragraphs 9 and 12. Paragraphs 9 and 12 refer to exhibits
26 that have been inappropriately annotated in a manner that could mislead a
27 reviewer. The attachments to my August 30, 2013 letter to the WLA APC show
28 unedited historic survey information from the City Engineer and that over 95

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percent of the house is placed on fill. Further, as to paragraph 12, Exhibit "C" to the Liston Declaration is not a "standard document". It is an annotated excerpt of a Santa Monica Mountains Topographic Map that was not provided prior to the ZA's issuance of his letter of determination and therefore was not, and could not, have been in the possession of the ZA at that time.

E. In general, the Liston Declaration is redundant, and I have chosen not to address line-by-line the repetitive inaccuracies presented.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed at Topanga, California, on September 11, 2013.


Michael J. Piszker