

Date: 2-25-14
Submitted in PLUM Committee

Council File No: 14-0171

Item No.: 5

Deputy: Communication from Appellant

Mr. Mark Barron
10521 Bellagio Road
Los Angeles, CA 90077

February 25, 2014

VIA HAND DELIVERY

Sharon Gin, Legislative Assistant
Councilmember Jose Huizar, Chair
Councilmember Gilbert A. Cedillo
Councilmember Mitchell Englander
Council of the City of Los Angeles
Planning Land Use Management Committee
200 North Spring Street
Los Angeles, CA 90012

Re: Letter of Support for the Project at 10550 West Bellagio Road

Dear Ms. Gin and Councilmembers:

This letter is submitted in support of the application of 10550 West Bellagio Road for a height variance in Case No. ZA 2012-1402-ZV-ZAA-ZAD-1A before the West Los Angeles Area Planning Commission. I have lived in Bel Air for over 30 years and reside at 10521 Bellagio Road. I am very familiar with the characteristics of the neighboring properties and support this project at a height of 50 feet.

The City of Los Angeles has already granted greater variances for other houses in Bel Air such as the 59-foot height variance for 620 N. Stone Canyon Road. The height, scale and aesthetics of the project are comparable to the surrounding homes in the area. The total property is 4.1 acres; the owners have elected to build two homes consistent with the low-density in the neighborhood. In addition, the high quality of the fire bridge on the adjacent parcel demonstrates the exceptional craftsmanship and expertise that will be applied to construction the Bellagio home. Lastly, the construction site is a nuisance to the neighborhood. I look forward to the completion of the home and believe it will contribute to the aesthetic appeal of the Bel Air community.

Please deny the appeal before you and approve the project for a residential home of 50 feet in height.

Sincerely,



Mr. Mark Barron

\\MBB

#5



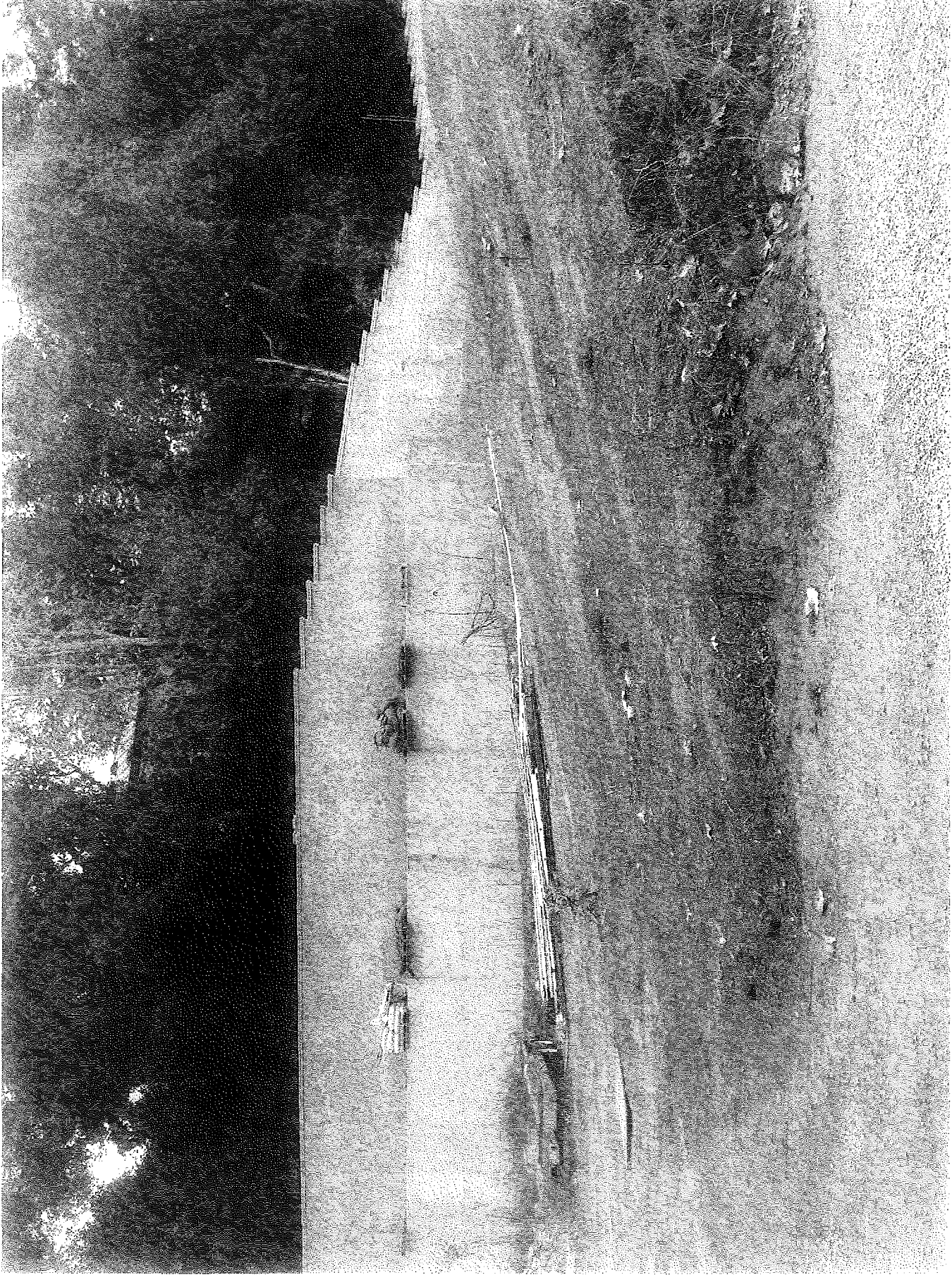
Buildable area far from Street due to stream bed. Property barely visible from the street.



Heavy vegetation blocks street views. Raised perimeter wall will further obstruct view.



Heavy vegetation blocks views, buildable area far from street.



Retaining wall is "stepped" wall. Buildable area view blocked by heavy vegetation.



Heavy vegetation blocks views. Buildable area is below hill and does not block views.



This is neighboring Stone Canyon home already under construction, vegetation blocks view.



Heavy vegetation blocks views of home.



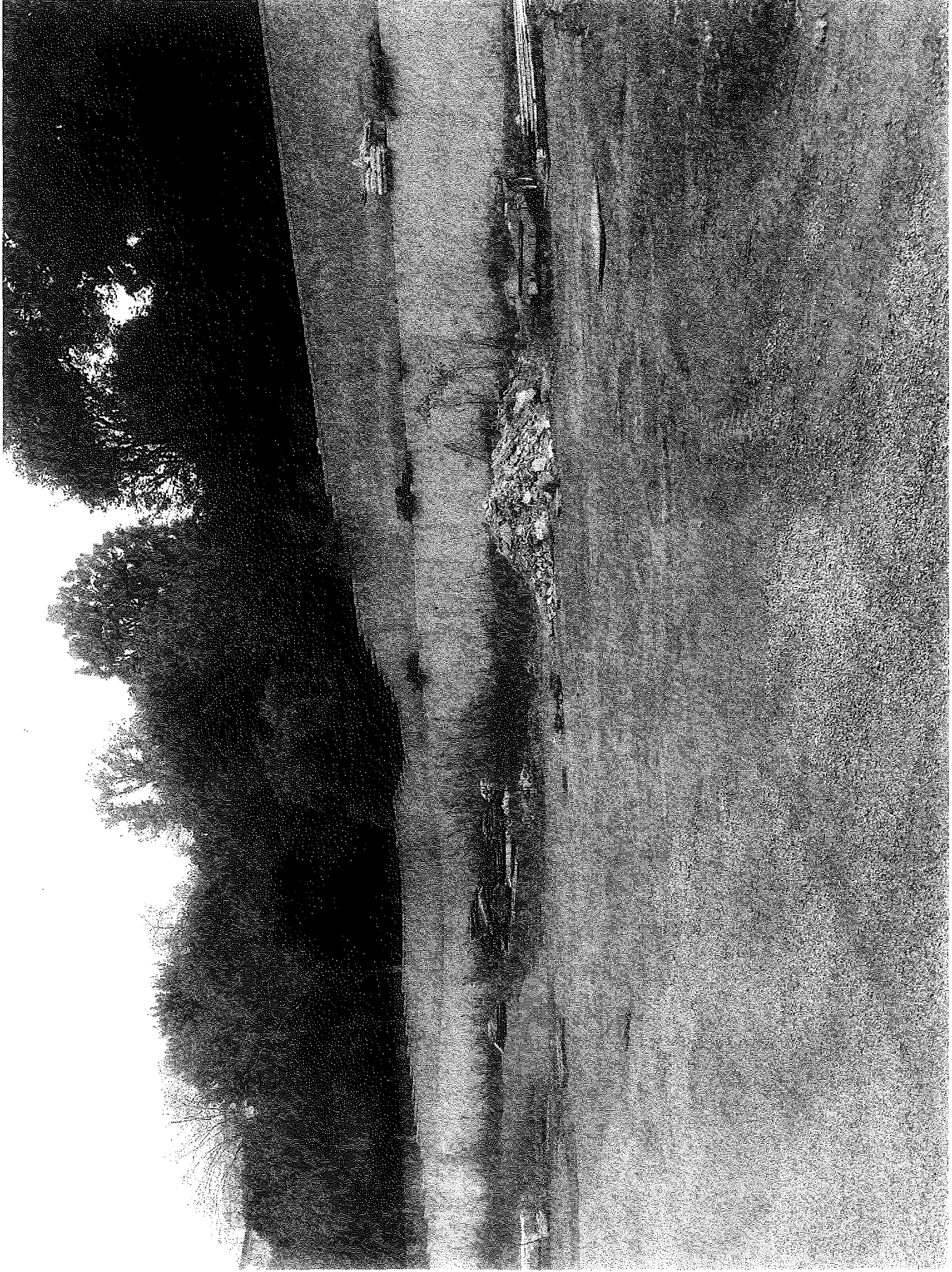
Buildable area far removed from street due to stream bed.



Buildable area removed from street, vegetation blocks views.



Building pad far from street. Neighbor's view blocked by heavy vegetation.



Vegetation blocks view of property. 2 retaining walls really are one "stepped" wall.

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WEST LOS ANGELES AREA PLANNING COMMISSION
REGULAR MEETING
HENRY MEDINA WEST L.A. PARKING ENFORCEMENT FACILITY
11214 W. EXPOSITION BOULEVARD, SECOND FLOOR,
ROLL CALL ROOM
LOS ANGELES, CALIFORNIA 90064

TRANSCRIPT OF PROCEEDINGS

-oOo-

Wednesday, January 15, 2014
Commencing at 4:44 p.m.

Joanna B. Brown, CSR No. 8570, RPR, CRR, RMR
369616

1 Los Angeles, California; Wednesday, January 15, 2014
2 4:44 p.m.
3
4 **COMMISSIONER LINNICK:** Good afternoon.
5 Welcome to the West Los Angeles Area Planning
6 Commission Meeting of Wednesday, January 15th.
7 Housekeeping items, phones should be off or on vibrate.
8 If you are planning to speak this evening, please fill
9 out a speaker card, and turn it in to staff. Parking
10 seems to be okay. The lot wasn't too full. So I won't
11 make any announcements about folks needing to move
12 their cars.
13 Let the records reflect the Commissioners
14 present today, Commissioner Halper,
15 Commissioner Donovan, Commissioner Linnick, and
16 Commissioner Foster. We are going to go in order of
17 the items on the agenda, although I think I'm going to
18 take four out of order because it's been continued. So
19 we'll start off with the departmental report, if there
20 is one, from the City Planning Department.
21 Hi, Mr. Tokunaga.
22 **JIM TOKUNAGA:** So I am going to be doing
23 everything today, yes. Shana could not be here today.
24 She had a conflicting meeting. So she asked that I
25 just convey that to you, and there was nothing to

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1 APPEARANCES OF COUNSEL:
2 FOR THE APPLICANT:
3 LEWIS, BRISBOIS, BISGAARD & SMITH LLP
4 BY: BRANT DVEIRIN, ESQ.
5 221 South Figueroa Street
6 Suite 1200
7 Los Angeles, California 90012
8 (213) 580-6317
9 (213) 250-7900 Fax
10 brant.dveirin@lewisbrisbois.com
11
12 FOR THE APPELLANT:
13 LAW OFFICES OF VICTOR I. MARMON
14 BY: VICTOR I. MARMON, ESQ.
15 1875 Century Park East
16 Suite 1600
17 Los Angeles, California 90067
18 (310) 551-8120
19 (310) 551-8113 Fax
20 vmarmon@earthlink.net

Date: _____
Submitted in _____ Committee
Council File No: 14-0171
Item No.: _____
Deputy: _____

1 report.
2 **COMMISSIONER LINNICK:** Okay.
3 **JIM TOKUNAGA:** And so I'll leave it at that.
4 **COMMISSIONER LINNICK:** Okay. Thank you.
5 We have on the agenda, although this may not
6 be coming up tonight, but other items of interest. We
7 have the presentation on the Expo corridor.
8 **COMMISSIONER FOSTER:** No. We are not going to
9 have that.
10 **COMMISSIONER LINNICK:** We are not?
11 **JIM TOKUNAGA:** Yeah. So I got a call from
12 Patricia Diefenderfer just saying that even though it
13 was on the agenda, the intent -- that they were not
14 ready. So they could possibly come on the next agenda.
15 **COMMISSIONER LINNICK:** Okay. Great. Thank
16 you. No. 2 is "Commission Business." The advance
17 calendar, are there any changes to the advance
18 calendar?
19 **RANDA HANNA:** We are good.
20 **COMMISSIONER LINNICK:** Okay. Thank you. Are
21 there any Commission requests? No. We are just
22 rolling along. The third item on "Commission
23 Business," approval of the minutes from our last
24 meeting, which was December 4th. It was last year.
25 **COMMISSIONER FOSTER:** Commissioner Foster. I

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1 would move we approve the minutes of December 4th.
2 **COMMISSIONER DONOVAN:** Commissioner Donovan.
3 Second.
4 **RANDA HANNA:** Commissioner Foster?
5 **COMMISSIONER FOSTER:** Aye.
6 **RANDA HANNA:** Commissioner Donovan?
7 **COMMISSIONER DONOVAN:** Aye.
8 **RANDA HANNA:** Commissioner --
9 **COMMISSIONER FOSTER:** Halper.
10 **RANDA HANNA:** -- Halper?
11 **COMMISSIONER HALPER:** Aye.
12 **RANDA HANNA:** Commissioner Linnick?
13 **COMMISSIONER LINNICK:** Aye.
14 **RANDA HANNA:** And the item has been -- the
15 motion is carried. Thank you.
16 **COMMISSIONER LINNICK:** Thank you. Okay. And
17 then our next item, I'm going to take Item No. 4 out of
18 order. It's VTT-71898-CN-A1 and its related cases,
19 DIR-2012-1112-DB, CEQA Environmental
20 2012-111-MND [sic], and the address is 11965 West
21 Montana Avenue. We understand that this matter has
22 been continued.
23 **JIM TOKUNAGA:** Yes. Just so I set the record
24 straight, that is another one of those instances where
25 there was a tract map appeal, and there was a companion

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1 density bonus case that's actually currently still in
2 the appeal period. So we don't want that -- a
3 situation which has happened, like, last time where we
4 had two things going on at different times. So we are
5 waiting for the appeal period on the density bonus to
6 finish so that if that's appealed, that it gets all
7 bundled as one package.
8 **COMMISSIONER LINNICK:** Good.
9 **JIM TOKUNAGA:** Okay? So that's -- we noticed
10 that on the agenda last week, and I immediately -- even
11 though it's not my case, I immediately let the staff
12 people know that this Commission would not accept it
13 that way.
14 **COMMISSIONER FOSTER:** Thank you.
15 **JIM TOKUNAGA:** Okay. Thank you.
16 **COMMISSIONER FOSTER:** You are listening.
17 **JIM TOKUNAGA:** Yes.
18 **COMMISSIONER LINNICK:** So do we need to -- do
19 we need to do anything or -- it happened, I know -- I
20 got a call. It happened from --
21 **JIM TOKUNAGA:** Oh.
22 **COMMISSIONER LINNICK:** -- your department, but
23 do we need to continue the matter?
24 **COMMISSIONER FOSTER:** Right. I think so.
25 **JIM TOKUNAGA:** I believe a letter has been --

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1 **COMMISSIONER LINNICK:** Are the parties here --
2 (Simultaneously speaking.)
3 **RANDA HANNA:** Yes. It will be continued until
4 February 28th. It has been --
5 **COMMISSIONER FOSTER:** So we will make -- I
6 will make a motion --
7 **COMMISSIONER LINNICK:** Yeah.
8 **COMMISSIONER FOSTER:** -- that we continue
9 case, that 11966 [sic] West Montana Avenue, to
10 February the 18th, is it?
11 **COMMISSIONER LINNICK:** 19th? Oh.
12 **COMMISSIONER FOSTER:** February --
13 **RANDA HANNA:** February 28th.
14 **COMMISSIONER FOSTER:** -- 28th. Okay.
15 Commissioner Foster.
16 **COMMISSIONER LINNICK:** Okay. We don't, oh --
17 Commissioner Linnick -- point-of-order -- information.
18 We don't have -- do we have a meeting on -- we have
19 February 5th and then February 19th.
20 **RANDA HANNA:** February 19th. So it will be on
21 February 19th.
22 **COMMISSIONER FOSTER:** 19th.
23 **COMMISSIONER LINNICK:** 19th. Okay.
24 **COMMISSIONER FOSTER:** Okay. So I move -- I
25 change my motion -- I modify my motion to

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1 February 19th.
2 **COMMISSIONER DONOVAN:** Commissioner Donovan.
3 Second.
4 **RANDA HANNA:** Okay. Commissioner Foster?
5 **COMMISSIONER FOSTER:** Aye.
6 **RANDA HANNA:** Commissioner Donovan?
7 **COMMISSIONER DONOVAN:** Aye.
8 **RANDA HANNA:** Commissioner Halper?
9 **COMMISSIONER HALPER:** Aye.
10 **RANDA HANNA:** Commissioner Linnick?
11 **COMMISSIONER LINNICK:** Aye.
12 **RANDA HANNA:** And the motion is carried.
13 **COMMISSIONER LINNICK:** Okay. Great. So
14 now we'll go back to Item No. 3,
15 ZA-2012-1402-ZV-ZAA-ZAD-1A, CEQA Environmental
16 2005-8611-MND-REC2, and the address is 10550 West
17 Bellagio Road. If staff can address that for us.
18 **COMMISSIONER DONOVAN:** Excuse me,
19 Madam President. I just have one quick -- a couple
20 quick disclosures. I have viewed the property site,
21 and also I received a telephone call from a
22 Steve Twining, asking me if I was going to attend
23 today's APC meeting. I understand Mr. Twining may
24 represent one of the homeowners associations in the
25 neighborhood. I told him yes. We had no discussion

