REVISED FINDINGS FOR HEIGHT VARIANCE FOR

360 NORTH STONE CANYON ROAD

SUBMITTED BY
COUNCILMEMBER KORETZ
ON MARCH 12, 2015

APPROVED BY THE PLANNING AND LAND USE MANAGEMENT COMMITTEE ON MARCH 24, 2015

PROPOSED FINDINGS
FOR ZONE VARIANCE APPLICATION
FOR HEIGHT VARIANCE

(PURSUANT TO LOS ANGELES MUNICIPAL CODE SECTION 12.27)
FOR
360 NORTH STONE CANYON ROAD, LOS ANGELES, CA 90077

Pursuant to Charter Section 245, the Los Angeles City Council asserted jurisdiction over the West Los Angeles Area Planning Commission case regarding 360 North Stone Canyon Road in (ZA-2012-1395-ZV-ZAA). The City Council has thus asserted jurisdiction over the decision of the West Los Angeles Area Planning Commission and will take action pursuant to Planning and Land Use Management Committee's recommendation as to the matter concerning the decision of the Zoning Administrator ("ZA") dated March 19, 2013 ("Determination") denying a height variance for a two story single-family residential unit.

The following grant of a height variance is based upon findings of fact set forth in Los Angeles Municipal Code section 12.27(D) and Charter section 562. The City Council finds that the ZA abused its discretion and erred in failing to consider the unique topographical and regulatory constraints of property as well as the General Plan policies supporting cohesion and aesthetic parity with residential structures among the Bel Air community.

Based upon the substantial evidence cited below, the Council asserts the following: (1) that the denial of the variance would result in practical difficulties and unnecessary hardships inconsistent with the general purpose and intent of applicable zoning regulations; (2) there are special circumstances applicable to the property such as the long, narrow, shallow depth of the parcel, topographical constraints of a traversing water channel, a 15 foot buffer and additional 10 foot setback beyond the buffer, and another 15 foot setback are constraints that do not apply generally to other properties in the vicinity and warranted approving the variance; (3) that such a variance is necessary for preservation and enjoyment of substantial property right or use generally possessed by other properties in the same zoned vicinity; (4) the granting of the variance will not be materially detrimental to the public welfare or injurious to property or improvements in the same zone or vicinity in which the property is located; and (5) granting of the variance will not adversely affect any element of the General Plan.

The evidence presented herein demonstrates the following: (a) findings 1-5 as described above and mandated by Los Angeles Municipal Code section 12.27(D) are all affirmatively proven; (b) the ZA erred and abused its discretion as to findings 1-5 such that the denial of the grant was an abuse of discretion and inaccurate; (c) approval of the ZA's Determination to permit the construction, use and maintenance of a 8 foot tall block wall was not appealed to the Area Planning Commission arid hence, any appeal has been was waived; and (d) granting of the variance is supported by the California Environmental Quality Act ("CEQA").

THE FOLLOWING FINDINGS OF FACT ARE REQUIRED BY LOS ANGELES MUNICIPAL CODE SECTION 12.27(D) AND SECTION 562 OF THE LOS ANGELES CITY CHARTER ARE AFFIRMATIVELY PROVEN:

1. **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 Applicant's property, 360 N. Stone Canyon Road, is located in an area of the City of Los Angeles known as Bel Air, which is characterized by sloping terrain and large estate homes. The property falls under the prior Hillside Ordinance ("HO") and Baseline Hillside Ordinance ("BHO") which were designed to ensure, in part, that residence sizes were compatible with lots; and that the overall character of the surrounding community was maintained. (2AR0231 [Letter from Fred Gaines to Zoning Administrator Charles Rausch ("ZA") dated January 8, 2013 ("Gaines Letter")].) The Bel Air area is populated with estate homes, many of which (like the property at issue) are on two acre parcels and developed with one-, two- or three story homes containing approximately 4,500 square feet to 40,000 square feet of floor area. (2AR0161 [Master Land Use Permit Application dated September 21, 2012 ("MLUP App.")]; 2AR0233 [Gaines Letter].) The size, height, and character of the Applicant's home (as proposed) are consistent with purposes and intent of the BHO. However, the strict application of the HO and BHO will result in unnecessary hardships due to the unique topography and setbacks and restrictions discussed in detail below.

The Applicant's property consists of an unusually long and narrow site configuration, characterized by natural downward southwesterly grade and 15-foot descending slope — all of which are practical difficulties for placement and buildability of the residence. (8AR1190 [Oversize Plot Plan of Stone Canyon Property ("Plot Plan")[1] showing the majority of the home at a finished grade of +/- 484 feet with the exception of the southwest corner that has a finished grade of 478.0. This descending elevation from 484 feet to 470.0 feet near the drainage easement (approximately 15 feet) affects only the southwest portion of the property nearest the water channel].) In addition to the irregular lot shape and grade, the site has unique and specific topographic hardships resulting from a water channel that traverses the western portion of the property and cuts through the front yard. (8AR1190 [Plot Plan].) These constraints include a 15-foot descending slope as well as a 15-foot storm drain easement and an additional 10-foot vegetative setback from the water channel as mandated by the City. (1AR0046 [Condition 2 of the Parcel Map Modification Approval requiring a 15-foot drainage easement]; 1AR0048, 0052 [Conditions 7 and 11 of the Parcel Map Modification Approval requiring a 10-foot vegetative setback on each side of the water channel].) Due to the water channel, mandated 15 foot storm drain easement and 10 foot setback from the easement, the property will have, at minimum, a 79 foot setback from the western property line (and greater in other areas). (8AR1190 [Plot Plan].) In the absence of the water channel, and corresponding 15 and 10 foot easement and setback, the home would have been constructed with a 25 foot maximum setback from the front (westerly) property line (similar to a majority of homes in the vicinity). (See Los Angeles Municipal Code ("LAMC") § 12.07.01 [lots zoned "RE" must have a "front yard of not less than 20% of the depth of the lot, but such front yard need not exceed 25 feet"].) However, due to the water channel and related restrictions along the western portion of the site, as well as a hill along the eastern side of the property and an additional 15 foot setback from the rear retaining wall, the buildable area of the property is ultimately reduced by 50 percent. (8AR1190 [Plot Plan showing a

