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PLEASE REFER TO FILE NO:

11834.01

February 24, 2014

BY EMAIL (sharon.gin@lacity.org and patrice.lattimore@lacity.org)

The Honorable Los Angeles City Council and
Its Planning and Land Use Management Committee
c/o Holly L. Wolcott, Interim City Clerk
200 N. Spring Street, Room 360
Los Angeles, CA 90012

**Re: Council File 14-0171**
**Planning and Land Use Management Committee Hearing February 25, 2014, Agenda Item 5; Council Hearing February 26, 2014, Agenda Item 7;**
**50-FOOT HEIGHT VARIANCE AT 10550 W. BELLAGIO ROAD –**
**Case No. ZA 2012-1402-ZV-ZAA-ZAD-1A**

Dear Honorable Councilmembers:

I represent Janice Lazarof, individually and as the trustee owner of 333 Copa de Oro Road, the property that is adjacent to the easterly boundary of 10550 W. Bellagio Road.

Your acting on this matter tomorrow (February 25) at the Planning and Land Use Management Committee ('PLUM") meeting and Wednesday (February 26) at the City Council meeting will constitute a violation of due process due to lack of adequate notice to persons affected by this matter, as well as due to the extremely short notice for those who found out by informal means. *See, e.g., Horn v. County of Ventura* (1979) 24 Cal.3d 605.

If you determine to proceed in connection with this matter in violation of due process, I write to urge you to vote to grant the appeal of Mrs. Lazarof, reverse the decision of the Zoning Administrator ("ZA") and deny the 50-foot height variance at 10550 W. Bellagio Road.

On Friday, February 21, 2014, I emailed to the City Clerk Proposed Findings supporting the grant of the appeal, the reversal of the decision of the ZA and the denial of the variance. I

hereby adopt and present to you those Proposed Findings, a copy of which (the "Proposed Findings"), along with my email, is attached as Exhibit "A" to this letter and incorporated in this letter by reference . The Proposed Findings provide detailed specifications of how the decision of the ZA dated November 1, 2013 was in error and constituted an abuse of discretion and detailed reasons for the grant of the appeal, the reversal of the decision of the ZA and the denial of the variance.

There are additional facts which support how the decision of the ZA was in error and constituted an abuse of discretion, and these facts provide additional reasons for the grant of the appeal, the reversal of the decision of the ZA and the denial of the variance. Those facts and reasons are specified in the Supplemental Proposed Findings that are attached to this letter as Exhibit "B" (the "Supplemental Proposed Findings"), and I hereby incorporate them in this letter by reference.

Thank you for your consideration.

Very truly yours,

Victor I. Marmon

VIM:et

Attachments (2)

cc: The Honorable Jose Huizar
The Honorable Gilbert A. Cedillo
The Honorable Mitchell Englander
Jim Tokunaga
Kenneth Fong, Esq.

# EXHIBIT “A”

## Victor Marmon

**From:** Victor Marmon [vmarmon@earthlink.net]
**Sent:** Friday, February 21, 2014 4:24 PM
**To:** 'sharon.gin@lacity.org'
**Cc:** 'etta.armstrong@lacity.org'; Victor Marmon (vmarmon@earthlink.net)
**Subject:** Proposed Findings for Council file 14-0171 -- PLUM Hearing February 25, 2014
**Attachments:** Proposed Findings Council File 14-0171 _10550 W. Bellagio Road - ZA-0201-1402-ZV-ZAA-ZAD-1A.pdf

Dear Ms. Gin:

Please place the attached proposed findings in the above Council File and upload them to the Council File Management System website.

Thank you.

Victor I. Marmon
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Los Angeles, CA 90067-2517
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**PROPOSED FINIDINGS**
**ZONE VARIANCE APPLICATION**
**FOR HEIGHT VARIANCE**

**(PURSUANT TO LOS ANGELES MUNICIPAL CODE SECTION 12.27)**
**CONCERNING**
**10550 WEST BELLAGIO ROAD, LOS ANGELES, CA 90077**