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1 whatsoever regarding the merits of this case.
 2 **COMMISSIONER LINNICK:** Thank you.
 3 Mr. Tokunaga --
 4 **COMMISSIONER FOSTER:** Commissioner Foster. I
 5 have the same disclosure. I went and I saw the
 6 property. I viewed it. I did get a call from
 7 Mr. Twining, but we had no discussion about the case at
 8 all. It was just whether I was going to be here
 9 tonight. I said, yes, I was.
 10 **COMMISSIONER LINNICK:** Commissioner Linnick.
 11 I'm feeling very alone in that I did not get a call
 12 from this said Mr. Twining, whoever he is, but I also
 13 have seen the property. Okay. Staff.
 14 **JIM TOKUNAGA:** Okay. So --
 15 **COMMISSIONER LINNICK:** Thank you.
 16 **JIM TOKUNAGA:** -- this item is an appeal of my
 17 approval of a height variance. Actually, it's a
 18 partial appeal. The appeal itself is on the variance
 19 that was granted for an over-in-height home, a
 20 single-family home of 50 feet in lieu of the 36 feet
 21 allowed. The site itself, I felt --
 22 First of all, I think the site might be
 23 familiar to you because, about a year ago, there was an
 24 adjacent site that also was under the same request for
 25 a variance for height, and in that case, I denied the

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1 appeal -- I mean, denied the request. So, in this
 2 particular case, I've approved it. Okay. And --
 3 There are a lot of things that have happened
 4 in that one year that we've held the original hearing,
 5 which was in January, approximately one year ago from
 6 today. We held another hearing back in September, and
 7 a lot of new information was given to me. And I felt
 8 that, on this particular site, there are some
 9 circumstances on the site that perhaps should allow for
 10 a variance. There is a creek, that you are all aware
 11 of, that is required to be maintained. There is a
 12 15-foot easement for the creek itself and then 10-foot
 13 landscape buffer on each side. And that is part of a
 14 parcel map approval that was approved by this
 15 Commission, I want to say, five years ago or so.
 16 And although the original applicant --
 17 application was to remove that condition, they've kept
 18 that condition. So, now, they have to comply with it.
 19 In doing so, I felt that it did cut into the property,
 20 at least portions of the property. The site itself has
 21 what I believe is a very long frontage along the
 22 street, and you have to maintain setbacks along that
 23 street frontage.
 24 And if you look at the site, too, it's
 25 described -- and this is the way the applicants

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1 themselves described it. It's sort of a bowl shape,
 2 and by that, I mean, if you -- from the street, it sort
 3 of slopes down a little. And because of the
 4 landscaping and the creek and the way it's set back
 5 from the street, I -- although the height, you know, is
 6 50 feet, I didn't believe that it would be that
 7 visible. And only a portion of that, the building
 8 itself, the home itself, is actually above -- at the
 9 50 feet, the portion that's measured nearest to the
 10 creek. And so in order --
 11 And I understand that the building can -- the
 12 home can be designed to, sort of, terrace along the
 13 topography, but in doing so, it may cut into the
 14 hillside. There is -- once you, sort of, leave the
 15 level -- marginally level area, it sort of slopes up,
 16 not that they would build up there, but that is another
 17 way to construct on the site.
 18 And so, because of the slope, the creek going
 19 through there, the setbacks that are required, I felt
 20 that the site has some constraints on it that perhaps
 21 allowed for the variance to be granted.
 22 And then the appeal was filed by a neighboring
 23 property owner, who believes that, you know, first, a
 24 variance should not be granted because there's no
 25 hardship, there's no special circumstance, and that,

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1 you know, perhaps that the building itself would be --
 2 obstruct views, or it would be -- sort of obstruct
 3 views along the road itself, which is what I'm reading
 4 now.
 5 So the neighborhood itself, this is like, I
 6 want to say, the last remaining or one of the last two
 7 remaining parcels along this street. The homes vary.
 8 Some are set back a lot, quite a bit. Others are --
 9 don't have much of a setback. I don't -- some -- I
 10 don't remember seeing the creek anywhere else. It
 11 could be behind walls or fences so I can't see it, but
 12 in this particular case, yeah, the creek is pretty
 13 prominent. So that in itself I felt was a special
 14 circumstance.
 15 With that being said, the variance was
 16 granted, and here we are today. The neighbors have
 17 appealed.
 18 **COMMISSIONER LINNICK:** Commissioner Linnick.
 19 **COMMISSIONER HALPER:** Commissioner Halper. A
 20 question --
 21 **JIM TOKUNAGA:** Yes.
 22 **COMMISSIONER HALPER:** -- Mr. Tokunaga. This
 23 is, like, almost deja vu. The Stone Canyon case, which
 24 the Commission heard, is very parallel to this
 25 particular case. What would -- succinctly, what would

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1 be the differences? Because the Commission did not
 2 approve the case or did not approve the request of the
 3 developer.
 4 What do you see as the specifics that would
 5 make this different than for approval?
 6 **JIM TOKUNAGA:** Well, for myself, the original
 7 case, the one adjoining this site -- I believe that was
 8 the 360 Stone Canyon -- and in that particular case,
 9 the whole argument from the very beginning, at least --
 10 and they changed representatives, but the applicant's
 11 original representative was saying that it -- the
 12 hardship was that they had pulled the building permits,
 13 and it was under construction, and therefore, it was a
 14 hardship, you know, that --
 15 But if that was their rationale for granting a
 16 variance, I felt that that was not appropriate. And
 17 then -- so they changed the representatives, and we
 18 held the hearing. I felt that, at the second hearing,
 19 the special circumstances were more geared towards the
 20 actual physical site and not so much, you know, well,
 21 the height is measured differently now than when we
 22 originally pulled the permit, and, you know, so,
 23 therefore, we have a hardship.
 24 But, you know, in fairness to the question,
 25 the sites are contiguous. So, you know, they are the

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1 same.
 2 **COMMISSIONER HALPER:** Thank you.
 3 **JIM TOKUNAGA:** Yeah.
 4 **COMMISSIONER LINNICK:** Commissioner Linnick.
 5 So is that the new information that you are referring
 6 to? When you started off your presentation, you said
 7 that, you know, we had heard this before but that based
 8 on the new information given to you, and then you
 9 stated the slope and the creek and the setbacks.
 10 **JIM TOKUNAGA:** Well, yes.
 11 **COMMISSIONER LINNICK:** You now are --
 12 **JIM TOKUNAGA:** The original hearing, which
 13 was, you know -- was a joint hearing and with the
 14 Advisory Agency, there were other -- this case, along
 15 with two other cases, we were hearing all three
 16 together, and there seemed to be all over the place.
 17 It wasn't specific to one or the other. So it was hard
 18 to discern what the requests were, but the hardship in
 19 that particular case was -- in the 360 Stone Canyon was
 20 that it was already under construction, and they
 21 measured the height different.
 22 Subsequent to that, they dropped the parcel
 23 map modification request. So the original parcel map
 24 that was approved by the West L.A. Area Planning
 25 Commission now stands. And all this new information as

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1 far as measuring and the way the setbacks are, the open
 2 space, the hillside, the topography, all that stuff was
 3 sort of being pushed onto the Commission perhaps during
 4 the appeal for the 360 Stone Canyon, but all that
 5 was information that the Zoning Administrator
 6 originally never really was presented. So we -- that's
 7 why we held the other hearing. And we held another
 8 hearing for this case specifically in September of last
 9 year.
 10 **COMMISSIONER FOSTER:** I have -- my question is
 11 the parcel map was approved --
 12 **JIM TOKUNAGA:** Yes.
 13 **COMMISSIONER FOSTER:** -- with the conditions,
 14 the setback, and everything from the creek. Was the
 15 current owner -- was the current owner the same owner
 16 then? Did he own the property then?
 17 **JIM TOKUNAGA:** Yes. I believe it was Mr. --
 18 (Simultaneous speaking.)
 19 **COMMISSIONER FOSTER:** Okay. So he's -- before
 20 he started any construction, he was aware of all of the
 21 conditions that were put on the property; is that
 22 correct?
 23 **JIM TOKUNAGA:** I would imagine he was.
 24 **COMMISSIONER FOSTER:** Okay.
 25 **JIM TOKUNAGA:** I can't speak for him, but I

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1 would imagine he was, yes.
 2 **COMMISSIONER FOSTER:** Well, I would think
 3 so --
 4 **JIM TOKUNAGA:** Yeah. Yes.
 5 **COMMISSIONER FOSTER:** -- since he owned the
 6 property then. You are saying he did own the property.
 7 **JIM TOKUNAGA:** Yes.
 8 **COMMISSIONER FOSTER:** And I remember very well
 9 when we had a lot of testimony about that property from
 10 various environmental groups and from the Council
 11 office at the time because there was a great concern
 12 over the creek. And it, the creek, runs all the way
 13 down Stone Canyon.
 14 **JIM TOKUNAGA:** Yes.
 15 **COMMISSIONER FOSTER:** So it does.
 16 **JIM TOKUNAGA:** Okay.
 17 **COMMISSIONER FOSTER:** So it does. Okay.
 18 Thank you. So he was the owner.
 19 **JIM TOKUNAGA:** Yes, he was.
 20 **COMMISSIONER FOSTER:** So he had that -- all of
 21 that information before he drew plans and before he
 22 started building?
 23 **JIM TOKUNAGA:** Yes.
 24 **COMMISSIONER FOSTER:** Okay. Thank you.
 25 **COMMISSIONER LINNICK:** Commissioner Linnick.

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1 A couple quick ones, although I probably have some more
2 later. So the information we received from the
3 architect, I think was in the letter from the
4 architect, of the appellant talked about the lack of a
5 slope analysis or a plot plan. Are those things that
6 you have or that you've seen?
7 **JIM TOKUNAGA:** I do not have them. No, I do
8 not have them.
9 **COMMISSIONER LINNICK:** Is that something that
10 you usually would have in a case like this? And was
11 that at all an issue for you?
12 **JIM TOKUNAGA:** We had some slope analysis
13 maps, but it wasn't specifically geared towards the
14 request. It was just sort of like a map that had the
15 topo lines on it, and I -- we did have that map, but it
16 wasn't an analysis of how the project height was
17 measured. So, you know, that's all I can say. I do
18 have that, but it's not a specific analysis.
19 **COMMISSIONER LINNICK:** Okay.
20 **COMMISSIONER FOSTER:** Do you -- do you not
21 have a plot plan still?
22 **JIM TOKUNAGA:** I do have a -- I do have a plot
23 plan that sort of defines the outline of the building,
24 yes. This is the one that we approved.
25 **COMMISSIONER FOSTER:** Okay. Thank you.

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1 **COMMISSIONER LINNICK:** Go ahead.
2 **COMMISSIONER DONOVAN:** Commissioner Donovan.
3 Just so that I understand everything here, there's no
4 appeal of the adjustment allowing the overheight fence;
5 correct?
6 **JIM TOKUNAGA:** No, I did not see that.
7 **COMMISSIONER DONOVAN:** So that's not before
8 us. Okay. And, now, we have these two companion
9 cases. They are property right next to each other,
10 Stone Canyon and Bellagio. And the applications for
11 variances was filed -- both filed on the same day,
12 September 21, 2012, and they both requested the same
13 height variance; correct?
14 **JIM TOKUNAGA:** Yes, it sounds familiar. Yes.
15 **COMMISSIONER DONOVAN:** And they both had the
16 same public hearing on January 9, 2013?
17 **JIM TOKUNAGA:** Yes.
18 **COMMISSIONER DONOVAN:** Okay. Then, looking
19 through the timeline here, you denied the variance for
20 Stone Canyon, and then that was appealed to this APC,
21 and we denied -- that was -- we heard it on
22 June 5th, 2013. We denied the appeal, and we upheld
23 your denial; right?
24 **JIM TOKUNAGA:** That's correct.
25 **COMMISSIONER DONOVAN:** Okay. And then CD5

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1 filed a 245 motion to remove the matter to the
2 City Council.
3 **JIM TOKUNAGA:** Uh-huh, yes.
4 **COMMISSIONER DONOVAN:** And then the
5 City Council essentially vetoed our determination and
6 remanded it back to this APC.
7 **JIM TOKUNAGA:** That's correct.
8 **COMMISSIONER DONOVAN:** Okay. So, then, on
9 August 7, we had another hearing on this Stone Canyon
10 property.
11 **JIM TOKUNAGA:** Appeal, yes.
12 **COMMISSIONER DONOVAN:** And at that time, you
13 did not change your initial denial -- determination to
14 deny the variance.
15 **JIM TOKUNAGA:** No.
16 **COMMISSIONER DONOVAN:** Okay. And, then,
17 there's another 245 motion. And then, on September 11,
18 the Council reversed the decisions and granted the
19 variance to Stone Canyon.
20 **JIM TOKUNAGA:** That's correct.
21 **COMMISSIONER DONOVAN:** Okay. And, then, after
22 that, on September 25th, you hold another hearing on
23 the Bellagio property.
24 **JIM TOKUNAGA:** That's correct.
25 **COMMISSIONER DONOVAN:** Okay. And then, on

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1 November 1st, you grant the variance on pretty much the
2 same facts as presented on the Stone Canyon property.
3 **JIM TOKUNAGA:** You mean as far as what
4 happened at Council or --
5 **COMMISSIONER DONOVAN:** Well, I guess, when
6 Commissioner Halper was asking you for the difference,
7 what seemed to come out for me is that the facts were
8 the same, but the reasoning behind the applicant's
9 request for a variance had changed slightly.
10 **JIM TOKUNAGA:** Slightly, yes.
11 **COMMISSIONER DONOVAN:** But the facts are the
12 same.
13 **JIM TOKUNAGA:** The facts are the same.
14 **COMMISSIONER DONOVAN:** Okay. And I guess the
15 tough question I have to ask, did the decision by the
16 City Council on Stone Canyon have any effect whatsoever
17 on your determination to grant the variance on
18 Bellagio?
19 **JIM TOKUNAGA:** No, it did not.
20 **COMMISSIONER DONOVAN:** Did the -- when the
21 City Council made -- overturned both of our rulings,
22 did they find -- make different findings of facts?
23 Were different facts presented?
24 **JIM TOKUNAGA:** They would have had to -- well,
25 in order to grant the variances, they would have had to

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1 make those findings.
 2 **COMMISSIONER DONOVAN:** They'd have to make
 3 findings, but did they -- did they -- were different
 4 facts provided to them?
 5 **JIM TOKUNAGA:** I have -- I do not know. Okay.
 6 **COMMISSIONER DONOVAN:** Okay. And so did you,
 7 in any way, decide that the Stone Canyon case created
 8 precedent for the Bellagio variance?
 9 **JIM TOKUNAGA:** Did the Stone -- no, no,
 10 because I -- well, my initial decision wasn't a denial.
 11 **COMMISSIONER DONOVAN:** Yeah. I only ask that
 12 because --
 13 **JIM TOKUNAGA:** Yeah.
 14 **COMMISSIONER DONOVAN:** -- in your report, you
 15 said you -- the adjacent property is currently being
 16 developed with a similar height variance granted by the
 17 City Council, and I was wondering about the
 18 significance --
 19 **JIM TOKUNAGA:** Oh, yeah. I just put that in
 20 there as background information. Yeah.
 21 **COMMISSIONER DONOVAN:** Okay. When we go
 22 through the five findings that you have to make for a
 23 variance -- and the first one is that the strict
 24 application of the zoning ordinance would result in
 25 practical difficulties or unnecessary hardships

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1 inconsistent with the general purposes and intent of
 2 the zoning regulations -- we asked the same question
 3 with Stone Canyon.
 4 Can a house of approximately the same footage
 5 presently be built on the Bellagio property without a
 6 variance?
 7 **JIM TOKUNAGA:** Yes, it could.
 8 **COMMISSIONER DONOVAN:** Okay. And I went
 9 through the transcript of the -- of your hearing there,
 10 and nobody from applicant represented to you that "If
 11 we don't get this variance, we can't build a house
 12 that's of the same square footage." Nobody said that;
 13 correct?
 14 **JIM TOKUNAGA:** No, I don't believe they did.
 15 **COMMISSIONER DONOVAN:** Okay. And you did
 16 receive a report, as a matter of fact, from the
 17 appellant, David Applebaum, saying that they can
 18 build -- they can redesign the house and basically
 19 build something about the same size without needing a
 20 variance. You did.
 21 **JIM TOKUNAGA:** Yes, uh-huh.
 22 **COMMISSIONER DONOVAN:** And you didn't receive
 23 any evidence that contradicted Mr. Applebaum.
 24 **JIM TOKUNAGA:** I did not.
 25 **COMMISSIONER DONOVAN:** Okay. So a denial of a

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1 variance is not going to prevent the applicant from
 2 building a house on his property.
 3 **JIM TOKUNAGA:** No, it would not.
 4 **COMMISSIONER DONOVAN:** So I'm trying -- I'm
 5 having difficulty finding the unnecessary hardship or
 6 the practical difficulties if the applicant -- the
 7 house isn't started to be built. They could just
 8 design a house that's within the height limits. It can
 9 be just as big as it was going to be big.
 10 What are the unnecessary hardships or
 11 practical difficulties?
 12 **JIM TOKUNAGA:** Well, when I'm -- this is
 13 Jim Tokunaga. When I'm reviewing a case, I'm looking
 14 at the case as far as what they are proposing to build,
 15 and I felt that with -- you know, I guess I can -- what
 16 you are saying is I could say, "Well, no. You can
 17 design it in a different way. So I'm going to deny the
 18 variance."
 19 But what I'm looking at is, based on the
 20 proposal of the project, for what they want to do, do I
 21 find that there are, you know, special circumstances or
 22 any reasons why the hardships on the site would prevent
 23 them from developing the home the way they want? And
 24 that's, you know -- that was my reasoning for the
 25 variance.

Page 24

1 **COMMISSIONER DONOVAN:** That gets to the crux
 2 of the matter because I remember, in the Stone Canyon
 3 case, the applicant's attorney said, "We just want this
 4 for aesthetic reasons." And I noticed in this case
 5 that the reason for the variance is so that the
 6 proposed residence can have a consistent roof line for
 7 the entire home. So they basically want this variance
 8 for subjective, aesthetic reasons.
 9 **JIM TOKUNAGA:** You know, yeah, I imagine. You
 10 will have to ask the applicants, but I would imagine
 11 that's probably it.
 12 **COMMISSIONER DONOVAN:** Now, you had -- one of
 13 the things you had to find is that the proposed height
 14 variance is going to be consistent with all of the
 15 goals of the Baseline Hillside Ordinance, the BHO, and
 16 I looked at that. And isn't one of the BH goals to
 17 encourage terrace structures that break up a boxy
 18 building?
 19 **JIM TOKUNAGA:** Yes, it is.
 20 **COMMISSIONER DONOVAN:** And the other thing,
 21 you know, I saw a lot of things in the hearing
 22 transcript and -- about that this height is not going
 23 to block a view, which, I guess, is the subject of a
 24 debate between both sides. But I looked at the BHO,
 25 and it doesn't say anything about blocking the view.

