

**PROPOSED FINDINGS
FOR ZONE HEIGHT VARIANCE APPLICATION**

**PURSUANT TO LOS ANGELES MUNICIPAL CODE SECTION 12.27
FOR
10550 BELLAGIO ROAD, LOS ANGELES, CA 90077**

- 1. The strict application of the Zoning Ordinance would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the zoning regulations.**

The Applicant is requesting a variance to permit construction of a 42,409 square foot single-family home on an 84,567 square foot lot. A water channel traverses the property from the north to the south along with an ascending slope on the east which reduces, by approximately 35 percent, the buildable space of the entire property. The standard required setback from Stone Canyon Road, for example, is 25 feet. The water channel also results in a downward slope on the southwest portion of the home that creates a low datum or measuring point that disproportionately reduces the entire height of the home. This is discussed below in greater detail.

The property falls under the Baseline Hillside Ordinance (“BHO”) which was designed to ensure that construction in the 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 BHO is meant to apply to hillside homes, and not to the Bellagio property which is on a relatively flat lot with a southwest gradient as opposed to being on a hill. The Bellagio property is surrounded by hills rather than being built on a hill and the surrounding hills and vegetation block any views of the proposed home, which is explained more fully below. The BHO public information handout and ordinance includes terraced illustrations pertaining to homes on a hill which is not applicable to this specific property since the Bellagio proposed home is not on a hill, and in fact is surrounded by hills. Terraced structures are not required under the BHO.

The Bel Air area is populated with estate homes, many of which (like the Applicant’s property) are on combined, 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. The size, height, and character of the subject home are consistent with the aesthetic goals of the BHO. The subject parcel is actually below street grade and not on a hill, and therefore is less obtrusive than many other neighboring properties, the majority of which have a finished grade some 60 feet higher.

The purpose of the variance request is not to increase the usable square footage of the home but rather to maximize the developable land on the property and to construct the home in parity with the character of the neighborhood. The proposed height of the home will not block anyone’s view. In fact, if one were sitting on the first floor of the nearest home, located at 333 Copa De Oro Road, that floor would be, at minimum, 15 feet higher than the proposed height of the roof line. In other words, an occupant of the neighboring home would have to look down nearly 15 feet to even see the roof line and this is assuming the individual is at grade level. Notably, in addition to the difference in elevation, there is dense foliage and mature trees in between the structures on both properties, severely restricting the roof line line-of-sight. From the Bellagio property, one cannot see through this vegetation onto the 333 Copa De Oro property.

It is in fact, because of the strict HO (predecessor to the BHO), the true grade and elevations of the property is not considered properly. For instance, the pre-1960 Elevation Exhibit submitted by the Applicant with the Liston Declaration depicts the “natural” pre-1960 topography (red), the 1960 topography (black), for the Bellagio property. The yellow shading as shown on the pre-1960 exhibit and the additional survey/house elevation exhibits shows the portion of the house that is over 36 feet, either due to the lower finish pad elevation, and/or the irregular topography of the adjacent drainage. The Zoning Ordinance height is measured by 5 feet from the house perimeter, (as measured by the City), to the lowest elevation point, the “datum” point. From the east side - highest grade elevation of 493 feet to the west side – lowest grade elevation of 477 feet, is approximately a 16 foot grade elevation difference. The hardship here is that the entire height of the house is now based on the lowest part of the entire property. Due to the water channel along the western portion of the property, the elevation cannot be altered, primarily due to floodplain restrictions. Although a home can be proposed further from the water channel the need for a height variance in some degree would still be required.

Approximately 82 percent of the proposed residence’s perimeter would be measured at +/-36 feet, from the finish pad elevation. Many homes that exceed 36 feet in height, were permitted by law under the HO, modified and adopted to the BHO in 2011, and this proposed home would be consistent with the character and build of these homes. Details of these precedent-setting height variances are described further in the subsequent findings. A very small portion of the proposed residence – less than 18 percent, would be greater than +/-36 feet in height. This portion of the proposed residence is due to the area located nearest to the water channel at the southwest corner of the home. The water channel is an unusual topographical feature that is not present on most properties in the area. The water channel causes significant lowering of the property grade in just this one area. This is the cause for only 18 percent of the height of the house to increase. This sloping toward the water channel results in a dramatically low datum point from which the entire residence is measured and is not an accurate representation of the overall, true building height. The overall grade difference between the eastern portion of the property and the western portion of the property, towards the water channel is approximately 16 feet. 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, even though it is nearly 16 feet higher, literally just around the corner.