Pursuant to Charter Section 245, the Los Angeles City Council asserted jurisdiction over the action of the West Los Angeles Area Planning Commission in (1) granting the appeal of by Janice A. Lazarof, individually and as Trustee of the Henri and Janice A. Lazarof family Trust dated June 10, 1985, as amended; (2) reversing the decision of the Zoning Administrator; (3) denying a variance from Section 12.21-C.10(d) to permit a height of 50 feet in lieu of the height limit for the construction of a single family dwelling in the RE20-1 Zone located at 10550 West Bellagio Road; and (4) modifying the findings of the Zoning Administrator regarding 10550 West Bellagio Road in Case No. ZA-2012-ZV-ZAA-ZAD. The City Council has thus asserted jurisdiction over the decision of the West Los Angeles Area Planning Commission and will take action pursuant to the Planning and Land Use Management Committee's recommendation as to the matter concerning the decision of the Zoning Administrator ("ZA") dated November 1, 2013 ("Determination") granting the applicant's requested height variance.

The following grant of the appeal, reversal of the decision of the ZA, and denial of the requested variance is based upon the required 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's action in granting the variance was in error and constituted an abuse of discretion.

After thorough consideration of the statements contained in the application, the plans submitted therewith and thereafter, the statements made and other evidence introduced at the public hearings on January 9, 2013 and September 25, 2013 before the ZA, the record, findings and decision of the ZA, the arguments presented to the Planning and Land Use Management Committee orally and/or in writing, all of which are by reference made a part hereof, the City Council finds that: (1) The strict application of the provisions of the zoning ordinance would NOT result in practical difficulties or unnecessary hardships inconsistent with the general purposes and intent of the zoning regulations; (2) There are NO 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; (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; (4) The granting of the variance WILL 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) The granting of the variance WILL

adversely affect elements of the General Plan; and further that (A) The granting of the variance will operate to grant a special privilege and permit a use substantially inconsistent with the limitations upon other properties in the same zone and vicinity; and (B) The conditions creating the need for a variance were self-imposed.

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 and Charter section 562 are not proven; (b) the ZA erred and abused its discretion as to Findings 1-5 such that the grant of the variance was in error and an abuse of discretion; (c) the ZA erred and abused its discretion such that the grant of the variance was in error and an abuse of discretion because the granting of the variance will operate to grant a special privilege and permit a use substantially inconsistent with the limitations upon other properties in the same zone and vicinity; and (d) the ZA erred and abused its discretion such that the grant of the variance was in error and an abuse of discretion because the conditions creating the need for a variance were self-imposed.

## ZONE VARIANCE DENIAL FINDINGS

In order for a variance to be granted, all five of the legally mandated findings delineated in City Charter Section 562 and Municipal Code Section 12.27-D must be made in the affirmative. In order to reverse the action of the ZA in granting a variance, the City Council must make written findings setting forth specifically the manner in which the action of the ZA was in error or constituted an abuse of discretion. The following is a delineation of the findings and the application of the relevant facts of the case to same:

### 1. The strict application of the provisions of the zoning ordinance would NOT result in practical difficulties or unnecessary hardships inconsistent with the general purposes and intent of the zoning regulations.

The ZA erred and abused his discretion in stating that Finding 1 can be made, when he stated that

> "[b]ecause height has to be measured from the lowest point, the entire height of the house regardless of where it is on the property is measured from the 477-foot datum point. This creates a practical difficulty because the height limit of 36 feet reduces the height of the home as the building footprint moves eastward from the datum point regardless of the 16-foot grade differential while maintaining the 36-foot height limit." (Letter of Determination dated November 1, 2013 ("LOD"), p. 12, indented, italicized paragraph.)

This statement is in error and an abuse of discretion in several ways.

(a) While the ZA correctly quotes how building height is to be measured under the Baseline Hillside Ordinance ("BHO"), the ZA committed error and an abuse of discretion

in concluding that this creates a practical difficulty for the applicant based on the mistaken concept that the building height must be reduced because the initial measurement point on the westerly side of the house is 16 feet below the easterly side of the house. In fact, the BHO permits the building "envelope height" -- the height of the applicant's proposed house -- to increase as the grade increases. Thus, there is no "practical difficulty" caused by the way height is measured due to the grade difference on the property. All the applicant has to do is design a house that complies with the BHO by following the terrain (stepping up the height of the house as the terrain height increases). The applicant has submitted no evidence showing that it cannot design a house that complies with the BHO, and the ZA cites no evidence for his conclusion that the applicant has a practical difficulty because of the way height is measured.