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1 It says the policy at 1-3.3 is to "preserve existing
2 views in hillside areas."
3 So even if it's not going to block the view, a
4 height variance on here is not -- it won't have the
5 same view it would have had if it was within the height
6 limit; correct?
7 **JIM TOKUNAGA:** "View" meaning from the
8 neighbor or --
9 **COMMISSIONER DONOVAN:** Yes.
10 **JIM TOKUNAGA:** Well --
11 **COMMISSIONER DONOVAN:** That would be the only
12 view that would be subject to the appeal, the neighbors
13 having their views changed, if not blocked.
14 **JIM TOKUNAGA:** Yes. Well, yeah. It's a
15 vacant site. So anything that you put on the site, you
16 know, is going to be visible regardless, I think,
17 whether it's 50 feet or 36 feet.
18 **COMMISSIONER DONOVAN:** And there was evidence,
19 at least from some of the neighbors, that they felt
20 that it was going to block their views.
21 **JIM TOKUNAGA:** The adjacent property owner, at
22 least their representative, did indicate that they felt
23 that there might be some obstruction of views.
24 **COMMISSIONER DONOVAN:** Now, the second part of
25 the variance findings that have to be made are the

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1 special circumstances. And, again, we went through
2 this on Stone Canyon, but the second one there is that
3 there have to be special circumstances applicable to
4 the property such as size, shape, topography, location,
5 or surroundings that do not generally -- apply
6 generally to the other property in the vicinity. And
7 the special circumstances that I heard you cite in your
8 report and also today are the creek, the topographical
9 changes, and the long frontage on the street.
10 Now, this is not the only property in the
11 vicinity that has a stream running through it.
12 **JIM TOKUNAGA:** That's correct.
13 **COMMISSIONER DONOVAN:** And this is not the
14 only property in the vicinity that had varying
15 elevations.
16 **JIM TOKUNAGA:** That would be correct.
17 **COMMISSIONER DONOVAN:** I mean, all of the
18 properties on the hillsides have varying elevations;
19 right?
20 **JIM TOKUNAGA:** Yes.
21 **COMMISSIONER DONOVAN:** Okay. And the reason
22 why there's such a long frontage in this particular
23 case is the applicant voluntarily tied two properties
24 together to build the project; right?
25 **JIM TOKUNAGA:** Yes, the tied -- parcels are

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1 tied.
2 **COMMISSIONER DONOVAN:** So wouldn't that
3 special circumstance be self-imposed?
4 **JIM TOKUNAGA:** Well, they tied it. So it's --
5 you know, it's their decision.
6 **COMMISSIONER DONOVAN:** Okay. And, then, I
7 think we've covered the No. 3, which is necessary -- is
8 the variance necessary for the preservation and
9 enjoyment of a substantial property right or use
10 generally possessed by other property but because of
11 the special circumstances and practical difficulties or
12 unnecessary hardship is denied. But we already know
13 that this property can be built on. A large house can
14 be built on.
15 And are there any other properties that
16 received a height variance for aesthetic reasons?
17 **JIM TOKUNAGA:** Well, for aesthetic reasons, I
18 can't say for sure. There are other variances in the
19 area, but I couldn't answer that. There is a house
20 across the street.
21 **COMMISSIONER DONOVAN:** And let's see. Now,
22 No. 4, which is another finding that you have to make
23 for granting a variance, whether it's going to -- and
24 you have to find that the variance will not be
25 materially detrimental to the public welfare. But the

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1 only finding I saw that you had there on page 16 was
2 that it's not going to block any views, and the height
3 won't be noticeable. But that brings us back to
4 whether the BHO says "preserve existing views," not
5 necessarily "block," but isn't --
6 One thing that struck me on this was that you
7 stated at page 17 that "The proposed height is not
8 consistent with the plan's intent to require compliance
9 with regulations pertaining to development in the
10 hillside area." And I saw that, and it jumped out at
11 me. Isn't compliance with regulations important to the
12 public welfare?
13 **JIM TOKUNAGA:** Okay. So what I'm saying here
14 is that the height that they are asking for is, of
15 course, not permitted by the zone, and the only way we
16 can grant that additional height is through a variance
17 process subject to these findings, and I guess what all
18 I'm saying is that I've made those findings.
19 **COMMISSIONER DONOVAN:** Can the granting of a
20 variance on this property have any precedential effect
21 on future land use in the area?
22 **JIM TOKUNAGA:** I think any kind of approval
23 would, yes.
24 **COMMISSIONER DONOVAN:** I think we've covered
25 the fifth one about -- all of the things that go with

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1 No. 4 also are included in No. 5. Thank you. I have
2 no more questions.
3 **COMMISSIONER LINNICK:** All right. Let's start
4 with the appellant. Can I have the appellant's
5 representative, Mr. Marmon. If you can, state your
6 name and address for the record, please, and you have
7 five minutes.
8 **MR. MARMON:** Thank you. Members of the
9 Commission, Mr. Tokunaga, guests, public speakers, my
10 name is Victor Marmon. My office address is
11 1875 Century Park East, Suite 1600, Los Angeles,
12 California 90067.
13 **COMMISSIONER FOSTER:** Do you have a cell phone
14 on?
15 **MR. MARMON:** No.
16 **COMMISSIONER FOSTER:** It might be causing --
17 **COMMISSIONER LINNICK:** Our last meeting, the
18 same thing happened.
19 **COMMISSIONER FOSTER:** We had a problem with
20 that. Okay.
21 **COMMISSIONER LINNICK:** And I don't know -- we
22 don't know what it was. So we'll --
23 **COMMISSIONER FOSTER:** -- give you an extra
24 minute there.
25 **COMMISSIONER LINNICK:** We'll bear with it.

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1 **MR. MARMON:** Hopefully -- I've moved it
2 further --
3 **COMMISSIONER LINNICK:** Okay.
4 **MR. MARMON:** -- further back. Wait. I have
5 it with me. That's the problem.
6 **COMMISSIONER FOSTER:** There you go. Maybe
7 that makes a difference. Give him an extra --
8 **COMMISSIONER LINNICK:** Yeah. We're --
9 **COMMISSIONER FOSTER:** We'll give him an extra
10 minute.
11 **MR. MARMON:** Sorry.
12 **COMMISSIONER LINNICK:** This won't count
13 against your time.
14 **MR. MARMON:** That's all right. I hope to not
15 use the time.
16 **COMMISSIONER LINNICK:** Okay. Okay.
17 **MR. MARMON:** First, I'd like to give to the
18 Commission some proposed findings of fact that specify
19 how the ZA erred and abused his discretion in this --
20 in issuing the letter of decision. So if I may.
21 Second, I'd like to point out that my client
22 is not here. She is extremely disappointed. She's
23 been at every single public hearing in this matter.
24 She was involved in issues relating to the protection
25 of the stream and -- since 2006, and she has the flu.

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1 She just can't -- couldn't make it. So she's really
2 quite saddened that she can't be here.
3 I know that you all do your homework. You
4 really read through what people provide to you. So I'm
5 not going to repeat what I've said in my letter to you
6 or in the appeal. I just want to point out a few
7 things.
8 While the ZA said that approving cases will
9 have a precedential effect, I want to make it very
10 clear that the 360 case is not final. We have filed a
11 petition for writ of mandate against the City. It will
12 be heard, so that that matter is open. There is no
13 final decision there. And we will pursue that to the
14 Court of Appeal or the Supreme Court if necessary
15 because that adoption of the zone variance by the
16 City Council was in error and a massive abuse of
17 discretion. In fact, it was just a political hack job,
18 but we'll leave that for another time.
19 Mr. Tokunaga indicated that there were
20 different facts presented in the 360 case, perhaps more
21 effectively in the 10550 case, about grade differences
22 and elevations and things like that. I want to point
23 out that when Councilmember Koretz first 245'ed to
24 this -- your initial action, he cited the sloping
25 property from the northwest to -- northeast to the

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1 southwest. He cited the grade difference between the
2 westerly portion and the easterly portion. He cited
3 the creek. These are not new facts. These are facts
4 that are the same for this property and the other
5 property, and you should treat both properties the
6 same.
7 Mr. Tokunaga was not provided with a slope
8 analysis map. That is a very particular document that
9 the Planning Department requires in order to determine
10 how much square footage can be built on a particular
11 property.
12 Now, Mr. Tokunaga told us at the hearing, at
13 the public hearing, that we could not talk about the
14 fact that this property will not comply with the
15 Baseline Hillside Ordinance for square-footage purposes
16 because that's just for the Planning Department or the
17 Building Department to determine after the variance
18 issues are determined, but the fact is he did not have
19 the slope analysis map.
20 Commissioner Donovan mentioned one of the
21 objectives of the plan is to preserve existing views.
22 Well, one of the existing views is from Stone Canyon
23 Road. This is a major entrance and exit to Bel Air,
24 and this house, like the 360 house, will tower above
25 that roadway.

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1 And I want to also point out that the
 2 applicant at the hearing before Mr. Tokunaga -- and I
 3 expect the applicant to say it again today -- says that
 4 the property is in a bowl.
 5 First of all, this land was sort of foothill
 6 land. It sloped upward gradually. You can see by --
 7 well, you were -- many of you were on the same
 8 Commission that approved the parcel map. What they
 9 did -- you -- I don't want to repeat what you already
 10 know, but I have to make it for the record. They
 11 installed a massive 1700 -- sorry -- I think around a
 12 750-foot double retaining wall roughly 17 to 20 feet in
 13 height. They've chopped off the back of the hill.
 14 They graded the property. They raised the grade of the
 15 property. And, now, we have essentially a flat pad
 16 that rises upward gradually. This is not in a bowl.
 17 And I'd like to provide the Commission with
 18 the applicant's own retaining wall exhibit from the
 19 January hearing in 2013. Just a moment.
 20 **COMMISSIONER HALPER:** Excuse me. You know,
 21 it's very difficult for me and, I think, other members
 22 of the Commission to be able to absorb documents in
 23 lieu of a --
 24 **MR. MARMON:** I completely understand.
 25 **COMMISSIONER HALPER:** Yeah.

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1 **MR. MARMON:** I'm sorry. I didn't mean to
 2 interrupt you. No. I appreciate that. But the point
 3 that I will make orally to you, Stone Canyon Road, as
 4 shown on this exhibit that I've provided to you -- and
 5 there's some blowups so that you can see it --
 6 Stone Canyon Road ranges from an elevation of 478 feet
 7 at the southwest corner of the property to 490 feet at
 8 the corner of Stone Canyon and Bellagio. The finished
 9 floor of the house, where you will see the house from
 10 for the most part except for the west side where you
 11 will see the full height of the house because of the
 12 basement being exposed, is at 494.30. So the house
 13 itself is not in a bowl. The house is actually above
 14 Stone Canyon Road, which is the location that most
 15 people will see the house.
 16 And it's clear that the Commission understands
 17 the Baseline Hillside Ordinance. I'd just like to
 18 provide an ex- -- I'd just like to read very briefly an
 19 excerpt from the City Attorney's report to the Council
 20 when the City Council adopted the Baseline Hillside
 21 Ordinance. It says, "The current method of calculating
 22 height gives developers incentive to build large, tall,
 23 box-like structures in the hillsides, which many
 24 communities have specifically identified as a problem.
 25 Thus, the existing regulations discourage the terracing

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1 of structures up and down a slope. By contrast, the
 2 proposed ordinance would encourage such terracing as a
 3 design feature and would visually break up the massive
 4 buildings. The proposed ordinance would also utilize a
 5 method of calculating height which follows the slope of
 6 the lot referenced in the proposed ordinance as
 7 envelope height and encourage buildings to step up and
 8 down a hillside and resulting in" -- "and results in a
 9 more aesthetically pleasing development."
 10 So I'd just like to conclude by saying that --
 11 **COMMISSIONER LINNICK:** Okay.
 12 **MR. MARMON:** -- this property is not
 13 significantly different from the other properties, the
 14 360. The applicant has not made -- provided evidence
 15 sufficient to make the findings. You'll see in the
 16 proposed findings that I provided that there are
 17 numerous errors of fact and law as well as abuse of
 18 discretion, and we request that you grant the appeal
 19 and reverse the granting of the variance. Thank you.
 20 **COMMISSIONER LINNICK:** Thank you. Any
 21 questions?
 22 **MR. MARMON:** I will provide a copy of the City
 23 Attorney's Report.
 24 **COMMISSIONER LINNICK:** Are there any questions
 25 for Mr. Marmon at this time? No? Okay.

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1 Okay. The applicant has five minutes. I
 2 have -- I don't know if I'm going to pronounce this
 3 correctly -- Dveirin, Mr. Brant Dveirin.
 4 **MR. DVEIRIN:** Yeah.
 5 **MR. LO:** If I may, I think I filled out the
 6 wrong side.
 7 **COMMISSIONER LINNICK:** You can talk to the
 8 staff.
 9 **MR. MARMON:** We do have other speakers. Is
 10 that permitted or not?
 11 **COMMISSIONER LINNICK:** It happens -- it
 12 happens after.
 13 **MR. MARMON:** Sorry.
 14 **COMMISSIONER LINNICK:** The appellant goes.
 15 The applicant goes, and then we have the speakers for
 16 and against. So, if you can, state your name and
 17 address for the record, please.
 18 **MR. DVEIRIN:** Yes.
 19 **COMMISSIONER LINNICK:** You have five minutes.
 20 **MR. DVEIRIN:** I'm Brant Dveirin with the law
 21 firm of Lewis, Brisbois, Bisgaard & Smith. I'm the
 22 representative for the applicant M & A Gabae. I have
 23 with me at these tables my architect, project manager,
 24 land use consultant, and another attorney from my firm
 25 if there are any questions.

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1 I always understood this to be about
2 10550 Bellagio, not 360. I think that's what we should
3 be looking at. I do believe that it's pretty clear
4 that the properties are different. The -- one thing we
5 have to recognize with 360 is at the time when that
6 application was done, there was a huge issue regarding
7 the stream, that it was going to be covered, and that
8 characterized and invaded that whole process.
9 That is no longer the case. We're preserving
10 the stream. That was asked for us to do. We're doing
11 that, and because of that, this site requires us to be
12 55 feet away from Stone Canyon.
13 So I take issue with the fact that this idea
14 that you are going to see this driving along
15 Stone Canyon -- I was there the other day. The cars
16 zip along there. There's already a stone wall there.
17 There's going to be some ironwork on top of that. So I
18 just don't think that's correct.
19 I submitted some photos. Hopefully, everybody
20 got to see it. I understand that everybody -- at least
21 two people have said they've been to the site. They
22 say photos are worth a thousand words, and I agree with
23 that. If you look at the photos, particularly
24 Photos No. 1, 4, and 10, you can see in Photo No. 1,
25 for example, just how far --

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1 **COMMISSIONER FOSTER:** What exhibit -- excuse
2 me. What exhibit is this?
3 **MR. DVEIRIN:** These are the photos I --
4 **COMMISSIONER FOSTER:** Oh, okay. You --
5 (Simultaneous speaking.)
6 **MR. DVEIRIN:** The first photo shows you just
7 how far this property is from the -- from the --
8 Stone Canyon, which is on the other side of that wall.
9 None of that -- none of that property between the
10 bottom of this picture and the stone wall can be used.
11 That has to be preserved at least 55 feet, in some
12 places more, further away from that wall.
13 If you look at the picture on page 4 -- the
14 picture on page 4, at the top, there's a little
15 building at the top. That's part of 33 [sic] Copa de
16 Oro Road, which is Mr. Marmon's client's property.
17 That's not her house. That's some art studio.
18 It's barely visible to this property with that
19 vegetation. This property sits -- I don't know if you
20 want to call it a bowl, but it has a huge wall behind
21 it. It has -- it's below the grade of the street.
22 None of the properties that surround it on the east and
23 on the north can see virtually anything on this
24 property except some of the roof, and it won't matter
25 whether that roof is 40 feet, 39 feet, 60 feet. They

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1 can't see it. That's why you need to go out to the
2 property. That's why these pictures are important.
3 Essentially, what you have out there is you
4 have a slope that goes like this. It slopes down to
5 the stream. Then you have a flat roof. So the part to
6 my right is going to be a little bit higher than the
7 part to my left. So it's only the part of the home
8 that's closest to the stream that's going to be
9 50 feet. Eighty-two percent of this property is going
10 to be at the 36 feet. Eighteen percent is going to be
11 at 50 feet, and it's only this one part.
12 When we get into the detail of this, we have a
13 substantially difficult site to build on. Only
14 65 percent of that site can be used for building. The
15 rest of it has to be preserved because of the stream,
16 which we agreed to do. Because of that imposition, we
17 are entitled to seek a variance.
18 One of the most basic things under American
19 law is a property owner to use his property to his
20 desire and maximum use under the law, and the law
21 allows him to apply for a variance. And if you meet
22 the requirements for a variance, you are entitled to
23 get it. And I believe, based on what the zoning
24 administrator outlined in the -- in the determination,
25 that we've met the requirements for a variance.

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1 I don't think it's particularly helpful to say
2 that these properties -- this should be treated exactly
3 the same way as 360 because -- because, at the time
4 that we did 360, we had a stream issue that we don't
5 have on Bellagio. We didn't have the -- we didn't have
6 the same information regarding the site. This site
7 is -- information is different.
8 And I really believe that if we look at the
9 particular opposition that we have in this case and
10 that we had in Stone Canyon, you will see, in light of
11 the two letters that I submitted today, one from the
12 homeowners association and one from another neighbor,
13 is that we don't have opposition from the neighborhood.
14 We have opposition essentially from one neighbor, maybe
15 two neighbors. It's always the same neighbor,
16 Ms. Lazarof -- Lazarof. That's her right. But as her
17 attorney said, he's going to take the Stone Canyon case
18 all the way to the Supreme Court. Good luck with that.
19 But the thing is, is that this is not about
20 land use. It's personal, and it's typical. When
21 you're the last one to build in a lot that everybody is
22 used to seeing empty for a substantial period of time,
23 certain people don't like it. I've seen it all over
24 the city.
25 This dispute needs to stop. It needs to stop

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1 here. It needs to stop now, and it needs your help to
 2 approve this variance so we can finally put an end to
 3 this and we can finish the job on Bellagio Road.
 4 There was a comment made with respect to the
 5 variance that somehow this site, you could -- you could
 6 do a home, I guess, that's terraced or that is a
 7 different height. And I suppose there's a lot of
 8 things you can do on a particular site, but understand
 9 this -- and I think this goes for a lot of projects in
 10 the city -- as a matter of right, when this thing
 11 started, he had a parcel map, and he had four lots, and
 12 he could have built four houses on there to spec and
 13 sold those lots. He's now building two larger homes on
 14 two lots that he's going to live in, and I understand
 15 one -- his brother is going to live in one of them.
 16 This is a much less intensive use of this
 17 site. It's not for profit. It's for personal use.
 18 This is the type of thing we should support, not
 19 oppose. This is what we want. We want people to
 20 maximally use a site, not to create waste, at the same
 21 time to do something that's attractive and to make sure
 22 that you listen to the requirements of the City
 23 regarding the stream, regarding the retaining walls,
 24 regarding the landscaping. We've done all of that.
 25 We've met all of the requirements.