[1] Copies of the Plot Plan are included throughout the record: 1AR0117 [Small Scale Plot Plan], 6AR1166 [Ledger Size Plot Plan]; 7AR1172 [Oversize Plot Plan]; 8AR1190 [Oversize Plot Plan].

50% reduction in buildable area resulting from: (1) the 79-foot setback from the western property line (due to the water channel, 15-foot easement, and 10-foot vegetative setback), (2) the 85-foot setback from the eastern property line (due to the 15-foot setback from the base of the retaining walls, the two retaining walls, and the steep ascending slope that continues offsite and onto adjacent properties on Copa de Oro Road, and (3) 12-foot setbacks from the northern and southern property lines. In particular, setbacks from the east and west further constrict the already narrow and irregular shape of the property leaving the proposed building pad as the only viable developable area of the parcel.]; see also 6AR1161 [Retaining Wall Exhibit depicting substantial setbacks from the east and west property lines].)

This 50 percent reduction in developable area on the property creates an even more narrow and shallow lot than the natural configuration of the site. Further, as stated by the Applicant's representatives and supported by evidence before the ZA, the home cannot be relocated elsewhere on the lot due to the physical characteristics of the property including the 15 foot decending slope, water channel, and 15-foot easement plus 10 foot setback requirements all of which constitute substantial hardships. (12AR1772-1792 [Testimony of the Applicant's then-Attorney Fred Gaines at the ZA hearing ("Gaines Testimony")]; 2AR0273 [ZA Determination Letter identifying rebuttal testimony by the Applicant's civil engineer, Leonard Liston]; 8AR1190 [Plot Plan]; see also 6AR1161 [Retaining Wall Exhibit].)

The subject parcel is actually below street grade and therefore less obtrusive than many other surrounding properties. For example, the adjacent homes on Copa de Oro Road have a finished grade some 60 feet higher. (8AR1190 [Plot Plan depicting the eastern boundary retaining wall and ascending slope abutting homes on Copa de Oro at a ***minimum*** elevation of 530 feet. Based on the continued ascending slope past the property line, these homes are at an approximate elevation of 540 feet[2], roughly 60 feet above the finished grade of the Applicant's property (484 feet)]; 12AR1776 [Gaines Testimony that "the base of that home [333 Copa de Oro Road] would be above the top roof of this house. . ." and is "40-plus-feet up"].) With the unique narrow and shallow layout of the lot strict application of these restrictions would mean there would not be sufficient east-west or north-south developable area to conform to the characteristics of Bel Air properties. Thus, the hardship realities of the property and constraints imposed by the City make strict adherence to these zoning regulations inconsistent with the intent of these regulations for this property.

The water channel also results in a downward slope on the southwest portion of the home that creates a substantially lower datum point (the featured control point from which the building height is measured) that disproportionately reduces the entire height of the home. (2AR0231-0232 [Gaines Letter].) Approximately 85 percent of the residence is currently measured at 28 feet, roughly 8 feet lower than the 36 feet permitted by law under the HO, in affect at the time the original permit was issued and applicable to other homes in the area. A very small portion of the home, 15 percent is currently measured at 36 feet. (2AR0239 [Elevation Exhibit included with Gaines Letter ("Elevation Exhibit") showing the structure height of 28 feet]; see also 6AR1144 [North-South Elevation Exhibit]; 8AR1190 [Plot Plan with dashed line indicating the top of the steep gradient slope affecting only a small portion of the home (approximately 15%) near the southwest corner closest to the water channel. Though the majority of the home can be constructed at approximately 36 feet, a variance is necessary to build a consistent roofline across the structure.]) The area located nearest to the water channel at the southwest corner of the home is situated at a significantly lower grading, resulting in a height increase of 28 feet to 36 feet in only this limited region. This artificial sloping toward the water channel results in a low datum point from which the entire residence is

[2] As shown on the January 1960 Santa Monica Mountains Topographical Map at 6AR1008 ("Topo Map"),the area immediately east of the property near Copa de Oro Road has a natural elevation of 542.0 feet – 58 feet above the finished grade of the Applicant's property at 484.0 feet. The Topo Map is stamped with the planning department case number ZA-2012-1395-ZV-ZAA-1A).

measured (though it is not representative of the true, overall building height). Due to the low datum point, a small portion of the house (15 percent) is the measurement for the entire home. (8AR1190 [Plot Plan].) A strict application of the zoning ordinance would result in a significant and unnecessary hardship to the Applicant because only 85 percent of the house can he built to a height of 28 feet without a variance — thus depriving the Applicant of significant structural square footage that is otherwise afforded to neighboring properties that are allowed to build to the full 36 feet.