Again, approximately 82 percent of the house's perimeter is +/-36 feet in height from the finish pad elevation, and only 18 percent is over the 36 feet, essentially the west elevation of the house. The lowest adjacent grade elevation of 480.72 is at the southwest corner of the house where the house is limited to one story and therefore it is in the 25-30 foot height range in that corner. When measured from that adjacent elevation point, the maximum house height is 527.0 – 480.72 (46.3 feet). If you go out 5 feet from the house perimeter, (as measured by the City), the lowest point, the datum point, is 477.0, therefore the maximum house height is approximately 50 feet, again this is only for 18 percent of the house, of which, is mostly below the finished grade. If one was standing from the street viewing the home it would appear to be only +/-33 feet. The other measured height, or 18 percent is actually below ground. But 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 building they are looking at the structure that is 82 percent +/-36 feet in height, of which 12 feet are below ground, invisible to the eye and 18 percent is +/- 50 feet in height, of which 14 feet are below finished grade.

The hardship is that the HO and BHO are intended to limit structures on hillsides from looming out of the ground and obstructing the hillside viewshed yet are applied to the Applicant’s property that is actually sunken, below even street grade, where the threat of looming is non-existent.

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 has special circumstances that do not apply to other properties in the same zone and vicinity such as topographical anomalies and buildable limitations that should be taken into consideration when reviewing this case to justify a height restriction.

The most significant special circumstances specific to the property are the flood zone, the narrowness of the property, the water channel that traverses through the property, and the flood plain buffer and setback requirements.

For clarity, the property is currently located in AO2 Flood Zone (and will be located in AE Zone once the Letter of Map Revision is filed). The AO2 Zone designation is an area of sheet flow shallow flooding with a depth of 2 feet. The Federal Emergency Management Act ("FEMA") requires that any insurable structure be located 2 feet above the adjacent ground elevation and Los Angeles City Stormwater Group requires that any insurable structure be located 3 feet above the adjacent ground elevation in an AO2 Zone. The highest adjacent grade based on current topography (post retaining wall) is +/-491 feet, therefore the finished floor would need to be raised to +/-494 feet and no basement would be allowed. The Conditional Letter of Map Revision, approved by FEMA October 23, 2013, will place the property in the AE Zone. The AE Zone is the floodplain delineation where base flood elevations are provided, which is established at 479 feet, by FEMA. Calculations performed to determine the extent of AE Zone and the base flood elevations were completed and calculated the water surface elevation adjacent to the structure is 481.77 feet. Thus, the lowest allowed finished floor of habitable space (basement) per FEMA is 481.77 feet and the lowest allowed finished floor of habitable space by the Los Angeles City Stormwater Group (basement) is 482.77 feet. The finished floor of the basement is set at 482.80; the first floor as finished is 494.50 feet.

If one were to keep the proposed house in the AO Zone, the house elevation would need to be raised by 3 feet above the adjacent grade to 494. If you add another foot for the pad you are at approximately 495. Regardless, the house height would be drawn from roughly the same datum point that is established, 5 feet away from the house and taking the lowest current or natural grade, which is 477 feet. Given the floodplain issue and the low point of the grade elevation due to the water channel traversing the property, the house is starting at a significantly lower elevation to have the height measured from.

Thus, due to the Flood Zone requirements, the Bellagio property is restricted from having below grade living or habitable space, which is a further hardship on the property, which is another justification for grant of this variance.

The site has an unusual existing site configuration that makes the property shallow in developable area or essentially a long and narrow site. This shallow developable lot exists because of the water channel that traverses north to south throughout the property within the front yard area along Stone Canyon Road. If the water channel did not exist, the home could be constructed after a front yard setback of 25 feet from the front property line. However, due to the existing water channel and its 15 foot buffer area(s) and additional 10 feet setback from the buffer area, the home is required to be setback from the front property line by a minimum of 55 feet in certain areas of the property, and more in others. As such, the front yard area is undevelopable and significantly restricts the developable area of the property by approximately 35 percent. In

addition, there is a 10 foot retaining wall setback along the eastern portion of the property. The home could not have been expanded outward to increase the square footage rather than built higher. And because the narrowness of the property limits the house to be situated in any other position other than a north/south position, the owner had to proceed in this matter to be consistent with the neighborhood - sizeable front yard, back yard, amenities that are expected on large properties such as a pool and possibly a tennis court. Again, the proposed house could potentially be moved further east of the water channel, but there would still be a need for a height variance due to the lower elevation closest to the western portion of the property. The hardship realities of the topography special to the property and requirements and constraints posed by the existing water channel make strict adherence to the zoning regulations infeasible.