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1 So I would ask that the appeal be denied, that
 2 the zoning administrator's determination be affirmed.
 3 And if you have any specific questions, I'm here to
 4 answer them, and if I can't, I have several of my
 5 experts here. They can answer them as well.
 6 **COMMISSIONER DONOVAN:** Commissioner Donovan.
 7 I have some questions. Now, it's my understanding -- I
 8 know you are saying that the Stone Canyon property is
 9 different from the Bellagio property, but it was my
 10 understanding from the last -- the Stone Canyon
 11 hearings that this -- well, first, let me ask you this:
 12 The applicant has graded -- done preliminary grading on
 13 both properties; correct?
 14 **MR. DVEIRIN:** I believe that the applicant has
 15 done preliminary grading on both properties. I've been
 16 out there. There are pads there, yes.
 17 **COMMISSIONER DONOVAN:** And he did them at the
 18 same time?
 19 **MR. DVEIRIN:** I don't know that.
 20 **COMMISSIONER DONOVAN:** Okay. Well, didn't
 21 your client apply for the Bellagio variance at the same
 22 time as the Stone Canyon variance?
 23 **MR. DVEIRIN:** I believe that's correct. I
 24 believe they were heard at different times. I believe
 25 that there was an initial application.

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1 Is that correct?
 2 There were not just two. There were three
 3 applications, one for a parcel map as well.
 4 **COMMISSIONER DONOVAN:** And the applicant's
 5 prior representative at the last hearing at
 6 Stone Canyon said that the grading on there actually
 7 lowered the level of the property somewhat.
 8 **MR. DVEIRIN:** I read the transcript. I do
 9 recall someone saying that. I don't believe it was --
 10 I don't believe that that was a significant change on
 11 the site, but, yes, there was a change in grading.
 12 **COMMISSIONER DONOVAN:** So, in other words, to
 13 some extent, if there is a bowl there, the applicant
 14 did some of the creation of that?
 15 **MR. DVEIRIN:** Yeah, but I -- look, I don't --
 16 I don't doubt that there was some grading there, and I
 17 don't doubt that some of that property may have been
 18 raised or lowered in order to create a pad, which is
 19 not unusual. But the idea that this is a bowl is a
 20 misnomer. You can call it a bowl. What it really
 21 is -- and if you go out there -- and it's in the photos
 22 that I submitted -- there is -- there are two retaining
 23 walls and a large hill in the back, extremely dense
 24 vegetation north and east on the site, and there is a
 25 55-foot-imposed setback from the road on Stone Canyon

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1 and Bellagio that limits you to 65 percent use of the
 2 site. And because of that hill and because of the fact
 3 that even with the minimal grading that occurred, that
 4 the pads are below the street level, you can't see the
 5 home that -- well, from Stone Canyon, and you certainly
 6 can't see it from the homes that are blocked by the
 7 vegetation. So there are no view impacts. That's
 8 what's important.
 9 **COMMISSIONER DONOVAN:** So I'm clear on this,
 10 you are saying this property is not in a bowl, or is it
 11 in a bowl?
 12 **MR. DVEIRIN:** I'm saying it's below the street
 13 level, and it's located --
 14 **COMMISSIONER DONOVAN:** But I'm using something
 15 specific. Is it a bowl or not a bowl -- in a bowl?
 16 **MR. DVEIRIN:** As I define a bowl, it is -- it
 17 is -- it is backed up by a -- on a hill with
 18 significant vegetation on the -- on the east side, and
 19 it's below the street grade as it -- as it slopes
 20 towards the west. Whether that's a bowl in your view
 21 and my view, I don't know. I'm saying that's what it
 22 is. It is below grade, and it's surrounded by a hill
 23 and dense vegetation. You can call that a bowl, I
 24 guess.
 25 **COMMISSIONER DONOVAN:** Okay. I noticed also

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1 that the height-variance request is to allow additional
2 height so the proposed residence can have a consistent
3 roof line for the entire home.
4 **MR. DVEIRIN:** Yes.
5 **COMMISSIONER DONOVAN:** That's so it -- for
6 aesthetic purposes?
7 **MR. DVEIRIN:** I would say that it is -- all
8 homes have to have aesthetic appeal for some reason or
9 other. I get that. I don't know if it's solely for
10 aesthetic purposes, but if your property slopes this
11 way towards -- this way towards the stream and you
12 want -- and your roof -- your roof, whether -- if
13 it's -- if it's an A-shaped roof, flat roof, whatever,
14 is going to be flat like this, you are going to have it
15 a little bit higher on this side, which is only
16 18 percent of the home. Eighty-two percent of this is
17 going to be at 36 feet.
18 But, yes, if you have a flat -- if you have a
19 consistent roof line and a -- and a -- and a slope this
20 way, you are going to have a little bit of a -- of a --
21 of a higher property towards the -- towards the water
22 channel than you are away from the water channel.
23 **COMMISSIONER DONOVAN:** But you can build a
24 home on this property with a varied roof line; correct?
25 **MR. DVEIRIN:** I don't know. I'm not a

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1 builder. I'm a lawyer. I have an architect here. You
2 can ask him.
3 **COMMISSIONER DONOVAN:** Okay. Well, we can get
4 back to that, then. But you have -- any other -- it
5 seems -- it seemed to me -- and I'll say, the prior
6 representative of your client admitted that this was
7 for aesthetic purposes, said it on the record, and so
8 I'm asking you, is this for aesthetic purposes?
9 **MR. DVEIRIN:** Not -- I don't believe anything
10 is solely done for aesthetic purposes because --
11 because a roof also has structural integrity uses and
12 things like that, but, yes, all homes have an aesthetic
13 purpose, mine and yours.
14 **COMMISSIONER DONOVAN:** Okay. And I note there
15 was no evidence presented to the ZA in the underlying
16 hearings here to the effect that your client cannot
17 build a home on this property unless he gets the
18 variance. You didn't present any -- you haven't
19 presented any evidence to the ZA or to us to the effect
20 that if you don't get this variance, you can't build a
21 home?
22 **MR. DVEIRIN:** What we've explained to the
23 zoning administrator and we've made clear in our
24 submittals is that this neighborhood is characterized
25 by large, estate-type homes. In order to have a large,

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1 estate-type home similar to our neighbors with the
2 amenities that all of our neighbors have such as tennis
3 courts and swimming pools, in order to do that with the
4 limited constraints of this site, that you can't use
5 35 percent of the site for building purposes, you need
6 to build a home in this way so that you can have the
7 same amenities. What our --
8 **COMMISSIONER DONOVAN:** But that's not my
9 question. It's a very narrow question because it goes
10 to the heart of finding the factors to find a variance.
11 Can your client build an estate home on this
12 property without a variance? Yes or no?
13 **MR. DVEIRIN:** I don't think that's -- I think
14 if you --
15 **COMMISSIONER FOSTER:** Yes or no?
16 **MR. DVEIRIN:** What?
17 **COMMISSIONER FOSTER:** Yes or no?
18 **MR. DVEIRIN:** No.
19 **COMMISSIONER FOSTER:** Okay.
20 **COMMISSIONER DONOVAN:** You cannot?
21 **MR. DVEIRIN:** No.
22 **COMMISSIONER DONOVAN:** Okay.
23 **MR. DVEIRIN:** And I'm saying that the -- if
24 you look at what a variance is for, which is, by law, a
25 variance is to allow you to have the same use as your

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1 neighbors because of physical and other types of
2 restraints on your property -- of course, it's a
3 discretionary determination, but a variance isn't
4 defined by whether or not you can build something
5 smaller.
6 Of course, you can build something smaller
7 anywhere, but the idea is that in order to maximize the
8 use of your property, which is your right and my right
9 and my client's right, you're entitled to seek a
10 variance. And if you can show, which we can, that this
11 site is severely constrained by its gradient and by its
12 size and that it won't impact the neighbors, we're not
13 causing anybody any distress, if you stand -- and as
14 we've pointed out, if you stand on 333 Copa de Oro Road
15 on the first floor, you are looking 15 feet over the
16 roof line at 50 feet.
17 So we're not impacting any of our neighbors.
18 And because we have the severe restraints on the site,
19 it's within our right to seek a variance.
20 **COMMISSIONER DONOVAN:** Well, first of all,
21 Counsel, there's no doubt that your client is entitled
22 to seek a variance. Whether the client gets a variance
23 or not, nobody has impeded your client's right to seek
24 a variance thus far.
25 **MR. DVEIRIN:** That's correct.

1 COMMISSIONER DONOVAN: Okay. You now say you
2 cannot build an estate-like home without a variance.
3 What kinds of homes can you not build?
4 What can't you build here if you don't get
5 this variance?
6 MR. DVEIRIN: I would ask my architect to
7 answer that question because that's -- that's beyond
8 my -- my pay grade, but -- but -- I -- I -- I do think
9 that -- that -- that anytime that you apply for a
10 variance -- anytime you apply for a variance, it's a
11 discretionary determination. And what I'm arguing for
12 is that we meet the requirements for you to exercise
13 your discretion in favor of granting the variance. And
14 we are asking you to do that, but it's not a -- it's
15 not a mandatory determination. It's a discretionary
16 determination.
17 And in order for my client to maximally --
18 maximize the use of his property as his right in order
19 to have something similar to the estate-size homes that
20 surround him, he needs the variance, but he can't get
21 it as a matter of right, which is why we're here.
22 COMMISSIONER LINNICK: Commissioner Linnick.
23 But you were mentioning that he could have built four
24 homes, and --
25 MR. DVEIRIN: Yes.

1 they -- they don't like the particular project. And
2 one of the things that you need to make clear to the
3 opposition at times is that what you can do as a matter
4 of right, you might like less. That's what I'm saying.
5 COMMISSIONER LINNICK: Sure.
6 MR. DVEIRIN: What we can do as a matter of
7 right may not be as aesthetically and practical --
8 practically pleasing, not only to us, but to our
9 neighbors. And I don't want that -- that fact lost on
10 this Commission because -- because what we're
11 essentially doing is a less dense use and a more
12 attractive use of this site than four smaller homes,
13 and I think that's something we should promote.
14 COMMISSIONER HALPER: Counselor,
15 Commissioner Halper. You refer to the fact that there
16 was a single resident or neighbor who was the
17 complaining source. I've got a number of the
18 letters --
19 MR. DVEIRIN: Yes.
20 COMMISSIONER HALPER: -- that are complaints
21 from -- let me finish, please. I've got one here from
22 the Federation of Hillside and Canyon Associations,
23 which indicate that they represent 42 associations and
24 200,000 constituents, and asking us to enforce the
25 hillside ordinance. So I would say we -- the

1 COMMISSIONER LINNICK: -- they obviously would
2 have been smaller, and they wouldn't have been the sort
3 of estate-like home that you are saying, you know, if
4 they build the two. So I'm kind of confused. I mean,
5 you are saying both -- sort of saying both things.
6 So --
7 MR. DVEIRIN: They could have --
8 COMMISSIONER LINNICK: -- I'm saying, they
9 could have just built the four homes, and --
10 MR. DVEIRIN: What I'm saying is --
11 COMMISSIONER LINNICK: -- I've got this
12 variance to make this home that is, like, similar to
13 the others in the neighborhood, you are saying?
14 MR. DVEIRIN: My understanding -- and someone
15 on my side will correct me if I'm wrong -- is that the
16 City Planning Department wanted something different
17 than what he legally could do with the property; in
18 other words, to tie the lots together, to put some --
19 to put bigger homes on the property.
20 There's a difference between what you can
21 build as a matter of right and what is wise to build,
22 and -- and I'm saying is -- is that, all over the city,
23 there are instances where people seek approvals --
24 I've -- I've -- as -- I've done this before where --
25 where -- where -- where people come out, and they --

1 Commission is very sensitive to what the neighbors are
2 concerned with in our decision-making. It doesn't
3 appear -- do you want to make a comment back?
4 MR. DVEIRIN: No, no. What I'm saying is that
5 I'm aware of some other opposition. Primarily, we have
6 one consistent opposition who is behind us on the hill
7 at 333 Copa de Oro, which is Ms. Lazarof, who I
8 understand is ill today, and I hope she gets better.
9 But that -- that -- that's what's driving this is that
10 single opposition.
11 But there are some other people that have sent
12 in letters, but that's not who is at every hearing,
13 opposed to everything that we've done on this property,
14 and will be with us until this gets done. And I think
15 it needs to stop, and I need your help to make it stop.
16 And the only way we can get that to stop is to get this
17 variance finally approved.
18 COMMISSIONER DONOVAN: Commissioner Donovan.
19 Do you believe that the Stone Canyon case created
20 precedent for the variance in this case?
21 MR. DVEIRIN: No.
22 COMMISSIONER DONOVAN: So you are not
23 asserting that?
24 MR. DVEIRIN: No, no. No, not at all. I
25 think this case stands on its own. I think I'm here on

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1 Bellagio. I'm not here on Stone Canyon.
2 **COMMISSIONER DONOVAN:** And you would agree
3 that the Bellagio property isn't the only property in
4 the vicinity that has a stream running through it?
5 **MR. DVEIRIN:** I don't know that for a fact.
6 **COMMISSIONER FOSTER:** I do. I do.
7 **MR. DVEIRIN:** I do know this, that that stream
8 is not just on that property. I don't know where else
9 it runs. I do know this, is that --
10 **COMMISSIONER DONOVAN:** It runs down
11 Stone Canyon, doesn't it?
12 **MR. DVEIRIN:** Yes. But I'm saying that there
13 are other properties that I am aware of -- and I can't
14 cite their addresses -- that they have this stream, and
15 they've been able to cover it, build over it, do
16 various things with it. We are actually preserving it,
17 and because of our preservation of this, we have
18 imposed on us a 50- -- at least a 55-foot setback from
19 the property line in order to build on this site. That
20 makes this site usable -- only 65 percent of this site
21 is actually usable. That's one of the big constraints
22 of the site in addition to the slope that makes our
23 property not as usable as we would like and why we need
24 a variance to maximize the use of this property for my
25 client's purposes.

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1 **COMMISSIONER DONOVAN:** Commissioner Donovan
2 again. Your client's property isn't the only property
3 in the vicinity with varying elevations; correct?
4 **MR. DVEIRIN:** I don't know of any other
5 properties in that immediate vicinity that has a
6 16-foot difference in elevation within a mere couple of
7 feet of property. Remember that -- that this property
8 slopes down towards the stream at a fairly -- a fairly
9 steep slope. There is a 16-foot difference between the
10 west and the east. That 16-foot differential is what
11 accounts for it being 50 feet here and then the rest of
12 the property, the other 82 percent, just being the
13 36 feet. So that's a very steep differential.
14 I'm unaware, as I sit here today, of any other
15 properties in that immediate vicinity that has a
16 16-foot differential in a matter of a few feet.
17 **COMMISSIONER FOSTER:** Is it not true --
18 Commissioner Foster -- that your client did the grading
19 on that property?
20 He did all of the grading and the backfill and
21 built the big retaining walls. He's had that property
22 for many years. Did he not know what the slope was?
23 He had no choice but to go along with the
24 preserving of the stream. That was something that this
25 Commission put on many years ago as an absolute. So

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1 when he bought this -- when he had the property, when
2 he went to design it, when he went to grade it, if he
3 knew about that, why didn't he do something at that
4 time when he had all of the grading done?
5 I've been to the site several times. I
6 remember the site when there was another home on it.
7 It's -- it's hard for me to imagine that these aren't
8 self-imposed conditions that he's put -- that he's put
9 on himself. He knew right off -- from the beginning
10 that the stream had a buffer zone, that he had to
11 plant --
12 I mean, all of those things have been known
13 since before he designed the house. So it's difficult
14 for me to understand how, now that he knows all of
15 that, he wants a variance, because he could have
16 designed the house to go along with what was the
17 hillside ordinance and the stream preservation. All of
18 those things could have been taken into consideration.
19 I don't -- what I don't understand is why he didn't do
20 that. Just, a variance seemed easier?
21 **MR. DVEIRIN:** I don't -- I wouldn't
22 characterize this as "easy." By the way --
23 **COMMISSIONER FOSTER:** Well, it was pretty easy
24 getting the one on 360 because it just got taken care
25 of in Council, you know.

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1 **MR. DVEIRIN:** No, no.
2 **COMMISSIONER FOSTER:** We've spent a lot of
3 time on this ourselves as a Commission. We've spent a
4 lot of time looking, reading, and studying this. So
5 it's not something that we take lightly either, you
6 know. And it's not easy for you, I'm sure, and it's
7 not easy for your client. But, on the other hand, it
8 hasn't been easy for us either because we've spent a
9 really lot of time reading through all of this
10 material, and so, you know, we are trying to do the
11 right thing for everybody. So that's --
12 **MR. DVEIRIN:** I don't know -- my understanding
13 from looking at the documents is that, when this
14 originally got started, there was a lot of time and
15 effort put into covering the stream -- okay? -- not
16 preserving the stream.
17 **COMMISSIONER FOSTER:** Right.
18 **MR. DVEIRIN:** Then there was a change to
19 preserving the stream. That's what I gathered from the
20 documents, that -- that, originally, there was a belief
21 that you could have a much deeper, longer pad than what
22 you have out there now.
23 When I was out there the other day, two weeks
24 ago, looking at this, for me the first time and walking
25 off that 55 feet, it's pretty clear that it's a

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1 severely restricted building pad. Almost 50 percent of
 2 your lot is not usable, and that requires a certain
 3 type of design if you are going to have homes like what
 4 surround you and are behind you.
 5 **COMMISSIONER FOSTER:** Okay. I think we
 6 understand that. Yeah. Okay.
 7 **MR. DVEIRIN:** So, yes, I think it's -- he
 8 graded -- yes, he bought the property, but I think --
 9 what I keep getting back to and I think is important is
 10 that the most fundamental of American rights is to use
 11 your property to its maximum use within the law --
 12 **COMMISSIONER FOSTER:** Right.
 13 **MR. DVEIRIN:** -- and that, based on a very
 14 detailed job done by the zoning administrator, we can
 15 meet the requirements of the variance.
 16 I think that the detail with which the zoning
 17 administrator dealt with this is in response to the
 18 detail with which we addressed it, which is not the
 19 same as what we did on Bellagio -- I mean, on
 20 Stone Canyon. And I don't think they are exactly the
 21 same, and I don't think we should let one invade the
 22 other. And I'm not arguing that 360 has precedential
 23 value of any kind.
 24 What I'm saying is that this is exactly the
 25 type of situation that someone would want a variance on

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1 and should get a variance. So I'm asking for your help
 2 for him because he -- in order to make this work and to
 3 have something similar to the neighbors, he needs the
 4 variance, and he can't get it other than through your
 5 discretionary approval.
 6 **COMMISSIONER FOSTER:** Okay. Thank you.
 7 **COMMISSIONER DONOVAN:** Commissioner Donovan.
 8 Just to be clear on this --
 9 **MR. DVEIRIN:** Yes, sir.
 10 **COMMISSIONER DONOVAN:** -- you are asserting
 11 that this property has the greatest degree in varying
 12 elevations of any other properties in the vicinity?
 13 **MR. DVEIRIN:** I don't know that for a fact.
 14 I'm saying is -- is that when I was out there and when
 15 I looked around and drove around, I'm unaware of any
 16 properties that have a 16-foot differential --
 17 personally unaware, in that immediate area, including
 18 around the hills and behind him and on the other side
 19 of the golf course, that -- that have a 16-foot
 20 differential in such a short pad. That's what I'm
 21 saying, and that's part of the difficulty of this site.
 22 **COMMISSIONER DONOVAN:** All right. So that's
 23 your personal impression. You don't have any evidence
 24 to that effect?
 25 **MR. DVEIRIN:** No, I don't have -- I don't have