The ZA erred in concluding "there has been nothing presented to substantiate that there is a practical difficulty or unnecessary hardship imposed by the existing zoning regulation that makes the additional 14 feet of height necessary." (Determination p. 9.) The ZA went on to speculate, without substantial evidence, that: "The site is fairly large and a more horizontal coverage of the home on the lot with same square footage *may* allow such features to be incorporated." (Determination p. 9, italics added.) No evidence was cited to support this conclusion, and we find none in the record. No technical expert testified that it was feasible to expand the residence given the other setbacks and city requirements. In contrast, the Applicant's representatives provided ample evidence as to the cumulative constraints on the property and impracticability of horizontal expansion and relocation of the building pad.

The ZA concluded that the 15 percent of the house currently at 36 feet (based on the low datum point) is in fact the actual height of the entire house. This is misleading because 85 percent of the house can be built to a height of 28 feet without a variance. Similarly, the ZA erred by misstating the increase in height as 38 percent. (Determination p. 12.) This creates the assumption that the entire house is being raised to +/- 50 feet — which is misleading and unsupported by record evidence. Rather, only 15 percent of the house will be +/- 50 feet; the remaining 85 percent will only be +/- 39 feet, a mere three feet above the 36 foot height limitation. (2AR0239 [Elevation Exhibit]; 6AR1144 [North-South Elevation Exhibit]; 8AR1190 [Plot Plan].)

The ZA also erred in failing to consider that 50% of the land is not buildable. Instead, the ZA speculated that the house could have been expanded outward to increase the square footage rather than the design as proposed. This speculation failed to take into consideration the narrow, shallow site configuration, physical characteristics of the property, including the storm drain easement and setback requirements and constraints posed by the existing water channel.

2. There are special circumstances applicable to the subject property such as size, shape, topography, location or surroundings that do not apply generally to other property in the same zone and vicinity.

The property consists of an unusually long and narrow site configuration, characterized by natural downward southwesterly grade and 15 foot descending slope — all of which are practical difficulties for placement and buildability of the residence. In addition to the irregular lot shape, the site has unique and specific topographic hardships resulting from a water channel that traverses the western portion of the property and cuts through the front yard. Due to the water channel, a mandated 15 foot easement and a 10 foot setback, the property will have, at minimum, a 79 foot setback from the western property line (and greater in other areas), unlike most other homes in the area that only have the required 25 foot maximum setback. (8AR1190 [Plot Plan]; LAMC § 12.07.01.) If the water channel, 15 foot easement and 10 foot setback did not exist, the home would have been constructed with a 25 foot maximum setback from the front (westerly) property line. However, due to the water channel, and the 15 foot easement and 10 foot setback along the western portion of the site and a hill along the eastern side of the property with another 15 foot setback, the buildable area of the property is ultimately reduced by 50 percent. (8AR1190 [Plot Plan]; 2AR0154 [Privacy Wall Exhibit]; 6AR1161 [Retaining Wall Exhibit].)

The Applicant's representatives testified as to the uniqueness of the parcel's shape, topography and corresponding City-mandated restrictions (as described in detail above) that are applicable to the Applicant's property. (12AR1775-1777, 1789 [Gaines Testimony regarding the higher elevation of surrounding properties and uniquely-imposed 10-foot vegetative setback]; 2AR0273 [ZA Determination Letter identifying rebuttal testimony of Leonard Liston].) Virtually no surrounding properties include the number of cumulative constraints on the property and a traversing water channel with increased easements and setbacks. (12AR1789 [Gaines Testimony]; 6AR1161 [Retaining Wall Exhibit].) Based upon record evidence, special circumstances exist on the property such as the irregular shape of the lot, elevation and sloping, topographical features and restrictions, which are unique and not applicable to surrounding properties.

The ZA erred in finding there are no "special circumstances" warranting a height variance. According to the ZA, "there has been no evidence presented to indicate that there is a special circumstance applicable to the subject property that do not generally apply to other properties in the same zone and vicinity." (Determination p. 10.) The ZA's conclusion was erroneous and not supported by substantial evidence because it failed to consider the water channel traversing the western portion of the property, the 15 foot storm drain easement and 10 foot setback that traverses each side of the water channel, and the additional 15 foot setback along the eastern portion of the property for the retaining walls, all of which are not customary together on any other parcels in the area. The ZA did not cite facts to counter evidence presented by the Applicant including topographic, elevation, and plot plans in the record. Instead, the ZA argued that other homes with significantly greater height were possibly approved and built under different ordinances and codes. (Determination p. 10.) The ZA provided no facts or details to support this conclusion.

In addition, the ZA failed to address any of the substantial evidence concerning the water channel traversing the property, the 79 foot setback from Stone Canyon Road required on this property rather than others in the area, the flood plain requirements, or significant southwest sloping that cumulatively result in 50 percent of the lot being unbuildable. (8AR1190 [Plot Plan depicting the 50% reduction in buildable area as a cumulative result of substantial setbacks]; 6AR1161 [Retaining Wall Exhibit].) There is no record evidence supporting the ZA's finding that these hardships generally apply to other properties in the same zone. Rather, the facts support a contrary finding, to wit, that special circumstances do exist. (12AR1789 [Gaines Testimony].) The Applicant provided ample detail as to the specific constraints of the property and the uniqueness of such constraints. The ZA erred in failing to consider or refute this information.

The ZA erred by misstating the increase in height as 38 percent. (Determination p. 38.) This creates the assumption that the entire house is being raised to +/- 50 feet — which is misleading and unsupported by record evidence. Rather, only 15 percent of the house will be +/- 50 feet; the remaining 85 percent will be +/- 39 feet, a mere three feet above the 36 foot height limitation. (2AR0239 [Elevation Exhibit]; 6AR1144 [North-South Elevation Exhibit]; 8AR1190 [Plot Plan depicting the eastern-boundary retaining wall and continuing ascending slope abutting homes on Copa de Oro at a minimum elevation of 530 feet. Based on the continued ascending slope past the property line, these homes are at an approximate elevation of 540 feet - roughly 60 feet above the finished grade of the Applicant's property (484 feet)]; see also 6AR1008 [Topo Map which shows the property immediately to the east on Copa de Oro Road at a natural elevation of 542.0 feet].)