The appellant has provided substantial evidence to the ZA from architect David Applebaum that the applicant could design a house of the same size, along with associated amenities, that complies with the BHO and other zoning requirements. (Letter dated September 24, 2013, from David Applebaum to Jim Tokunaga.)

(b) The ZA erred as a matter of fact by stating as a fact that "[t]he subject parcel is actually below street grade." (LOD, p. 13, first full paragraph.) This is factually incorrect. The majority of the perimeter of the property fronts along Stone Canyon Road, which ranges from an elevation of 478 feet at the southwest corner of the property to 490 feet at the corner of Stone Canyon Road and Bellagio Road as shown by the applicant's drawings, while the elevation of the first floor of the proposed house, as shown by the applicant's drawings, is 494.30 feet. And, as noted by the ZA, the property slopes upward as it proceeds easterly from Stone Canyon Road. So, clearly, while there may be a slight dip in the property along Stone Canyon Creek, the ground floor of the house as proposed, and in fact most of the property, is **above** the grade of Stone Canyon Road, not **below** it as stated by the ZA.

(c) The ZA erred and abused his discretion by stating that Finding 1 could be made because "[t]he size, height and character of the subject home is consistent with the aesthetic goals of the BHO." (LOD, p. 13, first full paragraph.) The proposed house, with its flat roof line at 527 feet, is, in fact, inconsistent with the purpose and intent of the BHO, which is designed to encourage terraced structures so that the mass of buildings is broken up, as evidenced by the City Council's adopted findings upon adoption of the BHO, which state:

> "[D]epending on the zone and height district, a unique envelope height limit is applied, **which encourages the terracing of structures up and down a hillside**. Thus, with a varied roofline, structures would allow more light and air to reach neighboring properties, add visual interest, and enhance transitions between properties. The proposed provisions help **to ensure that the mass of buildings is broken up, and that box-like structures have a lower height** thereby further reducing the "looming" factor which has been brought up by the public on several occasions." (Emphasis added.)

(d) The ZA further erred and abused his discretion in making Finding 1 when he stated that

> "[t]he variance request is only to allow additional height so that the proposed residence can have a consistent roof line for the entire home that otherwise would be difficult to maintain because of the measurement of height from the lowest datum point and the grade difference." (LOD, p. 13, second full paragraph.)

It was an error and an abuse of discretion for the ZA to cite the applicant's desire for a "consistent roof line" as a basis for finding that the applicant faces a practical difficulty or unnecessary hardship that is inconsistent with the purpose and intent of the zoning ordinance, when the purpose and intent of enacting the BHO's envelope height requirement was to break up building mass, encourage the terracing of structures and varied rooflines and "discourage large and tall box-like structures." Moreover, it is established state law that attractiveness of design lacks legal significance and is irrelevant in these kinds of variance cases.

> Thus, *data focusing on* the qualities of the property and Project for which the variance is sought, the desirability of the proposed development, *the attractiveness of its design*, the benefits to the community, or the economic difficulties of developing the property in conformance with the zoning regulations, *lack legal significance and are simply irrelevant* to the controlling issue of whether strict application of zoning rules would prevent the would-be developer from utilizing his or her property to the same extent as other property owners in the same zoning district. *Orinda Assn v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1166 (emphasis added).

Based on the record on appeal, the City Council further finds that there has been no evidence presented that there is a practical difficulty or unnecessary hardship imposed by the zoning ordinance in designing and building a house without a variance on this property; there has been no evidence presented that the applicant could not design and build a house, including a house comparable to homes in the neighborhood, without a variance; the applicant’s reason for requesting "[t]he variance is only to allow additional height so the proposed residence can have a consistent roof line for the entire home" (LOD, p. 13, second full paragraph.); the applicant's application for a variance is essentially for and due to subjective, aesthetic reasons; and substantial evidence was presented that a comparable house, including amenities, can be built without the requested variance in a manner consistent with the height regulation of the zoning ordinance.

Therefore, the City Council finds that Finding 1 cannot be made.

**2. There are NO 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 ZA erred and abused his discretion in stating that the following are special circumstances that support the making of Finding 2:

- "the topographical change between the western and eastern portions of the site";
- that the subject property is a "remaining vacant parcel in a mostly developed neighborhood";
- that the subject property has "a relatively long frontage along the public street"; and
- "the below street grade nature of the site." (LOD, p. 15, first full paragraph.)