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1 any evidence other than what I saw.
 2 **COMMISSIONER DONOVAN:** Okay. Thank you.
 3 **MR. DVEIRIN:** Thank you.
 4 **COMMISSIONER LINNICK:** Commissioner Linnick.
 5 If you could bring up your architect, that would be
 6 great. I don't know if -- some of the questions --
 7 **COMMISSIONER FOSTER:** Why don't we wait and
 8 hear some more and then --
 9 **COMMISSIONER LINNICK:** Do you want to --
 10 **COMMISSIONER FOSTER:** -- ask the architect
 11 some questions --
 12 **COMMISSIONER LINNICK:** Okay.
 13 **COMMISSIONER FOSTER:** -- after we hear some
 14 testimony just -- unless you have something immediate
 15 you want to ask the architect.
 16 **COMMISSIONER LINNICK:** Well, I wanted to ask
 17 about -- the same question I asked of Mr. Tokunaga
 18 about the plot plan and the -- you know, whether or
 19 not --
 20 **COMMISSIONER FOSTER:** Oh. Go ahead. I'm
 21 sorry.
 22 **COMMISSIONER LINNICK:** -- those things were
 23 provided, the slope analysis.
 24 **COMMISSIONER FOSTER:** The architect?
 25 **MR. DVEIRIN:** Yeah, the architect would be

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1 better to answer that --
 2 **COMMISSIONER LINNICK:** Okay.
 3 **MR. DVEIRIN:** -- than me.
 4 **COMMISSIONER LINNICK:** Yeah. Just be quick.
 5 **MR. DVEIRIN:** I know we are all aware of the
 6 slope. I'm not familiar with the specific slope
 7 analysis.
 8 **COMMISSIONER LINNICK:** Okay. Okay.
 9 **COMMISSIONER FOSTER:** Sorry. I just --
 10 **COMMISSIONER LINNICK:** No. That's okay.
 11 **MR. DVEIRIN:** Do you want the architect?
 12 **COMMISSIONER LINNICK:** That would be great.
 13 Thank you.
 14 **MR. DVEIRIN:** Yeah. He's here.
 15 **COMMISSIONER LINNICK:** Sure.
 16 State your name and address for the record,
 17 please.
 18 **MR. LO:** Roland Lo, 9034 Sunset Boulevard in
 19 West Hollywood.
 20 **COMMISSIONER LINNICK:** Commissioner Linnick.
 21 I just wanted to ask you the same question I had asked
 22 of staff --
 23 **MR. LO:** Sure.
 24 **COMMISSIONER LINNICK:** -- about whether or not
 25 there was a slope analysis presented to the planning

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1 staff and whether there was a plot plan.
 2 **MR. LO:** I have no knowledge of the slope band
 3 analysis, but, generally, the slope band analysis is
 4 required, you know, during the plan-check process.
 5 That's an item that is technically reviewed by the
 6 Planning Department for the appropriate size of the
 7 building, FAR. I don't know if that's -- that was
 8 requested by the ZA on this particular case.
 9 **COMMISSIONER LINNICK:** But --
 10 Commissioner Linnick. So, when you were designing, you
 11 didn't have the benefit of a --
 12 **MR. LO:** We have a preliminary slope analysis
 13 saying that you -- this -- this is a maximum -- because
 14 the site -- let's come back to it. The site is two
 15 lots. It's about roughly 2.1 acres. So that's 80,000
 16 square feet. The footprint of the building is really
 17 about 12,000 square feet. That's about 15 percent lot
 18 coverage. Fifteen percent, that's -- I believe the
 19 Code allows you for 30 percent or 35 percent lot
 20 coverage. I'm not -- I've got to verify that for sure.
 21 But the slope band analysis is -- it will be
 22 an item that will be technically approved by the
 23 Planning Department during the plan-check process. So
 24 I am aware of a big number, a number for a maximum
 25 square footage, but I believe what we have designed is

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1 within the maximum allowed square footage for this
 2 particular site.
 3 **COMMISSIONER LINNICK:** Do you have a question?
 4 **COMMISSIONER DONOVAN:** I have a question.
 5 **COMMISSIONER LINNICK:** Oh. Well, I was just
 6 going to -- so back to -- Commissioner Linnick. So
 7 back to the question of, you know, were there other
 8 designs, you know, we heard from appellant's -- we had
 9 testimony from appellant's architect about, you know,
 10 another design that could give you, you know, a
 11 wonderfully -- a wonderful estate-like, you know, home
 12 that would be similar to those in the neighborhood
 13 without doing -- without asking for the variance.
 14 **MR. LO:** That is an aesthetics from architect
 15 to architect.
 16 **COMMISSIONER LINNICK:** Sure.
 17 **MR. LO:** So it's a very subjective issue.
 18 But, for a fact, an estate -- my understanding of an
 19 estate site, a building, is that there are pitched
 20 roofs, you know, a great motor court, backyard, a
 21 great, large backyard. The pitched roof is actually a
 22 functional -- and around the Bel Air area, the pitched
 23 roof is very common for these French-chateau type of
 24 buildings. So it's a functional thing where, you know,
 25 you quickly shed water. I mean, it's really a

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1 functional thing, and, also, it's a good way of
 2 locating mechanical equipment and exhaust equipment
 3 that's up there.
 4 So, you know, in terms of it being solely on
 5 aesthetics, I don't believe this is solely aesthetic
 6 reasons why -- that you -- you know, that -- that
 7 this -- this variance is granted. So what it is, it is
 8 an opinion from architect to architect that -- you
 9 know, what constitutes an estate, but I do believe that
 10 this building does -- this house does -- contextually
 11 is very responsive to the surrounding neighborhoods.
 12 **COMMISSIONER DONOVAN:** Commissioner Donovan.
 13 There are some questions that your attorney said you
 14 had to answer. So I'm going to ask them.
 15 **MR. LO:** I'm going to try my best.
 16 **COMMISSIONER DONOVAN:** Okay. Are you -- are
 17 you saying that you could not design a home on this
 18 property without the need of a variance?
 19 **MR. LO:** Without the need of a variance? The
 20 property is constrained, you know, by the way it's
 21 being sited. I have got to actually -- you have to go
 22 to the site and actually take a look at it. That's a
 23 yes-or-no question. Am I correct?
 24 **COMMISSIONER DONOVAN:** (Inaudible response.)
 25 **MR. LO:** This circumstance is no.

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1 **COMMISSIONER DONOVAN:** You cannot design a
 2 home on this property without getting a height
 3 variance?
 4 **MR. LO:** In this particular -- the way it's
 5 sited, no.
 6 **COMMISSIONER DONOVAN:** And tell me why you
 7 can't design a home --
 8 **MR. LO:** Because the --
 9 **COMMISSIONER DONOVAN:** -- that's going to be
 10 within the height limit.
 11 **MR. LO:** Because the motor court is -- you
 12 know, the motor court is facing the street, and the way
 13 the site is being situated, the building has to situate
 14 a particular location for, you know -- for the
 15 circulation to actually function. So, in this
 16 particular case, in this particular design, no.
 17 **COMMISSIONER DONOVAN:** So the only reason you
 18 can't do it is because of the location of the motor
 19 court?
 20 **MR. LO:** No. Various reasons of siting the
 21 site. There's, you know -- you've got -- you've got
 22 sun. You've got wind. You've got solar access.
 23 You've got all of these other reasons. So, in this
 24 particular location --
 25 Any architect can tell you, you know, that

1 there is an alternative design to it, you know.
 2 **COMMISSIONER DONOVAN:** Okay. That's what I'm
 3 speaking to. I mean, let's see if I can be more
 4 accurate -- I mean, specific.
 5 Are you saying it's impossible to design a
 6 home --
 7 **MR. LO:** Oh, no.
 8 **COMMISSIONER DONOVAN:** -- on this property?
 9 **MR. LO:** No. No, I'm not saying that
 10 whatsoever.
 11 **COMMISSIONER DONOVAN:** So you could design a
 12 home with a varied roof level; correct?
 13 **MR. LO:** Varied roof level, yes.
 14 **COMMISSIONER DONOVAN:** Okay. And you could
 15 design a home on this property that would not need a
 16 height variance; correct? It's possible; correct?
 17 **MR. LO:** It's possible if it is -- you are
 18 talking about a hypothetical scenario. Yes.
 19 **COMMISSIONER DONOVAN:** And the varied roof
 20 line, you said the reason why that won't --
 21 First of all, one of the reasons you want a
 22 consistent roof line is aesthetics. That's one reason;
 23 correct?
 24 **MR. LO:** Aesthetics and --
 25 **COMMISSIONER DONOVAN:** Yeah, how it looks.

1 Tania Hackbarth -- Hackbarth.
 2 Name and address for the record. You have two
 3 minutes.
 4 **JON PERICA:** Jon Perica, 10338 Etiwanda
 5 Avenue, Northridge, California 91326. I'm a retired
 6 zoning administrator. Commissioners know that all five
 7 variance findings have to be made. The zoning
 8 administrator made none of the required variance
 9 findings. I'm going to pick on two of those.
 10 No. 3, evidence of a right to a 50-foot-built
 11 house generally possessed by other property owners in
 12 the same zone. The applicant lists no other examples
 13 of houses that have the same zone, the same vicinity,
 14 the same measuring distance, and the same type of use
 15 to justify a previous precedent.
 16 The ZA's findings relate to characteristics of
 17 the lot and topography, not any other precedential
 18 cases. By not citing another precedent of a previous
 19 grant similar to what's being asked for, this finding
 20 cannot be made. The inability of the zoning
 21 administrator to provide a precedent finding also
 22 occurred at the adjacent property at 360 Stone Canyon
 23 Road, owned by the same family partnership. This
 24 adjacent property has very similar topography and
 25 features, and that was denied twice by your

1 **MR. LO:** -- contextually responsive to the
 2 surrounding neighbors. Yes.
 3 **COMMISSIONER DONOVAN:** Yes. It's a
 4 subjective, aesthetic viewpoint; correct?
 5 **MR. LO:** Yes.
 6 **COMMISSIONER DONOVAN:** Okay. And --
 7 **MR. LO:** And we can't discuss aesthetics.
 8 It's really subjective in reality, you know.
 9 **COMMISSIONER DONOVAN:** Aesthetics are always
 10 subjective.
 11 **MR. LO:** Yes.
 12 **COMMISSIONER DONOVAN:** Yes, of course. All
 13 right. So -- all right. I guess I have no further
 14 questions. Thank you.
 15 **COMMISSIONER LINNICK:** Okay. Thank you. So
 16 now we have --
 17 **MR. DVEIRIN:** Do you have any questions for
 18 me, or do you want to hear from the other speakers?
 19 **COMMISSIONER FOSTER:** We are ready.
 20 **COMMISSIONER LINNICK:** No. I think we are
 21 good.
 22 **MR. DVEIRIN:** Okay. Thank you.
 23 **COMMISSIONER LINNICK:** Thank you. So let's
 24 hear from speakers for the appeal. I have Jon Perica
 25 or Perica and then John Murdock, then

1 condition -- Commission last year.
 2 In that previous decision on the adjacent
 3 Stone Canyon variance request, the ZA found that the
 4 precedential -- that no precedential height grant
 5 exists in the record previously in the community that
 6 can be used as an example to justify granting this
 7 particular case. There is absolutely no justification
 8 for this finding submitted by the zoning administrator
 9 or the applicants.
 10 Finding No. 1, identifying a city hard- -- a
 11 city-created hardship that can only be overcome by a
 12 variance. As your Commission has already noted, the
 13 applicant was not forced by the City to purchase this
 14 property. Due diligence would have indicated what the
 15 exact limitations on the property that was buildable
 16 could have been for that.
 17 The applicant had a choice of what the
 18 building footprint was, where to locate it, and he
 19 chose to make this particular location. At this point,
 20 a noted architect has submitted a letter to you that
 21 there are at least four other alternatives to build the
 22 same size house on the property. I think that's a
 23 valid compromise. The applicant gets a house similar
 24 to what he wants in size. The neighbors aren't
 25 burdened by another precedent.

1 As a zoning administrator, I've seen too many
2 examples of bad grants that other developers use to
3 say, "Well, the City granted that this time. I'm
4 entitled to the same thing." So I have that historical
5 long view for that.

6 COMMISSIONER LINNICK: Okay. Your time has
7 run.

8 JON PERICA: Thank you so much.

9 COMMISSIONER LINNICK: Okay. Thank you.
10 John Murdock, then Tania Hackbarth, and then Mr. Fisk.
11 Name and address for the record.

12 JOHN MURDOCK: Good evening, Madam President,
13 members of the Commission. My name is John Murdock. I
14 am an attorney, 1209 Pine Street, Santa Monica. I am
15 not being paid to be here. I'm actually speaking on my
16 own behalf, although I must say I'm biased because I do
17 represent this property owner in the litigation that's
18 pending on the adjacent property. Mr. Marmon and I
19 have filed a petition for a writ of mandate.

20 And I am here to say, as a member of the
21 public, I am extremely outraged at what happened in
22 this companion case with the use and, I would call it,
23 the misuse of Section 245.

24 I've been through the whole history of that
25 case, and I've been through all of the paper in this

1 last minute. He didn't comply with the Brown Act. He
2 didn't agendize his request. He said, "Oh, I found out
3 too late, just Friday, about this decision."

4 His deputy, the same deputy, was at your
5 hearing. He knew that you had denied the variance.
6 Your letter went to his office. So how could he come
7 to the Council and excuse his violation of the
8 Brown Act by saying he didn't know about it?

9 That's completely abusive in my view, and that
10 led to the remand. You again denied it, and then he
11 took it up again. I guarantee you are going to deny
12 this, and he's going to take it up, and we'll be right
13 there. Thank you.

14 COMMISSIONER LINNICK: Ms. Hackbarth and then
15 Dan Fisk and then Steve Twining or Twining.

16 Name and address for the record. You have two
17 minutes.

18 TANIA HACKBARTH: Good evening.
19 Tania Hackbarth, 300 Stone Canyon Road. I am the
20 property owner directly next door to 360 Stone Canyon.
21 I submitted a letter, which you all have and you've all
22 read. First off, I'd like to compliment all four of
23 you. I've been listening very intently to your very,
24 in my opinion, correct questioning and your very
25 accurate overview to look at this the way you have

1 case. There really isn't a difference. There's no
2 topographical difference. There's nothing that
3 distinguishes this case from that case. Your findings
4 were completely correct when you denied the variance or
5 upheld the zoning administrator's denial of a variance.

6 The same zoning administrator denied the
7 variance, and why is he granting the variance here?
8 Let's be real. The City Council reversed his decision
9 and said, "Here are the findings we want for this
10 property." Those findings are bogus. I guarantee you
11 they will be overturned in court.

12 Now, the applicant is here to ask you to do
13 the same thing, a set of bogus findings. You already
14 have pinpointed the main issue. Can you build a house?
15 Well, finally, you got a concession. "Yes, we can
16 build a house." That's it. It's all over. They must
17 make every one of the five findings.

18 When counsel says, "This is discretionary, and
19 please help us maximize the use of this property,"
20 that's completely wrong. It's not discretionary. It's
21 mandatory that the findings be made. And the courts
22 have consistently said, "It should be hard to get a
23 variance. It's not easy to get a variance." And
24 Councilmember Koretz was completely out of line because
25 how that happened, he came to the City Council at the

1 looked at it, and I want to compliment you on your very
2 wise questions that you've put forth this evening.

3 I've listened to this site being described as
4 a bowl, and in my mind, a bowl goes like this. Just a
5 womanly observation, to me, this is more like a saucer.
6 It's not even a bowl. It's more flat than what the --
7 what the applicant wants everybody to believe.

8 The 55 feet that he's talking about, that the
9 structure has to be pushed back 55 feet because of the
10 stream, et cetera, et cetera, to build the type of home
11 that he wants to build, one would normally do that
12 anyway to create a beautiful driveway, to create
13 beautiful landscaping, to create beautiful hardscape so
14 that you have a presence going up to a seemingly
15 beautiful house.

16 So I don't see that this 55 foot that he has
17 to bring this property back as being a detriment but
18 more being something that would logically need to be
19 designed anyway to create a beautiful frontage.