3. 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 such special circumstances and practical difficulties or unnecessary hardships, is denied to the property In question.

The property consists of an unusually long and narrow site configuration, characterized by a natural downward southwesterly grade and 15 foot ascending slope — all of which are special circumstances limiting placement and buildability of the residence. The site also has unique and specific topographic hardships resulting from the water channel that traverses the western portion of the property and cuts through the front yard. In addition, a 15 foot storm drain easement and a 10 foot additional setback from the easement as mandated by the City, results in a minimum setback of 79 feet from the western property line. (8AR1190 [Plot Plan].) In contrast properties without a water channel (and corresponding 15 foot easement and 10 foot setback requirements) may be constructed with only a maximum 25 foot setback (as is the case with the majority of properties in the vicinity). (LAMC § 12.07.01.) In addition, topographical impediments such as a hill along the eastern side of the property with another 15 foot setback contribute to the reduction of the overall buildable area by 50 percent. (8AR1190 [Plot Plan]; 2AR0154 [Privacy Wall Exhibit]; 6AR1161 [Retaining Wall Exhibit].) The ZA's unsubstantiated speculation as to the feasibility of horizontal build-out of the residence fails to account for the setbacks and the descending slope along the northeasterly boundary of the property that cumulative constrict the total buildable area such that the building pad as proposed is the only practical location to construct the home Therefore, the variance is necessary to preserve use of the property that is typically enjoyed by other properties in the area that would otherwise be denied to the Applicant.

The granting of the variance would indeed place the subject property in parity with other properties in the area, characterized by large estate homes and sloping landscapes. The purpose of the variance request is not to increase the usable square footage, but rather to add a peaked roofline with an attic to make the home consistent with the architectural style and character of the neighboring houses. (2AR0231-0232 [Gaines Letter]; 12AR1776-1777 [Gaines Testimony that the proposed roofline is similar in design to that of the 59-foot home at 620 N. Stone Canyon.) Further, the proposed height increase will not detract or block any neighboring views. (2AR0234 [Gaines Letter].) If an individual were sitting on the first floor of the nearest home, 333 Copa De Oro Road, that floor would be, at minimum, 20 feet higher than the proposed roofline height at 360 Stone Canyon. Again, this means that an individual would have to look ***down*** nearly 20 feet before the roofline is even visible at grade-level. (8AR1190 [Plot Plan showing the vantage point from 333 Copa de Oro Road based on the approximate elevation of the home (540 feet), including the average height of a person (5 feet) standing on the first floor who would be looking out at an elevation of approximately 545 feet (roughly 20 feet above the tallest point of the proposed roofline at 526 feet)]; 12AR1776 [Gaines Testimony].) In addition, unlike the majority of homes in this specific community, the subject parcel is actually below street grade and not on a hill, and therefore is significantly less obtrusive than adjacent properties on Copa de Oro Road which have finished grades approximately 60 feet higher. (8AR1190 [Plot Plan]; 12AR1775-1776 [Gaines Testimony].)

Many large homes in the vicinity have received height variances over the years, often with fewer and less severe natural topographical hardships.[3] (Determination pp. 5-6.) For example, in 2007, a height variance for 620 N. Stone Canyon Road was approved for a 59 foot residential structure to accommodate underground parking between the maid's quarters and the tennis courts (case no. ZA 2006-0982). As considered by planning staff and included in the record before the ZA, the functional difficulties of connecting those two areas was used to demonstrate hardship. (2AR0225 [Staff Investigation Report]; 12AR1785-1786 [Gaines Testimony regarding reference to the water channel as evidence of practical difficulties in the 620 N. Stone Canyon variance findings *notwithstanding the*

[3] Under similar special circumstances, the following over-in-height structures were previously approved within the surrounding vicinity; 457 Bel Air Road (ZA 2002-5061 — 44 foot building height);; 333 N. Copa De Oro Road (ZA 2000-0559 45 foot building height); 540 Crestline Drive (ZA 89-1250 YV — 57 foot building height); and 620 N. Stone Canyon Road (ZA 2006-0982 — 59 foot building height, as discussed above). (2AR0161 [MLUP App.]; 2AR0224 [Staff Investigation Report]; 2AR0233 [Gaines Letter]; 6AR1164 [Vicinity Map identifying approved over-height variances].)

absence of the additional 10-foot vegetative setback that imposed on the Applicant's property].) Notably, the starting elevation of the 620 Stone Canyon home is almost 60 feet higher than the finished grade of 360 N. Stone Canyon, such that the former property looms over its neighbors. It is common for administrative bodies to exercise their discretion in comparing the size of the property, i.e., whether it is a larger parcel (which is the case here); whether there are unusual topographical features that restrict construction (as is the case here); whether granting the variance would obstruct or impede other property owners (which is not the case here); and, whether granting the variance would put the property owner in parity with other properties (as is the case here). The hardships and constraints on the present property are far more significant from a topographical perspective than the 620 N. Stone Canyon property.