(a) It was error and an abuse of discretion for the ZA to base Finding 2 on topographical change on the property. There was no evidence provided by the applicant, nor any cited by the ZA, to show that the topographical variation on the property is distinct in character from comparable properties in the same zone and vicinity. This is a hillside area; all properties have similar variation in topography.

(b) The ZA abused his discretion in citing the vacancy of the property as a special circumstance. There is no logical connection between the requested height variance and the fact that the subject property is currently vacant.

(c) The ZA erred and abused his discretion when he cited the approximately 595 foot length of the frontage of the property along Stone Canyon Road and Bellagio Road as a special circumstance; the applicant *created* this condition when it tied lots "A" and "B" of its subdivision together to form the subject property. Further, the ZA ignored substantial evidence in the record that there are several other properties in the same zone and vicinity that have long frontages along a public street, with several properties that front on two public streets. Appellant's property (APN 4362-013-014) to the east of the subject property has a 596 foot frontage along Copa de Oro Road and Bellagio Road. The property at 300 Stone Canyon Road (APN 4362-013-011) immediately to the south of appellant's parcel map has a frontage of about 400 feet along Stone Canyon Road. Other properties that have frontages along two public streets include APN 4362-014-002 (Bel-Air Road and Copa de Oro Road) and APN 4362-014-001 (Copa de Oro Road and Bellagio Road).

(d) Finally, as noted in paragraph (b) of Finding 1 above, the ZA was in error when he cited as a basis for Finding 2 that the site is below grade.

Based on the record on appeal, the City Council further finds that there was no evidence presented, and none cited by the ZA, of special circumstances applicable to the property that prevent applicant from designing and building a house without a variance. No special circumstances exist that make the property distinct in character from comparable nearby properties, as is required to make this Finding. (*Committee to Save Hollywoodland, etc. v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1183.) The City Council finds, based on the record on appeal, that this is not the only property in the same zone and vicinity that has a stream running through it; this is not the only property in the vicinity with varying elevations; the general topography of the property is essentially the same as the surrounding properties; and Stone Canyon Creek also runs through neighboring properties. As noted above, the applicant's application for a variance is essentially for and due to subjective, aesthetic reasons, and substantial evidence was presented that applicant could design and build a home on the property of comparable size to its proposed structure, and with comparable amenities, without a variance.

Therefore, the City Council finds that Finding 2 cannot be made.

**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.**

The ZA erred and abused his discretion in stating that Finding 3 can be made.

(a) The applicant presented *no evidence* of any practical difficulty or unnecessary hardship that denies it the right to build a house on the property, and the ZA cites none. The Appellant presented substantial expert evidence, through the letter from architect David Applebaum, that there are numerous ways to build a house of similar size and with similar amenities on this parcel in compliance with setback and other zoning regulations without the need for a height variance. Without any evidence of a practical difficulty or unnecessary hardship that necessitates a height variance in order to build a comparable house on the subject property, it was an abuse of discretion for the ZA to find that Finding 3 could be made.

(b) The applicant presented no evidence of any “special circumstance” applicable to the subject property, and the ZA cites none, that is distinct in character from comparable properties in the same zone and vicinity. Without special circumstances, it was an abuse of discretion for the ZA to determine that Finding 3 could be made.

(c) Additionally, the applicant provided no evidence, and the ZA cited none, that establishes that the denial of the requested height variance will prevent the applicant

from constructing a house, including amenities, on the subject property, comparable to the applicant's neighbors' homes.

Based on the record on appeal, the City Council further finds that no special circumstances, practical difficulties or unnecessary hardships have been demonstrated; the property can be built upon and used similarly to other properties in the same zone and vicinity; there are no other properties in the vicinity with the same zoning that have received a height variance for the same or similar reasons that are used by the applicant to justify the present request; the vast majority of nearby properties are being used and enjoyed without a height variance; and the applicant requested this variance essentially for subjective, aesthetic reasons and submitted no evidence to the effect that the applicant could not design and build a house, including a house comparable to its neighbors' homes, without a variance.

Therefore, the City Council finds that Finding 3 cannot be made.

**4. The granting of the variance WILL 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 ZA erred and abused his discretion in stating that Finding 4 can be made.