20 He also talked about how there's no other
21 properties in the neighborhood that have a significant
22 differential, and my property has an even stronger
23 differential, and I'm right next door. Plus, I've
24 observed other homes along Stone Canyon Road that have
25 differentials. So I would like to point out that it's

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1 my observation that I have found many properties that
 2 have differentials that have managed to build beautiful
 3 homes and taking the stream into consideration.
 4 My only -- my only other comment -- and I
 5 truly believe this -- is that the reason that we are
 6 all here today is that this applicant is once again
 7 trying to obtain a special privilege that no other
 8 homeowner is allowed to have. You -- we have in
 9 Los Angeles a Baseline Mansionization Ordinance.
 10 Everybody has to work within those guidelines. And I
 11 want to plead to you one more time to deny his appeal
 12 and to uphold the Mansionization Ordinance, which you
 13 have put forward. Some other thoughts --
 14 **COMMISSIONER LINNICK:** Okay. Well, your time
 15 ran.
 16 **TANIA HACKBARTH:** Okay.
 17 **COMMISSIONER LINNICK:** Commissioner Linnick.
 18 I have a question. Does the stream -- does it --
 19 **TANIA HACKBARTH:** -- go right through my
 20 property too?
 21 **COMMISSIONER LINNICK:** Does your -- on your
 22 property?
 23 **TANIA HACKBARTH:** It goes right through my
 24 property.
 25 **COMMISSIONER LINNICK:** And how does your

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1 property treat the stream?
 2 **TANIA HACKBARTH:** Well, our structures are
 3 pushed back. Our structures -- and my home is 36 feet.
 4 And our structures are pushed back.
 5 **COMMISSIONER LINNICK:** Okay. And I have a --
 6 **TANIA HACKBARTH:** And my home is a -- was
 7 built -- newer built, 2000 -- it was built in
 8 the 2000 -- you know, I don't exactly remember the
 9 exact year, but it was between 2000 and 2005. So it's
 10 a newer-built home. But the stream runs straight
 11 through, and we hear that beautiful water going
 12 straight through.
 13 **COMMISSIONER LINNICK:** Well, I was --
 14 Commissioner Linnick. That was a question that I had
 15 because the stream sounds like it's this huge burden,
 16 but I would -- it would be lovely to have a stream on
 17 my property. It would seem very estate-like, I would
 18 think. So I'm glad to hear that, you know, you are
 19 okay with -- the stream is okay. It's not like a
 20 huge -- you like your stream.
 21 **TANIA HACKBARTH:** Well, that's --
 22 **COMMISSIONER LINNICK:** She's, like, "No, I
 23 don't really like my stream."
 24 **TANIA HACKBARTH:** -- not even the point.
 25 That's not even the point. The -- you know, what I --

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1 what I basically just want to convey to you is that the
 2 parameters with which he has to build with, you know,
 3 he can certainly do it with complying with the
 4 ordinance, I believe, that is on the books, and I just
 5 believe that he's asking for a special privilege. And,
 6 also, Stone Canyon Road -- and he's saying, well, only
 7 18 percent of it is going to be 55 feet, and the
 8 other --
 9 The problem is that the part that's going to
 10 be 55 feet is on Stone Canyon Road. So as the
 11 neighborhood drives through, up and down, they are
 12 going to see this big towering structure, which is
 13 probably equivalent to a four- or five-story office
 14 building, and that's -- you know, that's the reality.
 15 As you drive down Stone Canyon Road, it's the front
 16 half of it that he's saying is the 18 percent that
 17 needs to be 50-plus feet.
 18 **COMMISSIONER LINNICK:** Okay. Okay. Thank
 19 you. Dan Fisk. H. Dan Fisk and then Mr. Twining,
 20 **H. DAN FISK:** Yes.
 21 **COMMISSIONER LINNICK:** Name and address for
 22 the record. You have two minutes.
 23 **H. DAN FISK:** My name is Dan Fisk. I live at
 24 1527 Stone Canyon Road, just off of Stone Canyon Road.
 25 My mailbox is there. Our home is on Tanner Bridge

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1 Road. We have -- our property is called
 2 "Stone Bridge." It's the principal part of the
 3 original estate that started Bel Air, the
 4 Doheny Estate. Later, Bel Air, as you know, was
 5 developed by the Bell family.
 6 I'm here pro bono. The last time I appeared
 7 before a -- in a commission setting, I was on your side
 8 of the podium as chairman of a planning commission and
 9 city councilman.
 10 I have some empathy for the property owners.
 11 Philosophically, it's nice to be able to develop your
 12 own property the way you want to, but those of us who
 13 have been involved in land use planning know that if
 14 you don't have rules to follow, you end up with a
 15 hodgepodge community. And I share the comments that
 16 have been made against the variance before me. I have
 17 provided you with a letter that concisely states my
 18 point of view on this.
 19 Picking up off of what Tania said a few
 20 minutes ago, I'm quite concerned that coming into
 21 Bel Air on Stone Canyon Road or on Bellagio, which is
 22 the marquee entrance into this beautiful community, I
 23 don't want to see a commercial-like structure there
 24 with -- that has the appearance of three or four
 25 stories to be incompatible with all of the beautiful

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1 architecture that we have in the community. I think
2 that would be a big mistake. And I have not seen any
3 indication that they've met the five criteria that
4 should be met in good land use planning to permit such
5 a variance.
6 And so it is with that that I respectfully
7 oppose the issuance of the variance, and I would
8 appreciate the Commission carefully considering the
9 points made in the letter that I have submitted. Thank
10 you very much.
11 **COMMISSIONER LINNICK:** Thank you.
12 Steve Twining.
13 **H. DAN FISK:** There is one further comment I
14 might make. I think, if you talk to Ms. Ferris --
15 Tania, you'd find that the slope of her property is
16 very comparable to what the applicant has represented
17 their property has for their variance.
18 **STEVE TWINING:** Yes. My name is
19 Steve Twining. I live at 1535 Roscomare Road in
20 Bel Air. I am a Bel Air resident and have been for
21 over 40 years.
22 First of all, I'll say that a flat roof is
23 ugly in general. I'm speaking on behalf of the
24 Hillside Federation. You got the document. I won't
25 have to read, but I especially refer you to page 2.

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1 This instance is a blatant political -- there's blatant
2 political influence on the zoning administrator to
3 change his mind from 360 to this property even though
4 they are adjacent, and I have -- I believe, if I'm not
5 incorrect, it was a councilman who wanted to preserve
6 the stream. Is that -- is that true?
7 **SHAWN BAYLISS:** He's supportive of it. The
8 previous councilmember was in office when we got that.
9 **STEVE TWINING:** But what is a current -- the
10 current councilman is in support of the stream.
11 Is that correct?
12 **SHAWN BAYLISS:** He certainly is.
13 **STEVE TWINING:** Thank you.
14 In the prior case, the top floor was -- on one
15 hand, it was for utilities, air-conditioning and so on.
16 On the other hand, it was for aesthetics. This
17 property will clearly be visible from Stone Canyon, and
18 I also want to say that the Hillside Federation
19 represents 42 homeowner associations. They are listed
20 on the left side. If I had more time, I would read
21 them to you, but you don't need -- you are capable of
22 seeing those.
23 So the fact of the matter is that there are
24 hillside residents -- and I would say the majority --
25 that would be opposed to this variance. Thank you.

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1 **COMMISSIONER LINNICK:** Thank you. Okay. We
2 have rebuttal time unless counsel --
3 **COMMISSIONER FOSTER:** There's nobody opposing?
4 **COMMISSIONER LINNICK:** No. There's -- that's
5 all that I have.
6 Was there anyone -- I don't have any speaker
7 cards in favor of the -- or against the appeal. Okay.
8 I don't know if Mr. Bayliss -- would you like to go
9 before or after rebuttal?
10 **SHAWN BAYLISS:** I can go now.
11 **COMMISSIONER LINNICK:** Okay. Mr. Bayliss.
12 **SHAWN BAYLISS:** Shawn Bayliss, planning and
13 land use guy for Councilmember Paul Koretz' office.
14 There's definitely been a lot said here this evening.
15 The main takeaway points that we look at -- "we" being
16 in our office -- this is an irregular-shaped lot. A
17 lot of them are in Bel Air. It has a stream that runs
18 down it that, as it has been discussed, some properties
19 have. That stream is actually mandated to maintain by
20 order of this Commission. On top of that, it also has
21 an additional 15-foot buffer on top of it as mandated
22 by this Commission. It runs down the entire length of
23 this property.
24 Over 30 percent of the property is unusable
25 because of the river, the creek, the setbacks, the

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1 hillside. One part of the Baseline Hillside
2 Ordinance -- something that we try to avoid is grading
3 into the hillsides. If you were to push this home
4 back, you further tear into the hillside. I don't
5 think Mrs. Lazarof would be a fan of that, nor would
6 anybody.
7 Mr. Twining is correct. The Councilmember is
8 a staunch supporter of the preservation of that creek,
9 does not want it touched, and let the applicant know
10 loud and clear that the request for it to be moved from
11 the tract map was not a good idea.
12 Knowing the limitations that the City has
13 placed on this project and that a small portion,
14 roughly 18 to 20 percent of it, reaches that
15 36 percent, our office feels that those findings can be
16 made. We felt that the situation was actually similar
17 to the other one, which is why we took the route that
18 we did, and we support the applicant's request here as
19 well.
20 I'm more than happy to take questions, address
21 anything you want me to talk about.
22 **COMMISSIONER LINNICK:** Okay. Thank you.
23 **SHAWN BAYLISS:** Okay.
24 **COMMISSIONER LINNICK:** Now we are going to
25 have rebuttal from both the applicant and the

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1 appellant, two minutes. Does the applicant want to
 2 come forward and have two minutes, Mr. Dveirin?
 3 **MR. DVEIRIN:** Thank you, Ms. Linnick. A
 4 couple quick points.
 5 First of all, the way this thing, as I pointed
 6 out, goes down to the stream and the roof is the
 7 same -- it's the same elevation. The hardship -- and I
 8 don't know if I made this clear -- is that the
 9 requirement is that you measure the height five feet
 10 from the lowest point. It's because of that
 11 requirement that it's -- he deserves a variance
 12 because, when you have to use that for the measuring
 13 point, it only makes that one portion 50 feet. The
 14 house isn't all 50 feet, but it's the artificial
 15 constraint of the measurement five feet from the lowest
 16 point that makes this difficult. We shouldn't lose
 17 sight of that.
 18 There are -- in the ZA's determination, there
 19 are a list of properties that have similar variances
 20 that have been granted to numerous properties that
 21 surround us. We are not asking for anything that other
 22 people don't normally get when they are developing on
 23 this type of property. As I said to you when I was up
 24 here, the problem is -- this is no different than when
 25 I represented the Groman [ph] brothers, who were

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1 building on the last lot at some fancy tract up on
 2 Mulholland. And all of the neighbors came out because
 3 they wanted to look over their lot. When you're last,
 4 you hardly ever get the same modifications and
 5 variances that your neighbors have.
 6 There are no other properties that I'm aware
 7 of that are under this type of constraint that have to
 8 measure under this ordinance, with this sort of 16-foot
 9 differential, and then pay the price for the entire
 10 house. That's what makes this stand out. That's why
 11 it's difficult. That's why you should support the
 12 variance and deny the appeal.
 13 My understanding about the hillside group,
 14 they have no jurisdiction here. I don't believe the
 15 gentleman who spoke to you is actually on that board.
 16 I don't fully understand why they're here. The
 17 Mansionization Ordinance, my understanding, doesn't
 18 apply here.
 19 If you want to talk mansionization, let's go
 20 to my neighborhood just south of the Mormon temple.
 21 I've got a mansionization problem. I've got big houses
 22 next to my little house on Holmby. That's not what
 23 this is about, but I understand what she's talking
 24 about.
 25 I think Mr. Bayliss is correct. This was

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1 imposed on us. We are happy to deal with it, but it
 2 does constrain this property. And with that, I'd ask
 3 that you support the variance, deny the appeal, and
 4 affirm the zoning administrator's very detailed and
 5 dedicated work. Thank you.
 6 **COMMISSIONER LINNICK:** Thank you. Any
 7 questions? No. Okay. Mr. Marmon, two minutes. Name
 8 for the record, please.
 9 **COMMISSIONER FOSTER:** Don't touch it.
 10 **MR. MARMON:** My name is Victor Marmon.
 11 Do I have to give my office address,
 12 et cetera?
 13 **COMMISSIONER LINNICK:** No. That's fine.
 14 **MR. MARMON:** Okay. First, measuring five feet
 15 out from the perimeter of the property is not a
 16 hardship. It's the law. It's been the law since 1993
 17 with the original hillside ordinance. It is the law
 18 today.
 19 Second, measuring from that point is not
 20 the -- the way the building envelope works. The
 21 building envelope goes up the grade along with the
 22 property. You can keep your 36-foot height if you move
 23 up the grade and terrace your house.
 24 There was some discussion about how much
 25 grading was done at the property. I have a letter from

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1 Mr. Tokunaga, granting a waiver of a tract map, where
 2 he states that the previous approved amounts were
 3 17,430 cubic yards of cut, 494,000 [sic] cubic yards of
 4 fill, and 2,936 feet of export. The --
 5 Mr. Dveirin talked about the house having a
 6 flat roof. Think about it. A flat roof, the limit is
 7 30 feet, not 36 feet. You are talking about a 20-foot
 8 variance, a 50-foot variance instead of a 30-foot
 9 house.
 10 Again, Mr. Dveirin talked about the pad being
 11 below. The pad is above street level. He talked -- so
 12 I'm not sure if it was Mr. Dveirin or someone else
 13 talked about preservation was imposed on us. It was
 14 part of the conditions of a four-lot subdivision. It
 15 was agreed to voluntarily when the map was recorded.
 16 This is not an imposition. It was a voluntary
 17 agreement.
 18 And, then, there was reference to the Baseline
 19 Mansionization Ordinance. I think that was a mistaken
 20 reference. We all know it was the Baseline Hillside
 21 Ordinance.
 22 And, finally, there is no additional 15-foot
 23 buffer. There is a stream which you can't go --
 24 affect, and then there's a 10-foot vegetation buffer.
 25 There is no 15-foot buffer.

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1 Thank you very much. Thank you for your time
 2 on this. I know you spent a lot of time on it.
 3 Thanks.
 4 **COMMISSIONER LINNICK:** Thank you.
 5 Okay. Does anyone have any questions for
 6 anyone?
 7 Okay. We are going to close the public
 8 hearing and begin deliberations.
 9 **COMMISSIONER HALPER:** Commissioner Halper. If
 10 I may start. I am always reluctant to oppose a
 11 councilman's presentation from a council district.
 12 They are the elected official, and I respect them
 13 greatly. I also am -- would like to satisfy the needs
 14 of a homeowner to build what he wants.
 15 And I do resent the implication that
 16 Mr. Tokunaga is being acted on in a political manner
 17 because I believe he's a distinguished professional.
 18 However, I don't believe that the findings were made in
 19 a manner which satisfy me. I think they were fairly
 20 weak, and for that reason, I have reservations about
 21 the project.
 22 **COMMISSIONER DONOVAN:** Commissioner Donovan.
 23 I haven't heard any facts in this case that
 24 differentiate from our ruling in the Stone -- in the
 25 Stone Canyon case, and I agree with

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1 Commissioner Halper. It is with great reluctance that
 2 I disagree with a distinguished councilmember and
 3 frankly with anybody from the Planning Department, and
 4 I do that with the utmost respect. And I cast no
 5 aspersions whatsoever on the planning staff or
 6 Mr. Tokunaga at all, whatsoever, for his findings. He
 7 calls them as he sees them. That's the way I see it,
 8 but I just see them differently in this case.
 9 **COMMISSIONER FOSTER:** Commissioner Foster. I
 10 agree with what's been said by Commissioner Halper and
 11 Commissioner Donovan. I have seen nothing that changes
 12 the conditions. I see no reason why this house
 13 couldn't have been -- knowing the owner had the home
 14 since we made the ruling -- I think it was 2006 --
 15 there's, to me, no real reason that this home couldn't
 16 have been designed with the ordinance in mind and
 17 follow the rules.
 18 It's still a very big piece of property, and I
 19 think the stream is an asset to the property, not a
 20 liability. The stream makes for a natural beauty, and
 21 I think Stone Canyon is one of the most beautiful
 22 streets in our city. I've spent all my life living in
 23 Westwood, and I used to jog up Stone Canyon. I know it
 24 well, and it is beautiful. And a house that size with
 25 a flat roof -- and I believe a flat roof is supposed to

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1 be 30 feet, not 36 feet according to the ordinance -- I
 2 just -- I can't see that it couldn't be built in a way
 3 that would allow the ordinance to be followed. It
 4 doesn't -- I can't make the findings either. I looked
 5 at the findings, and I think the findings are very
 6 difficult for me to make to justify this.
 7 **COMMISSIONER LINNICK:** Commissioner Linnick.
 8 I think I agree with everything that's been said, and I
 9 think we've -- both the architect for the applicant and
 10 the architect for the appellant have said that there
 11 are other alternatives for this same property. So I
 12 think that also, sort of, adds to my thoughts about the
 13 fact that, you know, something else could be done.
 14 I agree about the stream. And then, also, you
 15 know, talking about the fact that it would -- that, you
 16 know, this is a very large property and something very
 17 estate-like -- I think the discussion from applicant's
 18 lawyer was that -- you know, it needs to be something
 19 like everyone else has, a big estate, and it sounds
 20 like you can still do that, and it's a large, wonderful
 21 property. And I think it could be -- you know, it
 22 could be with -- more in keeping with the character of
 23 the neighborhood. So that's all I have to add, I
 24 think.
 25 **COMMISSIONER DONOVAN:** Commissioner Donovan.

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1 I'm prepared to make a motion to -- on this case with
 2 the recognition and the cognizance that we have a court
 3 reporter here. We have another companion case in
 4 litigation right now, and so I have some detailed
 5 findings to make, and I apologize for --
 6 **COMMISSIONER LINNICK:** Okay.
 7 **COMMISSIONER DONOVAN:** -- the length of it.
 8 But I would -- my motion would be to grant the appeal,
 9 and the findings that I would make, this, as concerns
 10 the variance, would be as follows. And I will do the
 11 best I can and get it all together along with my notes,
 12 and I can make this available to staff in the next
 13 couple of days so that you will have something to look
 14 at, but --
 15 In this particular case, you have to make five
 16 findings in order to grant a variance, and in this
 17 particular case, I don't think the applicant can make a
 18 single one of these findings as he -- but even if you
 19 made four of them and you couldn't make the fifth one,
 20 you couldn't get a variance. So -- and this will be
 21 pursuant to L.A. Municipal Code Section 12.27-D. The
 22 first finding you have to make is that it would make a
 23 strict application of the provisions of the zoning
 24 ordinance will not result in practical difficulties or
 25 unnecessary hardships inconsistent with the general

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1 purposes and intent of the zoning regulations.
2 We saw from the report and from the transcript
3 of the hearing before the zoning administrator that the
4 applicant said the variance request is only to allow
5 additional height so the proposed residence can have a
6 consistent roof line for the entire home. Due to the
7 varying elevations at the site -- that's on page 13,
8 the second full paragraph -- the case is Committee To
9 Save Hollywoodland v. City of Los Angeles. It is 2008,
10 61 Cal. App. 4th, 1168, and Zakessian v. City
11 of Sausalito, 1972, 28 Cal. App. 3rd, 794 -- mandate
12 that hardships must be substantial.
13 There are no practical difficulties or
14 unnecessary hardships in designing and building a house
15 with a variance on this property, and the denial of a
16 variance will not prevent the applicant from designing
17 and building such a house that would be comparable to
18 others in the neighborhood. The evidence to support
19 this would be the September 24th, '13 report of
20 David Applebaum, which is attached as Exhibit C to the
21 January 6 -- January 2014 letter from the Marmon law
22 offices and testimony of Jon Perica as stated on
23 page 53 of the transcript of the September 25, 2013,
24 hearing. There's also testimony and letters submitted
25 to the ZA by Edgar Khalatian, Victor Marmon,

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1 Michael Piszker, Jon Perica and Janice Lazarof. So I
2 would incorporate the evidence referenced in the Marmon
3 law offices January 6th of 2014 letters as though fully
4 set forth.
5 I would also incorporate the testimony
6 evidence submitted at this hearing as though fully set
7 forth.
8 Additionally, there was no competent evidence
9 submitted by applicant to the effect that applicant
10 could not build and design a house comparable to his
11 neighbors' homes without a variance. This application
12 for a variance is essentially for subjective reasons.
13 The second finding that you have to make
14 before you can grant a variance is that -- has to do
15 with special circumstances, and in this case, there are
16 no special circumstances applicable to the subject
17 property such as size, shape, topography, location, or
18 surroundings that do not apply generally to other
19 property in the same zone and vicinity.
20 Committee To Save Hollywoodland required --
21 that case requires that special circumstances
22 pertaining to the property must be such that the
23 property is distinct in character from comparable
24 nearby properties. We have received substantial
25 evidence that this is not the only property in the

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1 vicinity that has a stream running through it. This is
2 not the only property in the vicinity with varying
3 elevations. The general topography of this property is
4 essentially the same as the surrounding property, which
5 Stone Canyon Creek also runs through.
6 There are no special circumstances that
7 prevent applicant from designing and building an estate
8 home without a variance. The same evidence to support
9 this is the same evidence I just cited for Finding
10 No. 1, and it also includes the testimony we heard
11 today.
12 The third finding that you have to make is
13 that regarding the preservation and enjoyment of a
14 substantial property right or use generally possessed
15 by other property. In this case, the variance is not
16 necessary for the preservation and enjoyment of a
17 substantial property right or use generally possessed
18 by other property in the same zone and vicinity but
19 which, because of the special circumstances and
20 practical difficulties or unnecessary hardships, is
21 denied to the property in question.
22 No special circumstances have been
23 demonstrated for the same reasons in the other
24 findings. No practical difficulties or unnecessary
25 hardships have been demonstrated. The property can be