Furthermore, while the property is approximately 225 feet deep in the area of the home, this depth is restricted because of a water channel that traverses from north to south near the western boundary of the property as well as an ascending slope along the eastern boundary of the property. As further discussed below, the topographic uniqueness of the water channel and the legally required setbacks (along the east and west portions of the property) reduce the building area of the property to a depth of approximately 145 feet, reducing the lot depth by approximately 35 percent. The home could not have been expanded outward to increase the footage rather than built higher because of the physical characteristics of the property, the water channel, buffer and setback requirements, the flood plain requirements and the ascending slope, all of which constitute hardships.

The existence of the water channel and required buffer and setbacks also sets the home back over +/-55 feet from Stone Canyon Road, rather than the mere 25 foot front yard setback as otherwise required by zoning and BHO, and to which most other residences have conformed. In other words, the lot area is restricted by the area taken up by the water channel and further setbacks related thereto and along the retaining wall. The water channel topography is similarly the reason why the datum point – the point from which the height is measured – is lower. The site has a natural flow to the water channel, which is why there is nearly a 16 foot elevation difference between the eastern and western portions of the property.

The Applicant's civil engineer provided written testimony (Declaration of Leonard Liston) regarding the particular constraints of the property including the water channel traversing through them with increased buffers and setbacks resulting in a 35 percent reduction in site buildability. The Liston Declaration also identifies the uniqueness of these hardships to the subject parcel as compared to other properties in the area, specifically stating in his Declaration that the "buildability of the Bellagio property is extremely unique as it is restricted by a water channel which traverses the property from north to south on the west side and an ascending slope which exists on the east portion the property." (See Liston Decl. p. 1, ¶ 4.) The evidence in the record is clear that there are no other properties in the area that are constrained in the same way and in so many ways as this property.

Approximately 82 percent of the proposed residence's perimeter would be measured at +/-36 feet, from the finish pad elevation. Many homes in the area that exceed the 36 feet in height, were permitted by law under the HO, modified to the BHO in 2011; this proposed home would be consistent with the character and build of these homes. Details of these precedent-setting height variances are described further in the subsequent findings. A very small portion of the proposed residence – less than 18 percent, would be greater than +/-36 feet in height. This portion of the proposed residence is due to the area located nearest to the water channel at the southwest corner of the home. The water channel – is an unusual topographical feature that is not present on most properties in the area. The water channel causes significant lowering of the property grade in just

this one area. This is the cause for only 18 percent of the height of the house to increase. This sloping toward the water channel results in a dramatically low datum point from which the entire residence is measured and is not an accurate representation of the overall, true building height. The overall grade difference between the eastern portion of the property and the western portion of the property, towards the water channel is approximately 16 feet. 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, even though it is nearly 16 feet higher, literally just around the corner.

Again, approximately 82 percent of the house's perimeter is +/-36 feet in height from the finish pad elevation, and only 18 percent is over the 36 feet, essentially limited to the west elevation of the house. The lowest adjacent grade elevation of 480.72 is at the southwest corner of the house where the house is limited to one story and therefore it is in the 25-30 foot height range in that corner. When measured from that adjacent elevation point, the maximum house height is $527.0 - 480.72 = 46.3$ feet. If you go out 5 feet from the house perimeter (as measured by the City), the lowest point (the datum point) is 477.0, therefore the maximum house height is 50 feet, again this is only for 18 percent of the house, of which, as illustrated by the south exhibit is mostly below the finished grade. If one was standing in front of the house, one would see the house as only +/-33 feet in height. The other measured height, or 18 percent is actually below finished grade. But 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 building they are looking at the structure that is 82 percent +/-36 feet in height, of which 12 feet are below ground, invisible to the eye and 18 percent is +/-50 feet in height.