(a) The ZA erred and abused his discretion when he stated that the project site was lower in grade than the street. The evidence in the record before the ZA, as discussed above, shows that the grade of the project site starts out about even with or above Stone Canyon Road and then goes up to the east. While the creek bed naturally dips below street level, the pad upon which Applicant shows the house being built is **above** street level elevation and therefore the proposed house will be the box-like structure the City Council was attempting to avoid when it adopted the BHO. (See Finding by City Council, quoted above).

(b) The ZA erred and abused his discretion in making Finding 4 because granting the variance will have an adverse precedential effect, detrimental to the goals of the Community Plan, since it would essentially raise the general height limit in the neighborhood and be used to justify other such height increase requests in the immediate area, as evidenced by the ZA's citing the height variance granted to the adjacent property to the south by the City Council in his justification for this Finding.

Based on the record on appeal, the City Council further finds that the granting of the variance will create an adverse visual effect on neighboring properties; will defeat the goals of the BHO, which goals include encouraging the building of terraced structures that break up the mass of structures and preserving existing views in hillside areas; and

will have a precedential effect as it would essentially raise the general height limit in the neighborhood by providing support for others to seek height variances.

Therefore, the City Council finds that Finding 4 cannot be made.

**5. The granting of the variance WILL adversely affect elements of the General Plan.**

The ZA erred and abused his discretion in stating that Finding 5 can be made.

(a) The ZA erred and abused his discretion when he found, without citing any supporting evidence, that the granting of the requested variance will not adversely affect any element of the General Plan. Actually, the facts recited by the ZA contradict the Finding he made. The ZA stated, correctly, that "the proposed height is not consistent with the plan[']s intent to require compliance with regulations pertaining to development in the hillside areas including compliance with the Baseline Hillside Ordinance." (LOD, p. 17, first full paragraph.) The ZA goes on to say, "The granting of the variance without the required findings to justify an approval of the request will adversely affect elements of the General Plan." (LOD, p. 17, second full paragraph.) As demonstrated above, the required Findings cannot be made, and therefore the conclusion necessarily follows that the Plan will be adversely affected.

(b) The ZA further erred and abused his discretion because he justified Finding 5 by saying that since he made the other four Findings, there is no adverse effect on any element of the General Plan. By this erroneous circular reasoning, whenever the first four Findings can be made, then Finding 5 is automatic. That is an error of law. There must be substantial evidence to support each of the five required Findings independently, including Finding 5, and the ZA must cite it. Here, the ZA does not cite any evidence to support his Finding 5, because there was none before him. Without evidence to support it, it is an abuse of discretion for the ZA to have made Finding 5.

(c) Moreover, the ZA ignored substantial evidence in the record that Finding 5 cannot be made. As noted by the ZA, "The Land Use Element of the City's General Plan divides the City into 35 Community Plans" (LOD, p. 16, last paragraph.), and the Bel Air-Beverly Crest Community Plan is applicable to the subject property. In a letter to the ZA which is part of the record in this Case, appellant's zoning expert set out the purposes and policies of the Bel Air-Beverly Crest Community Plan that will be adversely affected by the granting of the requested variance:

> "Chapter 2 (Purpose of the Community Plan) of the Bel Air-Beverly Crest Community Plan provides the following purposes:
>
> "• *Preserving and enhancing the positive characteristics of existing residential neighborhoods while providing a variety of housing opportunities with compatible new housing.*

"• *Preserving and enhancing the positive characteristics of existing uses which provide the foundation for Community identity, such as scale, height, bulk, setbacks, and appearance.*

"Chapter 3 of the Bel Air-Beverly Crest Community Plan also provides the following Residential Land Use Policies:

*"The intensity of land use in the mountain and hillside areas and the density of the population which can be accommodated thereon should be limited in accordance with the following:*

"• *The compatibility of proposed developments with existing adjacent development.*

"• *Design should minimize adverse visual impact on neighboring single family uses."*

Based on the record on appeal, the City Council further finds that the granting of a height variance for the subject property

(i) will adversely affect the purpose and policies of preserving and enhancing the positive characteristics of the existing residential neighborhood as follows:

• The proposed height is excessive and not compatible with existing uses and appearances.

• The proposed height does not minimize adverse visual impact on neighboring uses.

• Granting the proposed height variance will set a precedent that will adversely affect the positive characteristics of the existing neighborhood.