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1 built upon and used similarly as other properties in
2 the vicinity.
3 There are no nearby properties in the vicinity
4 with the same zoning that have received a height
5 variance for the same or similar reasons that are used
6 to justify the present request, and we touched on that
7 in the -- that was not really highlighted in the
8 testimony except for on the rebuttal by the applicant's
9 attorney.
10 I will say some of the properties --
11 540 Crestline is three miles away in a different zoned
12 area. 255 Mabery is eight miles away in a different
13 zoned area. 480 Bel Air, which was done in 1995, is a
14 quarter of a mile away and approved for only 45 feet in
15 height. 457 Bel Air was in 2003, and it's a quarter of
16 a mile away as well, an approval for only 55 feet. So
17 those comparable properties offer no support to the
18 applicant. All of the other evidence is the same as
19 I've cited to No. 1.
20 The fourth finding has to do with material
21 detrimental -- finding the variance to be materially
22 detrimental to the public welfare, and the granting of
23 this variance would be materially detrimental to the
24 public welfare, or injurious to the property or
25 improvements in the same zone or vicinity in which the

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1 property is located.
 2 We have evidence before us that the granting
 3 of a variance on this property will create an adverse
 4 visual effect as respects neighborhood -- neighboring
 5 properties. We've seen that in letters, and it's the
 6 testimony that we received today. It will defeat --
 7 Granting a variance on this property will
 8 defeat the purpose of the goals of the Baseline
 9 Hillside Ordinance, including -- which includes the
 10 encouraging of building terraced structures. They
 11 break up the mass of the structures.
 12 The granting of a variance will defeat the
 13 purpose of the BHO also in that, under Policy 1-3.3,
 14 it's to preserve existing views in hillside areas.
 15 There's nothing in there about obstructing. It's
 16 supposed to be preserve existing views.
 17 Finally, the granting of a variance on this
 18 property will and is likely to have a precedential
 19 effect. It would essentially raise the general height
 20 limit on the neighborhood because anybody could come in
 21 and say, "I want a higher structure now." The same
 22 evidence that I used before, on the other ones, would
 23 be applicable here.
 24 The fifth and last one is the granting --
 25 finding would be the granting of the variance will

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1 adversely affect elements of the General Plan. The
 2 Bel Air-Beverly Crest Community Plan purposes include
 3 preserving and enhancing the positive characteristics
 4 of existing residential neighborhoods; preserving and
 5 enhancing the positive characteristics of existing
 6 uses, which provide the foundation for community
 7 identity, identity such as scale, height, bulk,
 8 setbacks, and appearances; and the land use policies in
 9 the Community Plan there speak to the intensity, that
 10 the land use should be limited in accordance; the
 11 compatibility of the proposed development with existing
 12 adjacent development; and the design should minimize
 13 adverse visual impact on neighboring single-family
 14 uses. The proposed --
 15 It will adversely affect the existing
 16 neighborhood. The proposed height is excessive and not
 17 compatible with existing uses and appearances. It does
 18 not minimize the adverse visual effect on neighboring
 19 uses, and most importantly of all, it's likely to set a
 20 precedent that will adversely affect the positive
 21 characteristics of the neighborhood, and for all of the
 22 other reasons that I have found, it applied to the BHO
 23 as stated in No. 4.
 24 Finally, the granting of this variance will
 25 operate to grant a special privilege and permit a use

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1 substantially inconsistent with the limitations upon
 2 other properties in the same zone and vicinity.
 3 We have no evidence, nor has any been
 4 asserted, that another property has received a height
 5 variance in the nearby vicinity under the same set of
 6 circumstances and facts for the same reason, and
 7 there's no evidence submitted by the applicant that he
 8 could not design and build an estate home comparable to
 9 his neighboring -- neighbors' homes without a variance.
 10 This application for a variance is essentially for
 11 aesthetic reasons, also for the same evidence.
 12 The other finding that I would additionally
 13 make, the need for a height variance is self-imposed by
 14 the applicant. This need is for aesthetic purposes
 15 only. A house -- a home can be designed that is
 16 aesthetically pleasing without a variance and for the
 17 same facts that I cited in the other ones.
 18 Also, I will reference the Stone Canyon matter
 19 because it was the same -- it's the same applicant.
 20 The initial hearing was at the same time. The
 21 properties are right next to each other. There's
 22 evidence that it's substantially the same, and at that
 23 point, the representative for the applicant said, yeah,
 24 they wanted a higher roof because -- you know, for
 25 aesthetic reasons. That was -- and I would incorporate

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1 the testimony from that hearing as well.
 2 The final thing that -- the second to the last
 3 thing is that I would cite Orinda Association v. Board
 4 of Supervisors, 1986, 182 Cal. App. 3rd, 1145, which
 5 holds basically that attractiveness of design lacks
 6 legal significance and is irrelevant in these kinds of
 7 variance cases.
 8 The last thing I would do, I would incorporate
 9 the proposed findings by the appellant to the extent
 10 that they are consistent with the findings that I've
 11 set forth.
 12 **COMMISSIONER FOSTER:** Commissioner Foster.
 13 Second.
 14 **RANDA HANNA:** Commissioner Donovan?
 15 **COMMISSIONER DONOVAN:** Aye.
 16 **RANDA HANNA:** Commissioner Foster?
 17 **COMMISSIONER FOSTER:** Aye.
 18 **RANDA HANNA:** Commissioner Halper?
 19 **COMMISSIONER HALPER:** Aye.
 20 **RANDA HANNA:** Commissioner Linnick?
 21 **COMMISSIONER LINNICK:** Aye.
 22 **RANDA HANNA:** And the motion is carried.
 23 **COMMISSIONER LINNICK:** Okay. Our next item is
 24 public comment, and I haven't received any comment
 25 cards.

1 RANDA HANNA: No comment cards.
2 COMMISSIONER LINNICK: So the meeting has
3 adjourned at 6:33.
4 (End of proceedings at 6:33 p.m.)
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1 COURT REPORTERS CERTIFICATE
2 STATE OF CALIFORNIA }
3 COUNTY OF ORANGE } ss.
4
5
6 I, Joanna B. Brown, hereby certify:
7 I am a duly qualified Certified Shorthand
8 Reporter, in the State of California, holder of
9 Certificate Number CSR 8570 issued by the Court
10 Reporters Board of California and which is in full
11 force and effect.
12 I am not financially interested in this
13 action and am not a relative or employee of any
14 attorney of the parties, or of any of the parties.
15 I am the reporter that stenographically
16 recorded the testimony in the foregoing
17 proceeding and the foregoing transcript is a true
18 record of the testimony given.
19
20 Dated: February 5, 2014
21
22
23
24
25

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47:5;61:19	89:23			
36 (9)	540 (1)			
9:20;25:17;39:10;	92:11			
45:17;54:13;74:3;	55 (9)			
80:15;84:7;87:1	37:12;38:11;56:25;			
360 (16)	72:8,9,16;75:7,10;			
13:8;14:19;15:4;	92:16			
31:10,20;32:24;35:14;	55-foot (1)			
37:2,5;40:3,4;55:24;	53:18			
57:22;67:22;71:20;	55-foot-imposed (1)			
78:3	43:25			
36-foot (1)	5th (2)			
83:22	7:19;18:22			
39 (1)				
38:25	6			
3rd (2)				
89:11;96:4	6 (1)			
4	89:21			
	6:33 (2)			
	97:3,4			
4 (7)	60 (1)			
5:17;27:22;29:1;	38:25			
37:24;38:13,14;94:23	61 (1)			
4:44 (1)	89:10			
3:2	65 (3)			
40 (2)	39:14;44:1;53:20			
38:25;77:21	6th (1)			
42 (2)	90:3			
51:23;78:19				
45 (1)	7			
92:14				
457 (1)	7 (1)			
92:15	19:9			
478 (1)	750-foot (1)			
34:6	33:12			
480 (1)	794 (1)			
92:13	89:11			
490 (1)				
34:7	8			
494,000 (1)				
84:3	80,000 (1)			
494.30 (1)	61:15			
34:12	82 (1)			
4th (3)	54:12			
4:24;5:1;89:10				
5	9			
5 (1)	9 (1)			
29:1	18:16			
50 (11)	90067 (1)			
9:20;11:6,9;25:17;	29:12			
39:9,11;48:16;54:11;	9034 (1)			
57:1;81:13,14	60:18			
50- (1)	91326 (1)			
53:18	67:5			
50-foot (1)				
84:8				
50-foot-built (1)				
67:10				
50-plus (1)				
75:17				
53 (1)				

Victor Marmon

From: Victor Marmon [vmarmon@earthlink.net]
Sent: Monday, February 24, 2014 1:45 PM
To: 'sharon.gin@lacity.org'; 'Patrice Lattimore'
Cc: 'councilmember.huizar@lacity.org'; 'councilmember.cedillo@lacity.org';
'councilmember.englander@lacity.org'; 'jim.tokunaga@lacity.org'; 'kenneth.fong@lacity.org';
Victor Marmon (vmarmon@earthlink.net)
Subject: Council File 14-0171 -- PLUM Hearing February 25, 2014; Council Hearing February 26, 2014
Attachments: CF 14-0171 2014-02-24 V. Marmon letter to City Council & PLUM, in favor of appeal and in
opposition to 50-foot height variance.pdf

Dear Ms. Gin and Ms. Lattimore:

Attached please find my letter of today's date to the City Council and to its Planning and Land Use Management Committee. Please place this letter in Council File 14-0171 and upload it to the Council File Management System website.

I would appreciate if would acknowledge receipt of this email and my attached letter.

Thank you.

Victor I. Marmon
Marmon Law Offices
1875 Century Park East, Ste 1600
Los Angeles, CA 90067-2517
Tel. 310.551.8120
Fax 310.551.8113
www.vimilaw.com
vmarmon@earthlink.net

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Date: _____
Submitted in _____ Committee
Council File No: 14-0171
Item No.: _____
Deputy: _____

MARMON LAW OFFICES

WATT PLAZA
1875 CENTURY PARK EAST, SUITE 1600
LOS ANGELES, CALIFORNIA 90067-2517
WWW.VIMLAW.COM

TELEPHONE (310) 551-8120
FACSIMILE (310) 551-8113

VMARMON@EARTHLINK.NET

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

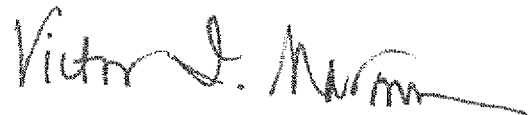
The Honorable Los Angeles City Council and
Its Planning and Land Use Management Committee
February 24, 2014
Page 2

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
Marmon Law Offices
1875 Century Park East, Ste 1600
Los Angeles, CA 90067-2517
Tel. 310.551.8120
Fax 310.551.8113
www.vimlaw.com
vmarmon@earthlink.net

**PROPOSED FINDINGS
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 FINDINGS
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.

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
Marmon Law Offices
1875 Century Park East, Ste 1600
Los Angeles, CA 90067-2517
Tel. 310.551.8120
Fax 310.551.8113
www.vimlaw.com
vmarmon@earthlink.net

Date: 2-25-14
Submitted in PLUM Committee
Council File No: 14-0171
Item No.: 5
Deputy: Communication from Appellant

**PROPOSED FINDINGS
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 FINDINGS
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 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.

MARMON LAW OFFICES

WATT PLAZA
1875 CENTURY PARK EAST, SUITE 1600
LOS ANGELES, CALIFORNIA 90067-2517
WWW.VIMLAW.COM

TELEPHONE (310) 551-8120
FACSIMILE (310) 551-8113

VMARMON@EARTHLINK.NET

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

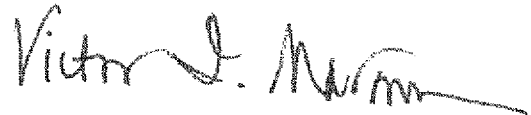
The Honorable Los Angeles City Council and
Its Planning and Land Use Management Committee
February 24, 2014
Page 2

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"

COVER PAGE

Date: 02/25/2014 03:42

NO. OF PAGE: 3 (include this page)

To: Name: Marmon, Victor

Date: 2-25-14

Submitted in PLUM Committee

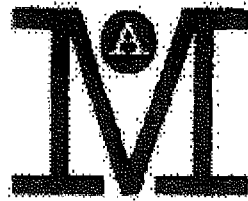
Council File No: 14-0171

From:

Item No: _____

Deputy: _____

Comment:



● McQUISTON ASSOCIATES
6212 Yucca St, Los Angeles, CA 90028-5223
(323) 464-6792 FAX same
consultants to technical management
February 24, 2014

CF14-0171
ITEM 5, PLUM 2/25/14
S. Gin

**ADDITIONAL STATEMENT of J.H. McQUISTON on
§245 REFERRAL of 10550 W. BELLAGIO ROAD**

Honorable Chairman and Members of the Committee:

There is no Constitutional way that this Committee may support the Application for variance for this property.

My prior Statement appears to be lost from the Council File. Attached is a copy of it.

And importantly, in *I.N.S. v Chadha*, 462 U.S. 919 (S Ct 1983), at 949 the Chief Justice quoted James Wilson:

"Despotism comes on mankind in different shapes, sometimes in an Executive, sometimes in a military, one. Is there danger of a Legislative despotism? Theory & practice both proclaim it. If the Legislative authority be not restrained, there can be neither liberty nor stability; and it can only be restrained by dividing it within itself, into distinct and independent branches. In a **single house there is no check, but the inadequate one**, of the virtue & good sense of those who compose it." 1 Farrand 254.

And Joseph Story: "Public bodies, like private persons, are occasionally under the dominion of strong passions and excitements; impatient, irritable, and impetuous. . . . If [a legislature] feels no check but its own will, it rarely has the firmness to insist upon holding a question long enough under its own view, to see and mark it in all its bearings and relations on society." 1 Story 383.

At 960 Justice Powell quoted James Madison: "[t]he accumulation of all powers legislative, executive and judiciary in the same hands, whether of one, a few or many, and whether hereditary, self appointed, or elective, may justly be pronounced the **very definition of tyranny**." *The Federalist* No. 47.

Councilmember Koretz said the reason for his §245 Motion was that there is a stream running through the property, but *APC addressed that issue thoroughly (see CF14-0171) and properly rejected it as legally-trivial*.

The Standard of Review for this Committee, per LAMC and numerous Court authorities, is not to second-guess the Commission if it addressed the issue and *its decision can be reached*. **The Record which you have in the CF proves its decision was reached reasonably. The stream's presence cannot be a factor justifying a variance because the stream is present on other similar properties and it doesn't prevent construction without variance. That is what the Record and evidence proved to the Commission.**

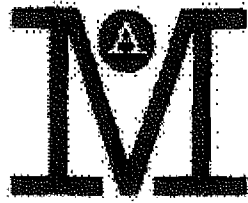
Topanga Assn v Los Angeles County, 11 C3d 506 (Cal S Ct in bank 1974) *emphasized* at 520 that variance grants **should be rare**. Councilmembers must heed what the Supreme Court said. **There is a breakdown of law which affects public safety if laws are scoffed-at by City leaders. If leaders don't believe the law, why should anyone else obey it?**

There was substantial evidence that a substantial building could be constructed without any variance whatsoever. And building as asked-for could, upon serious thought, be dangerous to public safety.

Respectfully submitted,

J. H. McQuiston, P.E.

encl 2/11 Statement to Council
c: Interested parties



● **McQUISTON ASSOCIATES**
6212 Yucca St, Los Angeles, CA 90028-5223
(323) 464-6792 FAX same
consultants to technical management
February 10, 2014

CF14-0471
ITEM 18 COUNCIL 2/11/14
A. Alietti

**STATEMENT of J.H. McQUISTON on
§245 JURISDICTION over 10550 W. BELLAGIO ROAD**

Honorable President and Members of the Council:

Notwithstanding Councilmembers' comity, Council must deny jurisdiction for this case.

Assertion is legally "frivolous" and wastes City funds. Commission's decision is legally-impregnable.

1. McQuiston reviewed this matter closely. Commission's decision was analyzed. **Contrary to many Commission decisions, this one is substantiated with facts, laws, and Court decisions. All are per law pertinent, conclusive, and not legally-capable of being rebutted. Council must therefore deny assertion.**

2. The developer's sole *raison d'etre* for violating the City's Plan is only because the developer wants this building (on a slope) to have a "flat roof" regardless of City Plan's mandate to follow the slope's contour.

Commission correctly cited (1) controlling Court decisions which say the developer's reason is legally-insufficient to violate City-Plan's prohibition on such "flat roof" for hillside development, and (2) construction per Plan is legally-practical and practiced by others in the zone.

3. Commission could have cited what the California Supreme Court said is "at the hierarchy of local law governing land use": *Leshar Communications v City of Walnut Creek*, 52 Cal 3d 531. *Leshar* said:

"Once the city has adopted a general plan, all zoning ordinances must be consistent with that plan, and to be consistent must be 'compatible with the objectives, policies, general land uses, and programs specified in such a plan.' (§ 65860, subd. (a)(ii).)" §65680(d) **mandates the section specifically on this City.**

Leshar also said:

"**The Planning and Zoning Law itself precludes consideration of a zoning ordinance which conflicts with a general plan as a pro tanto repeal or implied amendment of the general plan. The general plan stands. A zoning ordinance that is inconsistent with the general plan is invalid when passed (*deBottari v. City Council* (1985) 171 Cal. App.3d 1204, 1212, 217 Cal. Rptr. 790; *Sierra Club v. Board of Supervisors* (1981) 126 Cal. App.3d 698, 704, 179 Cal. Rptr. 261) and one that was originally consistent but has become inconsistent must be brought into conformity with the general plan. (§ 65860.) The Planning and Zoning Law does not contemplate that general plans will be amended to conform to zoning ordinances. The tail does not wag the dog. The general plan is the charter to which the ordinance must conform.**"

4. Commission' reasoning is legally-correct in every part of its Finding, and each reason separately is sufficient to support its denial. **But violating Plan is the threshold which by-itself mandates disapproval notwithstanding all else in Commission's decision.**

Respectfully submitted,

J. H. McQuiston

c: Interested parties

Victor Marmon

Date: _____

Submitted in _____ Committee

From: Michael Kemp [mkemp@makarc.com]Council File No: 14-0171**Sent:** Monday, February 24, 2014 12:00 PM

Item No.: _____

To: Victor Marmon**Subject:** [FWD: Council File 14-0171 – 10550 West Bellagio Road – Case No. ZA-2012-1402-ZV-ZAA-ZAD-1A]

Deputy: _____

Attachments: 2013-09-09 Ramin Kolahi email on behalf of BABCNC-2.pdf

For your information, copy below of email sent to Ms. Sharon Gin, Executive Assistant for the City Council PLUM Committee.