The evidence reveals that from the finished grade to the height of the structure is 36 feet. However, the lower elevation dictates the datum and overall starting point to measure the height of the structure. This measurement structure creates the justification for the Applicant to receive a variance for the 18 percent of the house that is +/- 50 feet in height, of which 12 to 14 feet is below ground. Thus, from street level, the home appears only +/-33 feet attributable to a basement at 12 feet (subterranean and invisible to the eye), a first floor of 15 feet, a second floor of 12 feet and roof at 5.7 feet.

The standards for grant of a variance under the Municipal Code, does not include as one of its factors, that the applicant could build something or anything else on the site, in compliance with the height limit. As long as the Applicant can meet the requirements for a variance, it is irrelevant that the Applicant could possibly have built something else on the property that didn't require a variance. No applicant is required to show that a variance is necessary, or that construction without a variance is impossibility. In fact, even if the home was moved east, further from the water channel, a variance of some degree would still be needed. Again, terraced structures are not required under the BHO and the Bellagio property is not on a hillside. The severe and unique hardships of this site, and the lack of any view impacts, as described above and below, are the required justification for this variance.

3. Such 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.

Though no two properties are similar, the Applicant submitted substantial evidence showing that many of the approvals under the HO took into consideration several of the factors relevant to these parcels, which include size, topographical limitations due to sloping towards the water

channel that traverses the property, and whether the proposed home would be compatible with the surrounding properties. Testimony provided to the ZA discussed those parcels, including a 2007 approval in the immediate vicinity that permitted a 59 foot ordinance to permit underground parking.

The topography of the property is unique to properties in this area in that a water channel traverses it from north to south which significantly limits the buildable space of the property by 35 percent. Specifically, the setbacks from Stone Canyon Road ordinarily would be 25 feet. Because of the water channel, the buffer and setback requirements is at minimum 55 feet in some locations and more in others. The property cannot be built out horizontally due to these setbacks and an ascending slope along the southwesterly boundary of the property, as well as the additional 10 foot retaining wall setback along the eastern boundary of the property

There are many large homes that have received height variances over the years including the property located at 620 N. Stone Canyon Road, which is immediately adjacent to the north. The 620 N. Stone Canyon property received a height variance to accommodate linking underground parking between the maid's quarters and the tennis courts for a building height of 59 feet. This variance was granted in 2007. The "functional difficulties" of connecting those two areas was used to demonstrate hardship. Notably, the 620 N. Stone Canyon home begins at an elevation almost 60 feet higher than the finish grade of 10550 Bellagio Road so that the property essentially 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 restraints on 10550 Bellagio Road are far more significant from a topographical perspective than those on the 620 N. Stone Canyon property.

The granting of the variance would indeed place the subject property in parity with other properties in the area, many of which received variances with far less natural topographical hardships. It would not grant a special privilege. In fact, because of the topographical and Zoning Ordinance, the narrowness of the property further limits the house to be situated in any other position other than a north/south position. Thus, the owner had to proceed in this matter to be consistent with the neighborhood - sizeable front yard, back yard, amenities that are expected on large properties such as a pool and possibly a tennis court, similar to the property at 620 N. Stone Canyon. If the Applicant is not afforded reasonable capacity to build these characteristics on his property, this in itself is a hardship.

The site has an unusual existing site configuration that makes the property shallow in developable area or essentially a long and narrow site. This shallow developable lot exists because of a water channel that traverses north to south throughout the property within the front yard area. If the water channel did not exist, the home could have been constructed after a front yard setback of 25 feet from the front property line. However, and because of the existing water channel and its 15 foot buffer area(s) and additional 10 feet setback from the buffer area, the home must be setback from the front property line approximately 55 feet, at minimum in certain areas of the property and more in others. As such, approximately 75 feet of the front yard area is undevelopable and significantly restricts the developable area of the property by 35 percent. The home could not have been expanded outward to increase the square footage rather than built higher. Even if it were feasible, a variance of some degree would still be needed. The hardship realities of the property and requirements and constraints posed by the existing water channel make strict adherence to the zoning regulations infeasible.