The ZA abused his discretion in finding that the Applicant had not met its burden of demonstrating special circumstances and therefore, erred in concluding the variance was not necessary for the preservation and enjoyment of property rights and use similar to those in the surrounding area. The ZA further erred in basing this finding on this unsupported conclusion with minimal additional analysis. According to the ZA, "denial of the variance does not prohibit the applicant from constructing a single-family residence on the property." (Determination p. 10.) After acknowledging that there were other homes of like size and height, the ZA stated that "the circumstances that granted relief to other homes in the area from height regulations are unique to each case and in itself not a justification. . ." (Determination, p. 11.)

The ZA erred in not considering the relevant special circumstances of the property or demonstrating why such factors considered for similar properties should not be considered in the present case. The Applicant submitted substantial evidence showing that many of the approvals under the HO took into consideration factors such as size, topographical limitations due to sloping towards the water channel that traverses the property, and compatibility of the proposed project with surrounding properties. (2AR0161 [MLUP App.]; 2AR0233-0239 [Gaines Letter].) Testimony provided to the ZA discussed the 2007 ordinance permitting a 59 foot structure in order to accommodate underground parking at 620 N. Stone Canyon Road (ZA 2006-0982). (12AR1785-1789 [Gaines Testimony].) The ZA erred in not considering equivalent hardships, including the water channel and 15-foot storm drain easement, and special circumstances unique to 360 N. Stone Canyon Road such as the narrow, irregular lot shape and additional 10-foot vegetative setback (in contrast to the 620 N. Stone Canyon approval). (2AR0232-0233 [Gaines Letter]; 12AR1785-1790 [Gaines Testimony].) The ZA erred in failing to evaluate the conditions and practical difficulties amounting to a 50 percent loss of square footage and developable land on the property should the variance be denied.

The ZA also misrepresented the height of structure in concluding that the 15 percent of the house currently at 36 feet (based on the low datum point) is the actual height of the entire house. This is misleading because 85 percent of the house *can* be built to a height of 28 feet without a variance. Thus, in denying the variance the Applicant is deprived of significant structural square footage that is otherwise afforded to neighboring properties that are allowed to build to 36 feet. The ZA erred in failing to consider the loss of use resulting from denial of the variance, since the record demonstrated that 50% of the parcel is undevelopable and horizontal build-out is not practical due to the narrow, shallow site configuration, physical characteristics of the property including the topographical constraints of the water channel, 15 foot easement and additional 10 foot setback as well a sloping elevation of 15 feet. (8AR1190 [Plot Plan]; see also 6AR1161 [Retaining Wall Exhibit].)

4. The granting of such 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.

The property falls under the BHO, designed to ensure that construction in this unique community did not unduly block views, that residence sizes were compatible with lots; and that the overall character of the surrounding community was maintained. The Bel Air area is a unique community in the City, populated with estate homes, many of which are on two acre parcels and developed with one-, two- or three story residences ranging from 4,500 square feet to 40,000 square feet of floor area. (2AR0233 [Gaines Letter].) The size, height, and character of the Applicant's home (as proposed) are consistent with the aesthetic goals of the community and the objectives of the BHO. In addition, the peaked roofline will enhance the overall aesthetic appeal and conform to the architectural style of the surrounding properties. (2AR0231-0232 [Gaines Letter]; 12AR1776-1777 [Gaines Testimony].)

In addition, granting the variance will not block or otherwise adversely impact views from neighboring properties, most of which are at least 60 feet higher in elevation. (8AR1190 [Plot Plan showing the eastern retaining wall at 530 feet and continued ascending slope onto adjacent homes on Copa de Oro Road with an approximate elevation of 540 feet, 54+ feet higher than the finished grade of the Applicant's home at 484 feet]; 2AR0238 [Gaines Letter with Photograph Exhibit]; 12AR1775-1777 [Gaines Testimony].) As stated above, if an individual were sitting on the first floor of the nearest home, 333 Copa De Oro Road, that floor would be, at minimum, 20 feet higher than the proposed roofline height at 360 N. Stone Canyon. Again, this means that an individual would have to look *down* nearly 20 feet before the roofline is even visible at grade-level. (8AR1190 [Plot Plan]; 12AR1776 [Gaines Testimony].)

The ZA erred in concluding that it would be injurious in creating a "precedent setting approval" were a variance granted here. (Determination p. 11.) This is not a finding as it does not cite facts indicating how the physical approval of the variance would actually impact public welfare or be injurious to other properties. Thus, this unsubstantiated conclusion that the variance will adversely affect properties or improvements in the surrounding area cannot be maintained.

The ZA acknowledged that the height variance at the property does not deviate from the intent of the General Plan. (Determination pp. 11-12.) The HO and BHO was intended to ensure that views were not blocked, oversized homes were not constructed relative to lot sizes and that uses are compatible. The ZA erred by failing to identify how the height variance would undermine the intent of the HO or BHO. In addition, the ZA erred by not taking into consideration that the height of the subject property will not block views or even be prominently visible from neighboring properties because the site has a below-grade starting elevation, is setback significantly from the property line and is shrouded by dense foliage and mature trees. (8AR1190 [Plot Plan]; 12AR1775-1777 [Gaines Testimony].) The record evidence further demonstrates that the finished grade of the first floor of the nearest property, 333 Copa De Oro Road, is some 20 feet higher than the elevation of the proposed roofline and that the view is protected by foliage and mature trees. (8AR1190 [Plot Plan]; 2AR0233 [Gaines Letter].) The record also demonstrates that raising the roofline to permit a peaked design with attic will render the home more aesthetically appealing and consistent with other houses in the area. (2AR0231-0232 [Gaines Letter]; 12AR1776-1777 [Gaines Testimony].) The ZA erred in failing to address or refute this evidence and abused its direction in finding the granting of the variance would be materially detrimental to the public welfare or injurious to the property or property improvements in the vicinity.