(ii) will defeat the purpose of the goals of the Baseline Hillside Ordinance, which goals include preserving existing views in hillside areas and encouraging the building of terraced structures that break up the mass of structures;

(iii) will adversely affect the existing neighborhood in that the proposed height is excessive and not compatible with existing uses and appearances;

(iv) will not minimize the adverse visual effect on neighboring uses; and

(v) will set a precedent that will adversely affect the positive characteristics of the neighborhood.

Therefore, the City Council finds that Finding 5 cannot be made.

Additionally, based on the record on appeal, the City Council further finds that

**6. The granting of the variance will operate to grant a special privilege and permit a use substantially inconsistent with the limitations upon other properties in the same zone and vicinity. Los Angeles Municipal Code Section 12.27-D and Charter Section 562.**

There is no evidence that another property has received a height variance in the same zone and vicinity for the same reasons the applicant has put forth and under the same set of circumstances and facts as in this case, and the applicant submitted no evidence to the effect that applicant could not design and build an estate home, including a home comparable to its neighbors' homes, without a variance.

**7. The conditions creating the need for a variance were self-imposed. Los Angeles Municipal Code Section 12.27-D and Charter Section 562.**

Any "need" by the applicant for a height variance on this property is self-imposed by the applicant because the applicant is requesting the variance for aesthetic purposes only to achieve a consistent roof line for the entire home, when a comparable home can be designed without the need for a height variance.

# EXHIBIT “B”

**SUPPLEMENTAL PROPOSED FINIDINGS**
**ZONE VARIANCE APPLICATION**
**FOR HEIGHT VARIANCE**

**(PURSUANT TO LOS ANGELES MUNICIPAL CODE SECTION 12.27)**
**CONCERNING**
**10550 WEST BELLAGIO ROAD, LOS ANGELES, CA 90077**

In addition to the Proposed Findings previously provided on behalf of appellant Janice A. Lazarof, individually and as Trustee of the Henri and Janice A. Lazarof family Trust dated June 10, 1985, as amended, the following Supplemental Proposed Findings provide additional specifications of how the action of the ZA was in error and constituted an abuse of discretion. These additional specifications constitute additional reasons to grant the appeal of Mrs. Lazarof, reverse the decision of the ZA and deny the variance.

## SUPPLEMENTAL ZONE VARIANCE DENIAL FINDINGS

In order for a variance to be granted, all five of the legally mandated findings delineated in City Charter Section 562 and Municipal Code Section 12.27-D must be made in the affirmative. In order to reverse the action of the ZA in granting a variance, the City Council must make written findings setting forth specifically the manner in which the action of the ZA in his Letter of Determination dated November 1, 2013 ("LOD") was in error or constituted an abuse of discretion. The following is a delineation of additional relevant facts applicable to certain of the five legally mandated findings delineated in City Charter Section 562 and Municipal Code Section 12.27-D:

**2. There are NO 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 ZA erred and abused his discretion in stating that the following is a special circumstance that supports the making of Finding 2:

> "the requirement to maintain Stone Canyon Creek in its natural state with a buffer zone" (LOD, p. 15, first full paragraph).

(e) It was error and an abuse of discretion for the ZA to cite as a basis for Finding 2 the parcel map condition and mitigation measure "to maintain Stone Canyon Creek in its natural state with a buffer zone" when the applicant did not seek to overturn this requirement, and it voluntarily agreed to abide by it when it recorded its covenant and agreement in May 2011 voluntarily agreeing to this condition and mitigation measure.

**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.**

The ZA abused his discretion in stating that Finding 3 can be made.

(d) The applicant provided no evidence, and the ZA cited none, that establishes that that a 50-foot building height is a right generally possessed by other property in the same zone and vicinity or that the use of the subject property for a single family dwelling is denied to the subject property. Without such evidence, the ZA abused his discretion in stating that Finding 3 could be made.

**5. The granting of the variance WILL adversely affect elements of the General Plan.**

The ZA erred and abused his discretion in stating that Finding 5 can be made.

(d) The ZA stated correctly that "[t]he zoning code is an implementing tool of the General Plan." (LOD, p. 17, second paragraph.) However, the ZA erred and abused his discretion when he granted a zone variance without the applicant having provided to the Planning Department, as part of its application for the variance, a Slope Analysis Map, which is specifically required under Municipal Code Section 12.21-C.10(b)(1) for a height variance.