While the property is approximately 225 feet deep in the area of the home, this depth is restricted because of a water channel that traverses from north to south near the western boundary of the property as well as an ascending slope along the eastern boundary of the property. As further discussed below, the topographic uniqueness of the water channel and the legally required setbacks reduce the building area of the property to a depth of approximately 145 feet, thereby reducing the buildable area of the property by approximately 35 percent. The home could not have been expanded outward to increase the footage rather than built higher because of the physical characteristics of the property, the water channel, buffer and setback requirements, the flood plain requirements and the ascending slope, all of which constitute hardships.

The existence of the water channel and required buffers and setbacks also sets the home back over +/-55 feet from Stone Canyon Road, rather than the mere 25 foot front yard setback otherwise required under the zoning and BHO and to which most other residences have conformed. In other words, the lot area is restricted by the area taken up by the water channel and further setbacks related thereto. The water channel topography is similarly the reason why the datum point – the point from which the height is measured – is lower. The site has a natural flow to the water channel, which is why there is a 16 foot elevation difference between the eastern and western portions of the property.

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 proposed height would not affect views of the surrounding residences in the area that are of similar sizes and heights. The height variance, at the property does not deviate from the intent of the General Plan. The General Plan incorporates the City's BHO and HO. These Ordinances were intended to ensure that views were not blocked; oversized homes were not constructed relative to lot sizes and that uses are compatible. The subject property is situated some 60 feet below other surrounding homes so it is next to impossible that any views would be blocked. The evidence further demonstrates that the finished grade of the first floor of the nearest property, 333 Copa De Oro Road, is some 15 feet higher than the elevation of the proposed roofline and the view is protected by dense foliage and mature trees. In fact, if one were sitting on the first floor of 333 Copa De Oro Road, that floor would be, at minimum, 15 feet higher than the proposed height of the house roof line. In other words, an occupant of the neighboring home would have to look down nearly 15 feet to even see the roof line and this is assuming the individual is at grade level. Notably again, in addition to the difference in elevation, there is dense foliage and mature trees in between the structures on both properties. Thus, one cannot see through the foliage and vegetation from the Bellagio property onto the Copa De Oro property.

Additionally, if one were standing from Stone Canyon looking towards the property, they would be nearly at the same elevation and the home height to them would appear as +/-33 feet. This however, would be through dense foliage and even a stone wall that is currently exists and that will remain.

The record contains several photographs from the Applicant which clearly show that the home, regardless of height is not visible to any of the neighbors' homes, who are all located to the north, south and west, as large hills, existing retaining walls, and very dense vegetation block any views from the neighbors. The only view of the Bellagio property is from cars traveling on Stone Canyon, and due to the fact that the planned home is below grade closest to Stone Canyon, only the height of +/- 33 feet is visible from passing cars, and even that view is blocked by large trees

in addition to a block wall, with now-approved iron works to be placed on top of the existing wall to a total height of 8 feet. Of note, the addition height of the wall along Stone Canyon was approved by the Zoning Administrator under the same application as the height variance, yet was not appealed by any party.

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

There are eleven 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. 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 have the home consistent with the character of the neighborhood – with estate homes and landscaped parcels. From street view, the measured height of the proposed structure would appear as 33 feet; 12 feet of which are below ground, invisible to the naked eye, a first floor of 15 feet, a second floor of 12 feet and a roof of 5.7 feet. Thus, due to lower elevation and datum point, the property as proposed will not be obtrusive from any vantage point.

In fact, the first floor of the nearest home, 333 Copa De Oro Road, is already situated at least 15 feet higher than the proposed roofline height. In other words, an occupant of the neighboring home would have to look down nearly 15 feet to even see the residential roofline of the proposed project (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 many other properties, the majority of which have a finished grade some 60 feet higher. In addition to the stark contrasts in elevation, dense foliage and mature trees separate the structures on the properties. From the Bellagio property, one is unable to see through such foliage on to Copa De Oro property. Thus, it would be nearly impossible for views to be blocked by the proposed structure and would not run afoul with the purposes of the BHO or the General Plan.

The Bel Air Beverly Crest Community Plan is not affected, precisely because the very policies of the Plan are met by the Bellagio property, which is uniquely constrained, will have no detrimental view impacts or other impacts, and it is designed to be an attractive estate home similar to the surrounding neighbors' homes. The care and design of the home shown in all of the submittals to date, clearly exhibit the intent to enhance and not detract from the special character of the unique Los Angeles neighborhood.