5. The granting of the variance will not adversely affect any element of the General Plan.

There are 11 elements in the City's General Plan, each of which establishes policies that provide for the regulatory environment in managing the City and for addressing environmental concerns and

problems. The majority of policies derived from these elements are in the form of regulatory requirements in the Los Angeles Municipal Code.

The project does not propose to deviate from any of the requirements of the Los Angeles Municipal Code. The Land Use Element of the City's General Plan divides the City into 35 Community Plans. The Bel Air-Beverly Crest Community Plan Map designates the property for Very Low I Density Residential land uses with a corresponding zone of RE20-1 and Height District No. 1. As stated in Chapter 3 of the Community Plan, the residential land use policies are designed to ensure that residence sizes are compatible with existing lots and that the overall character of the surrounding community is maintained. (Bel Air Comm. Plan pp. 111-1 to III-2.) The size, height, and character of the Applicant's home as proposed are consistent with the aesthetic goals of the BHO and would adhere to the City and community land use objectives.

The General Plan incorporates the City's HO and BHO, intended to prevent over-building of hillside lots, to ensure that views are not blocked by proposed structures, and to maintain compatibility of structures in the area. The proposed variance is not being requested to increase the usable square footage of the home but rather to make the home consistent with the architectural style and character of homes in the neighborhood. (2AR0231-0232 [Gaines Letter]; 12AR1776-1777 [Gaines Testimony].) In fact, the first floor of the nearest home, 333 Copa De Oro Road, is already situated at least 20 feet higher than the proposed roofline height. In other words, an occupant of the neighboring home would have to look down nearly 20 feet to even see the residential roofline at 360 N. Stone Canyon (and this is assuming the vantage point is at grade level). In contrast, the subject parcel is actually below street grade and therefore less obtrusive than other properties on Copa de Oro Road, several of which have a finished grade some 60 feet higher. (8AR1190 [Plot Plan]; 12AR1776 [Gaines Testimony].) In addition to the stark contrasts in elevation, dense foliage and mature trees separate and obscure the proposed structure from adjacent properties. (2AR0234-0238 [Gaines Letter including Photograph Exhibit]; 12AR1775-1778 [Gaines Testimony].)

Eighty-five (85%) percent of the current structure is +/- 28 feet. (2AR0239 [Elevation Exhibit showing the structure height of 28 feet]; see also 6AR1144 [North-South Elevation Exhibit]; 8AR1190 [Plot Plan showing that only a small portion of home at the southwest corner (roughly 15%) is impacted by the steep descending slope and necessitates a variance to construct a consistent roofline].) Under the HO (incorporated into the General Plan) residential structures at 36 feet were allowed. Therefore, the vast majority of the home is less than what was, by right, permitted. Only 15 percent of the current home is +/-36 feet — meaning 15 percent of the home dictates the elevation to measure the height for the entire house. This elevation difference is caused by the southwesterly downward slope of the property toward the water channel - an unusual topographical feature that is not present in conjunction with legally-mandated setbacks on most properties in the area. (2AR0232 [Gaines Letter]; 12AR1789 [Gaines Testimony].) The height of the structure is measured by the lowest natural or graded elevation 5 feet away from the entire perimeter of the structure. Because of the water channel and downward slope of the property, the lowest graded elevation will always be nearest to the water channel. (2AR0160 [MLUP App.]; 2AR0232 [Gaines Letter].) This property is no exception. The overall grade difference between the eastern portion of the property and the western portion of the property towards the water channel is approximately 15 feet. (8AR1190 [Plot Plan].) With a property that has been previously disturbed (in fact lowered from its natural grade, as is the case here), the height of the house will always be unfairly measured from the lower elevation. If the proposed variance is granted, the roofline for the majority of the home would be +/- 39 feet. As to that small area of exception, the measurement from the finished grade to the roofline would be +/- 50 feet — less than 15 percent of the total structure. (8AR1190 [Plot Plan].)

From street view or finished grade, measured height of the current structure is 36 feet; although 85 percent of the home is actually 28 feet (8 feet lower than what is allowed). However because the lower elevation dictates the datum and overall starting point to measure the height of the structure, it is unknown to someone looking at the height of the structure that they would be looking at a height of +/- 39 feet (11 feet of which are below ground, invisible to the naked eye) with the approved variance. (2AR0239 [Elevation Exhibit]; 6AR1144 [North-South Elevation Exhibit].)

The ZA acknowledged that, aside from height, the proposed residence was consistent with the General Plan. For the ZA's finding, the only conclusion reached, without citing any facts, was that the granting of the variance without the required findings to justify an approval of the request will adversely affect elements of the General Plan. (Determination p. 11.) This is a conclusion of law and is not supported by record evidence.

The ZA acknowledged that the height variance at the property does not deviate from the intent of the General Plan. (Determination pp. 11-12.) The General Plan incorporates the HO, intended to ensure that views are not blocked, oversized homes are not constructed relative to lot size and that uses remain compatible. The ZA failed to identify how the height variance would undermine any of these objectives, which, as stated above, it does not.

In addition, the ZA erred in failing to consider applicable elevations — mainly that the subject property is situated some 60 feet below other surrounding homes on Copa de Oro Road so that no views will be blocked. (8AR1190 [Plot Plan]; 12AR1775-1777 [Gaines Testimony].) The record evidence further demonstrates that the finished grade of the first floor will be 20 feet lower in elevation than that of the nearest property (333 Copa De Oro Road) and that the view is protected by foliage and mature trees. (8AR1190 [Plot Plan]; 2AR0233 [Gaines Letter]; 12AR1776-1777 [Gaines Testimony].) The record also demonstrates that a peaked roofline design will render the home more consistent with residences in the area, furthering the intent to maintain and preserve the visual character and property parity of the area. (2AR0231-0232 [Gaines Letter]; 12AR1776-1777 [Gaines Testimony].) These facts are not acknowledged or refuted by the ZA, but rather are ignored in light of consistency with the General Plan.

PURSUANT TO LOS ANGELES MUNICIPAL CODE SECTION 12.24-X, 7, THE CITY COUNCIL DOES HEREBY APPROVE:

The Zoning Administrator's Determination granting the construction, use and maintenance of a maximum 8 foot in height wall within the front yard, in lieu of the maximum 3-1/2 feet otherwise permitted, in conjunction with a single-family dwelling in the RE20-1 Zone is conditioned upon the terms and conditions set forth below. All other use, height and area regulations of the Municipal Code and all other applicable government/regulatory agencies shall be strictly complied with in the development and use of the property, except as such regulations are herein specifically varied or required:

1. The use and development of the property shall be in substantial conformance with the plot plan submitted with the Application, except as may be revised as a result of this action.

2. The authorized use shall be conducted at all times with due regard for the character of the surrounding district, and the right is reserved to the Zoning Administrator to impose additional corrective Conditions, if, in the Administrator's opinion, such Conditions are proven necessary for the protection of persons in the neighborhood or occupants of adjacent property.

3. All graffiti on the site shall be removed or painted over to match the color of the surface to which it is applied within 24 hours of its occurrence.

4. A copy of the first page of this grant and all Conditions and/or any subsequent appeal of this grant and its resultant Conditions and/or letters of clarification shall be printed on the building plans submitted to the Development Services Center and the Department of Building and Safety for purposes of having a building permit issued.

5. The applicant shall defend, indemnify and hold harmless the City, its agents, officers, or employees from any claim, action or proceedings against the City or its agents, officers, or employees relating to or to attack, set aside, void or annul this approval which action is brought within the applicable limitation period. The City shall promptly notify the applicant of any claim, action, or proceeding and the City shall cooperate fully in the defense. If the City fails to promptly notify the applicant of any claim action or proceeding, or if the City fails to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City.

6. The materials for the fence shall consist of decorative wrought iron fence on top of the existing wall with the wrought iron to a maximum height of 8 feet.

7. Prior to the issuance of any permits relative to this matter, a covenant acknowledging and agreeing to comply with all the terms and conditions established herein shall be recorded in the County Recorder's Office. The agreement (standard master covenant and agreement form CP-6770) shall run with the land and shall be binding on any subsequent owners, heirs or assigns. The agreement with the conditions attached must be submitted to the Development Services Center for approval before being recorded. After recordation, a certified copy bearing the Recorder's number and date shall be provided to the Zoning Administrator for attachment to the subject case file.

All terms and conditions of the approval shall be fulfilled before the use may be established. The instant authorization is further conditional upon the privileges being utilized within three years after the effective date of approval and, if such privileges are not utilized or substantial physical construction work is not begun within said time and carried on diligently to completion, the authorization shall terminate and become void.

In order for the fence to be approved, the City Council made the following findings in the affirmative, pursuant to Los Angeles Municipal Code section 12.24-X-7:

1. **The project will enhance the built environment in the surrounding neighborhood or will perform a function or provide a service that is essential or beneficial to the community, city or region.**

A decorative stone and masonry wall currently exists in the public right-of-way adjacent to the applicant's property. It ranges in height from about 50-inches to about 54-inches. The sections of the wall in front of the applicant's property are approximately 108 and 233 feet in length. The applicant seeks approval to construct and maintain a new decorative wrought iron fence on top of the existing wall, with a total height of 8 feet maximum.

The property is located in an area of the City characterized by sloping terrain and large estate homes. Over-in-height privacy walls and fences are prevalent in the neighborhood. Traveling from Sunset Boulevard toward the project site, most if not all of the residences along Stone Canyon Road have a fence or wall of over 42-inches in the front yard setback area These include the following:

- 110 Stone Canyon Road: wall of 9 feet in height
- 111 Stone Canyon Road: wall of 9 feet in height
- 120 Stone Canyon Road: wall of 8 feet in height
- 129 Stone Canyon Road: fence of 6 feet in height
- 300 Stone Canyon Road: wall of 9 feet in height

Additionally, the rear yards of 245 and 295 Strada Corte face Stone Canyon Road. 245 Strada Corte has an 8-foot wall in its rear yard, and 295 Strada Corte has a five-foot wall over a three-foot slope. As such, the applicant's request for a fence and wall with a total height of up to 8 feet is consistent with the fences and walls maintained on the properties along Stone Canyon Road from Sunset Boulevard to the project site.

2. **The project's location, size, height, operations and other significant features will be compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood, or the public health, welfare and safety.**

The proposed over-in height privacy fence wall is compatible with the heights of those on the adjacent properties at the Stone Canyon Road frontage. The surrounding properties in the project area are developed with one-, two- or three-story homes containing approximately 4,500 square feet to 40,000 square feet of floor area. There are other homes in the project vicinity with fences and walls that exceed the fence height limit of 42-inches. Due to the dense landscaping, topography, and size of the subject site and the neighboring properties, the over-in-height wall will minimal impact on the neighboring properties.

The zoning regulations require a maximum height of fences and walls within the required setbacks in order to provide compatibility between respective properties as well as to ensure orderly development. Such regulations, however, are written on a Citywide basis and cannot take into account individual unique characteristics that a specific parcel and its intended use may have. in this instance, the granting of the request will allow a more viable, functional, livable dwelling in a manner consistent with the spirit and intent of the zoning regulations. The proposed privacy fence wall will not result in any change to the character of the residential neighborhood, which is improved with estate sized homes with similar height walls.

3. **The project substantially conforms with the purpose, intent and provisions of the General Plan, the applicable community plan, and any specific plan.**

The Bel Air-Beverly Crest Community Plan seeks to protect investment, promote good design, and ensure public safety. The Plan does not specifically address adjustments for over-in-height fences and walls within a required setback area. Granting the requested adjustment allows the applicant to create a more useable landscape area that will provide more functional private open space. Furthermore, the proposed privacy fence wall will not change the primary use of the proposed single family home. Therefore, the project will be in substantial conformance with the various elements and objectives of the General Plan.

4. **Consideration has been given to the environmental effects and appropriateness of the materials, design and location, including any detrimental effects on the view enjoyed by occupants of adjoining properties and security to the subject property.**

In general, fences/walls, when in character with their surroundings, are not detrimental to the public welfare or injurious to adjacent properties. In this instance, the design, location, and height of the fence will not cause shade or shadow impacts, nor will it create an area that conceals potential criminals, arid is not in the public right-of-way. As requested and conditioned, the fence does not create visibility problems, or impacts to light and air. The proposed fence allows for added privacy and security while still retaining an open design that relates to the street. Thus, as proposed, the fence is not anticipated to have any impacts on solar access, ventilation or on privacy to the adjoining property owners.

TRANSFERABILITY:

This authorization runs with the land. In the event the property is sold, leased, rented or occupied by any person or corporation other than the owner/Applicant, it is incumbent upon the owner to advise them regarding the conditions of this grant.

VIOLATIONS OF THESE CONDITIONS, A MISDEMEANOR:

Section 12.29 of the Los Angeles Municipal Code provides:

A variance, conditional use, adjustment, public benefit or other quasi-judicial approval, or any conditional approval granted by the Director, pursuant to the authority of this chapter shall become effective upon utilization of any portion of the privilege, and the owner and applicant shall immediately comply with its conditions. The violation of any valid condition imposed by the Director, Zoning Administrator, Area Planning Commission, City Planning Commission or City Council in connection with the granting of any action taken pursuant to the authority of this chapter, shall constitute a violation of this chapter and shall be subject to the same penalties as any other violation of this Code.

Every violation of this determination is punishable as a misdemeanor and shall be punishable by a fine of not more than $2,500 or by imprisonment in the county jail fora period of not more than six months, or by both such fine and imprisonment.

FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL OUALITY ACT:

A Mitigated Negative Declaration ("MND") was issued for the proposed project (ENV 2005-8611-MND) on March 16, 2006. The lead agency certified the MND and found that with the imposition of mitigation measures described in the MND, the project would not have a significant effect on the environment. The MND reflects the lead agency's independent judgment and analysis based on substantial record evidence as to the absence of significant environmental effects.

IF CONDITIONS NEED TO BE ADDED SEPARATELY FROM THE ALREADY APPROVED PORTION (FOR THE FENCE HEIGHT ADJUSTMENT WHICH WAS GRANTED AND NOT APPEALED), THEN THE FOLLOWING CONDITIONS SHALL BE ADDED:

1. All other use, height and area regulations of the Municipal Code and all other applicable government/regulatory agencies shall be strictly complied with in the development and use of the property, except as such regulations are herein specifically varied or required.

2. The *use* and development of the property shall be in substantial conformance with the plot plan submitted with the Application and attached to the case file, except as may be revised as a result of this action.

3. The authorized use shall be conducted at all times with due regard for the character of the surrounding district, and the right is reserved to the Zoning Administrator to impose additional corrective Conditions, if, in the Administrator's opinion, such Conditions are proven necessary for the protection of persons in the neighborhood or occupants of adjacent property.

4. A copy of the first page of this grant and all Conditions and/or any subsequent appeal of this grant and its resultant Conditions and/or letters of clarification shall be printed on the building plans submitted to the Development Services Center and the Department of Building and Safety for purposes of having a building permit issued.

5. The applicant shall defend, indemnify and hold harmless the City, its agents, officers, or employees from any claim, action or proceedings against the City or its agents, officers, or employees relating to or to attack, set aside, void or annul this approval which action is brought within the applicable limitation period. The City shall promptly notify the applicant of any claim, action, or

proceeding and the City shall cooperate fully in the defense. If the City fails to promptly notify the applicant of any claim action or proceeding, or if the City fails to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, or hold harmless *the* City.

6. Approved herein is a variance from Section 12.21-A.17(c)(1) to permit a height of 50 feet for the construction of a single-family dwelling in the RE20-1 Zone.

7. Mitigation measures contained in Mitigated Negative Declaration No. ENV 2005-8611-MND as adopted by the West Los Angeles Area Planning Commission on October 6, 2006 are hereby made part of the conditions of approval of this grant and shall be strictly complied with.

8. Prior to the issuance of any permits relative to this matter, a covenant acknowledging and agreeing to comply with all the terms and conditions established herein shall be recorded in the County Recorder's Office. The agreement (standard master covenant and agreement form CP-6770) shall run with the land and shall be binding on any subsequent owners, heirs or assigns. The agreement with the conditions attached must be submitted to the Development Services Center for approval before being recorded. After recordation, a certified copy bearing the Recorder's number and date shall be provided to the Zoning Administrator for attachment to the subject case file.