----- Original Message -----

Subject: Council File 14-0171 -- 10550 West Bellagio Road -- Case No. ZA-2012-1402-ZV-ZAA-ZAD-1A

From: "Michael Kemp" <mkemp@babnc.org>

Date: Mon, February 24, 2014 11:55 am

To: "Sharon Gin" <sharon.gin@lacity.org>

Cc: "Honorable Gilbert Cedillo" <councilmember.cedillo@lacity.org>, "Honorable Paul Krekorian" <councilmember.krekorian@lacity.org>, "Honorable Bob Blumenfield" <councilmember.blumenfield@lacity.org>, "Honorable Tom LaBonge" <councilmember.LaBonge@lacity.org>, "Honorable Paul Koretz" <councilmember.koretz@lacity.org>, "Honorable Nury Martinez" <councilmember.martinez@lacity.org>, "Honorable Felipe Fuentes" <councilmember.fuentes@lacity.org>, "Honorable Bernard Parks" <councilmember.parks@lacity.org>, "Honorable Curren Price" <councilmember.price@lacity.org>, "Honorable Herb Wesson" <councilmember.wesson@lacity.org>, "Honorable Mike Bonin" <councilmember.bonin@lacity.org>, "Honorable Mitchell Englander" <councilmember.englander@lacity.org>, "Honorable Mitch O'Farrell" <councilmember.ofarrell@lacity.org>, "Honorable Jose Huizar" <councilmember.huizar@lacity.org>, "Honorable Joe Buscaino" <councilmember.buscaino@lacity.org>, "Gary Plotkin" <gplotkin@babnc.org>, "Shawn Bayliss" <shawn.bayliss@lacity.org>

Dear Ms. Gin,

In reference to above noted Council File and Case Number. As current Chair of the Planning and Land Use Committee (PLU) of the Bel Air - Beverly Crest Neighborhood Council (BABCNC), I wish to advise the members of PLUM that the position of the BABCNC has not changed since that stated in previous correspondence. As outlined before, the Bel Air Beverly Crest Neighborhood Council at it's January 2013 meeting passed a motion to oppose the above reference request for a height variance.

The following previous correspondence to the City Council PLUM Members and the Area Planning Commission is attached for reference:

1. E-mail of September 9, 2013 from Ramin Kolahi (Past Chair of the BABCNC PLU) to PLUM Members reiterating the position of the BABCNC.
2. E-mail of May 23, 2013, from Ramin Kolahi to the Area Planning Commission advising of the motion taken by the BABCNC.
3. Letter of May 3, 2011, from the BABCNC PLU to the City Planning Department.

Should you have any questions regarding this item, please do not hesitate to contact me.

Respectfully,

Michael A. Kemp, AIA

BABCNC Planning & Land Use Committee - Chairperson

Bel Air / Beverly Crest Neighborhood Council

www.babcnc.org

babcnc e-mail: mkemp@babcnc.org

310-775-7614 Direct

From: Ramin Kolahi [<mailto:rkolahi@babanc.org>]

Sent: Monday, September 09, 2013 2:07 PM

To: 'sharon.gin@lacity.org'

Cc: 'Gary PLOTKIN' (gplotkin@babanc.org); dloze@babanc.org; Shawn Bayliss (shawn.bayliss@lacity.org); councilmember.wesson@lacity.org; councilmember.english@lacity.org; councilmember.Labonge@lacity.org; councilmember.cedillo@lacity.org; councilmember.krekorian@lacity.org; councilmember.blumenfeld@lacity.org; paul.koretz@lacity.org; councilmember.martinez@lacity.org; councilmember.fuentes@lacity.org; councilmember.parks@lacity.org; councilmember.price@lacity.org; councilmember.bonin@lacity.org; councilmember.ofarrell@lacity.org; councilmember.huizar@lacity.org; councilmember.buscaino@lacity.org; patrice.lattimore@lacity.org

Subject: Council File 13-0804-S1 -- 360 N. Stone Canyon Road (Case No. ZA-2012-1395-ZV-ZAA-1A)

Dear Ms. Gin:

Please find the below email sent to the Area Planning Commission on May 23rd, 2013 with regards to the above referenced property.

As outlined before, the Bel Air Beverly Crest Neighborhood Council has previously opposed this request in January 2013, we want to ensure the members of PLUM are aware of our previously stated position.

Feel free to contact me with any questions.

Sincerely,

Ramin Kolahi

Bel Air Beverly Crest Neighborhood Council

West Los Angeles Area Planning Commission

10000 Wilshire Blvd, Suite 1000, Beverly Hills, CA 90210

rkolahi@babonc.org email

www.babonc.org web

www.beverlyglen.org web

From: Ramin Kolahi [<mailto:rkolahi@babonc.org>]

Sent: Thursday, May 23, 2013 6:08 PM

To: 'Rhonda.Ketay@lacity.org'

Cc: 'jim.tokunaga@lacity.org'; Shawn Bayliss (shawn.bayliss@lacity.org); Robert Ringler (ringler@babonc.org); stwining@babonc.org

Subject: ZA 2012-1395 ZV ZAA - 10550 Bellagio Road

Dear Ms. Ketay:

As current Chair of the Planning and Land Use Committee (PLU) of the Bel Air Beverly Crest Neighborhood Council, I wanted to inform of you a motion that was passed at our January 2013 meeting regarding the subject property, please put into public record regarding this matter so the Commissioners have our official position.

◆ **Motion** to oppose 1) the request by the applicant to change parcel map conditions and mitigation measures adopted by the West Los Angeles Area Planning Commission; 2) oppose the Applicant's request for height variances to 50 feet for the Stone Canyon house and 53 feet and 3 inches for the Bellagio house; 3) oppose the Applicant's request for zoning adjustment to an 8 foot front wall height along both Bellagio and Stone Canyon and 4) oppose the Applicant's request for three additional retaining walls on the Bellagio Road property. Motion was made. Motion seconded. Discussion held. **Motion passed unanimously.**

Also note the letter dated May 2011 from our PLU Committee supporting the Bel Air Neighborhood Council's position regarding the applicants request to removed conditions previously conditioned by the Planning Commission.

Please feel free to contact me if you have any questions.

<<...>> <<...>>

Sincerely,

Ramin Kolahi

9/10/2013

Bel Air Beverly Crest Neighborhood Council

Residents of Beverly Glen Representative

rkolahi@babonc.org email

www.babonc.org web

www.beverlyglen.org web



Building A Better Community

PO Box 252007, Los Angeles, CA 90025

Tel: (310) 479-6247 Fax: (310) 479-0458 www.babcnc.org

May 3, 2011

Marc Woerschling
Planning Department
200 North Spring Street, 7th Floor
Los Angeles, CA 90012

Re: 10550 Bellagio Road - Parcel Map - AA-2005-3998-PMLA-1A-M1

Dear Mr. Woerschling,

The Planning and Land Use Committee of the Bel Air Beverly Crest Neighborhood Council voted unanimously to support the Bel Air Association in their letter to you dated March 28, 2011 (see attached) regarding the above mentioned property with respect to the applicant's request to be exempted from the conditions set forth in the October 4, 2006 and August 9, 2006 decisions by the Planning Commission and the Deputy Advisory Agency.

We concur with the Bel Air Association that none of the conditions should be modified in any way.

Thank you for your consideration of this matter.

Respectfully submitted,

Carolyn Carradine and Carol Sidlow
Co-Chairs - Planning and Land Use Committee - BABCNC

cc: Michael LoGrande - Director of City Planning
Councilman Paul Koretz - CD5
Shawn Bayliss, Planning Deputy - CD5
Garland Cheng, Advisory Agency
Jim Tokunaga, Advisory Agency
Colleen M. Hanlon and Paulette DuBey, Bel Air Association

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Vice President
Ron S. Galperin
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Alan Fine
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Irene Sandler
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Planning and Land Use
Public Safety/Disaster Preparedness
Public Works/Telecommunications
Traffic Committee

STAKEHOLDER GROUPS
Bel-Air Association
Bel-Air Crest Master Association
Bel-Air Glen HOA
Bel Air Ridge Association
Benedict Canyon Association
Benedict Hills Estates HOA
Casiano Bel-Air HOA
Casiano Estates Association
Crests Neighborhood Association
Employees Organizations
Faith-Based Institution
Holmby Hills HOA

Hotel Bel-Air
Laurel Canyon Association
Lookout Mountain Alliance
Members-At-Large
North Beverly Dr./Franklin Canyon HOA
Private Schools
Public Schools
Residents of Beverly Glen
Roscomare Valley Assoc.
Santa Monica Mt. Conservancy
Save Our Strip



100 Bel-Air Road

Los Angeles, CA 90077

March 28, 2011

Via email marc.woersching@lacity.org
and U.S. Mail

Mr. Marc Woersching, City Planner
Los Angeles Department of City Planning
Los Angeles City Hall, Room 720
200 N. Spring Street
Los Angeles, CA 90012

Re: Parcel Map AA-2005-3998-PMLA-1A-M1; 10550 Bellagio Road, Los Angeles 90077

Dear Mr. Woersching:

I am writing to you on behalf of the Bel-Air Association (the "BAA"), the neighborhood association representing an area of Los Angeles with over 1,900 homes and businesses, which includes the property at 10550 Bellagio Road (the "Property"). The BAA strongly opposes the recent application by M & A Gabae (the "Applicant") to eliminate the conditions of approval for Parcel Map AA-2005-3998-PMLA-1A set by the West Los Angeles Area Planning Commission almost five years ago. Generally, these conditions require the Applicant to preserve the Stone Canyon Creek in its natural state, plant a buffer zone of indigenous plants on either side of the creek, and to cluster development on the Property.

In 2009, the BAA opposed the Applicant's request to subdivide the Property into four lots and to perform extensive grading. Nevertheless, permission to subdivide was granted. Now, in a renewal of similar efforts in 2006 and 2010, the Applicant seeks to nullify the conditions imposed on that subdivision, apparently in order to pipe and bury the Stone Canyon Creek so as to develop the lots "to their full potential."

The portion of Stone Canyon Creek on the Applicant's property is one of the rare waterways in Los Angeles that remains uncovered and in a relatively natural state. In addition to the aesthetic harm and the loss of natural habitat that would result, environmental experts have advised the BAA that piping or straightening the Creek would significantly speed-up its water flow, causing erosion and sedimentation downstream and altering the Creek on the properties of Bel-Air residents. Moreover, the Stone Canyon Creek is a blue-line stream, a tributary of Ballona Creek, and the subject of an ongoing restoration project that has cost hundreds of thousands of dollars, required thousands of volunteer work hours, and

involved the UCLA Institute of Environment and Sustainability, UCLA Facilities, Heal the Bay, Santa Monica Baykeeper, the Santa Monica Bay Restoration Commission, the UCLA Lab School, and numerous other school and community volunteer groups. Deviation by the Applicant from the conditions imposed by the Planning Department runs directly counter to the goals of this restoration project.

Applicant rests its contention that the Planning Commission abused its discretion in setting the conditions on subdividing the Property on a case concerning a neighboring property at 620 Stone Canyon (Case No. ZA-2006 - 0982 (ZV)(ZAA)(ZAD), claiming that the Applicant should be treated the same as the property owner in that case. The case cited by Applicant, however, is inapposite. *In that case, the requested variances did not involve the Stone Canyon Creek.* The fact that the Stone Canyon Creek was off-handedly and wrongly referred to in that case as a "storm drain" and "sanitary sewer easement," was simply a mistake that should not be repeated.

For the reasons stated above, the BAA respectfully requests that the Applicant's application be denied in its entirety and that none of the conditions set forth in the October 4, 2006 and August 9, 2006 decisions by the Planning Commission and the Deputy Advisory Agency be modified in any way.

Thank you very much.

Very truly yours,



Colleen M. Hanlon
Chair, Land-Use Committee

cc: Michael LoGrande, Planning Director
Garland Cheng, Advisory Agency (Hearing Officer)
S. Gail Goldberg, AICP, Advisory Agency
Michael S. Y. Young, Deputy, Advisory Agency
Jim Tokunaga, Deputy, Advisory Agency
Hon. Paul Koretz, Councilperson, 5th District
Shawn Bayliss, Planning Deputy, 5th Council District
Carol Sidlow, Bel-Air Beverly Crest Neighborhood Council,
Planning and Land Use Committee Chairperson
Dr. Cully Nordby, Phd., UCLA Institute of the Environment and Sustainability

CITY OF LOS ANGELES

CALIFORNIA

HOLLY L. WOLCOTT
Interim City Clerk



Office of the
CITY CLERK

Council and Public Services
Room 395, City Hall
Los Angeles, CA 90012
General Information - (213) 978-1133
Fax: (213) 978-1040

Date: _____

Submitted in _____ Committee _____

Council File No: 14-0121

When making inquiries relative to
this matter, please refer to the

Council File No.
13-0804-S1

ERIC GARCETTI
MAYOR

RECEIVED

SEP 03 2013

Law Offices of
Victor Marmon

HANNON HOPPES
Council and Public Services
Division

www.cityclerk.lacity.org

August 30, 2013

CD 5

NOTICE TO APPELLANT(S), APPLICANT(S), AND INTERESTED PARTIES

You are hereby notified that the Planning and Land Use Management (PLUM) Committee of the Los Angeles City Council will hold a public hearing on **Tuesday, September 10, 2013**, at approximately **2:30 p.m.**, or soon thereafter, in the Board of Public Works Edward R. Roybal Hearing Room 350, City Hall, 200 North Spring Street, Los Angeles, CA 90012, to consider a Mitigated Negative Declaration and related California Environmental Quality Act findings, and an appeal filed by M and A Gabae, LP (Representative: Ben Kim) from part of the determination of the West Los Angeles Area Planning Commission in sustaining the Zoning Administrator's decision in denying the building height variance from Los Angeles Municipal Code Section 12.21-A.17(c)(1) to permit a height of 50 feet in lieu of the 36 feet height limit for the construction of a single family dwelling in the RE20-1 zone, for property located at 360 North Stone Canyon Road in the Bel-Air-Beverly Crest Community Plan Area, subject to Conditions of Approval. (On August 27, 2013, Council adopted Motion [Koretz - Krekorian] pursuant to Charter Section 245, asserting jurisdiction over the August 7, 2013 action [Letter of Determination dated August 16, 2013] of the West Los Angeles Area Planning Commission.)

Applicant: M and A Gabae, LP
Representative: Ben Kim

The full City Council will consider this matter on **Wednesday, September 11, 2013**, at approximately **10:00 a.m.**, or soon thereafter in the John Ferraro Council Chamber, Room 340, City Hall.

If you are unable to appear at these meetings, you may submit your comments in writing. Written comments may be addressed to the City Clerk, Room 395, City Hall, 200 North Spring Street, Los Angeles, CA 90012. In addition, you may wish to view the contents of Council file No. 13-0804-S1 by visiting: <http://www.lacouncilfile.com>.

Please be advised that both the PLUM Committee and City Council reserve the right to continue this matter to a later date, subject to any time limit constraints.

Sharon Gin, Legislative Assistant
Planning and Land Use Management Committee
213-978-1074

Note: If you challenge this proposed action in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Clerk at, or prior to, the public hearing. Any written correspondence delivered to the City Clerk before the City Council's final action on a matter will become a part of the administrative record. The time in which you may seek judicial review of any final action by the City Council is limited by California Code of Civil Procedure Section 1094.6 which provides that an action pursuant to Code of Civil Procedure Section 1094.5 challenging the Council's action must be filed no later than the 90th day following the date on which the Council action becomes final.

13-0804-S1_ltr_plum_8-30-13

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CITY OF LOS ANGELES

CALIFORNIA



ERIC GARCETTI
MAYOR

HOLLY L. WOLCOTT
Interim City Clerk

Office of the
CITY CLERK

Council and Public Services
Room 395, City Hall
Los Angeles, CA 90012
General Information - (213) 978-1133
Fax: (213) 978-1040

SHANNON HOPPE
Council and Public Services
Division

www.cityclerk.lacity.org

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this matter, please refer to the
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13-0804-S1

August 30, 2013

CD 5

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213-978-1074

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13-0804-S1_ltr_plum_8-30-13

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Victor Marmon
 1875 Century Park East
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 Los Angeles, CA 90067

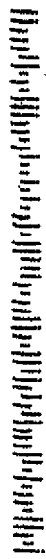
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February 24, 2014

TO: THE HONORABLE CITY COUNCIL and it's PLANNING AND LAND USE
MANAGEMENT COMMITTEE

RE: COUNCIL FILE 14-0171
10550 West Bellagio Road Los Angeles, CA 90077

FROM: Guy and Tania Hackbarth
300 Stone Canyon Road Los Angeles, CA 90077
(Neighbor directly south of parcel map that includes the subject property)

Date: _____
Submitted in _____ Committee
Council File No: 14-0171
Item No.: _____
Deputy: _____

We are the neighbors directly south and adjacent to the applicant's four lots that contain both the property under consideration (10550 W. Bellagio) and a house currently under construction at 360 N. Stone Canyon Road. We strongly OPPOSE any request for a height variance above the 30 feet allowed by the Baseline Hillside Ordinance (BHO) for houses with flat roofs.

The Zoning Administrator's Letter of Determination dated November 1, 2013, is factually incorrect when he says that "the residences adjoining properties to the south and are largely obstructed from view due to the size of the lots, the dense vegetation and the change in grade". From our house, we can see well beyond the proposed building site, so lot size has nothing to do with obstruction of our view. There is dense vegetation already in place and we can see through it, and the change in grade does not obstruct anything, but only makes the situation worse for us.

In addition to personal concerns associated with the view, the ZA overlooked that Stone Canyon Road is one of the most traveled roads in Bel Air, and the west side of the proposed house (along Stone Canyon Road) is part of what is creating the request for the variance. As proposed, one would see a 50-foot vertical wall from the road that could not be fully shielded by vegetation due to the location of the gate to the property.

There are other important errors in the ZA's Letter of Determination, including:
1) The applicant is requesting a SPECIAL PRIVILEGE to build an over height house.
All the properties within the vicinity of the proposed house have sloping terrain. Many contain Stone Canyon Creek. Most of the surrounding properties are smaller than this property, yet there are significant Bel Air-style houses that are not overheight and still have amenities on these smaller properties.

2) The applicant does not have practical difficulties or unnecessary hardships.

The applicant is choosing where to put the house on the almost 2 acre site. As stated in a letter presented to the ZA by David Applebaum, an architect who has worked on several homes in Bel Air, there are many other ways to develop the site that would not require the variance. The applicant is creating its own supposed hardship with a poor site plan.

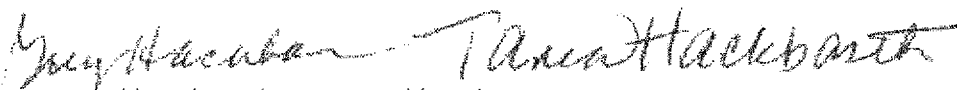
3) There are not special circumstances applicable to this property.

Many homes in the vicinity have the Creek, and all have sloping terrain. Most of the homesites are smaller than this property. For some reason, the applicant claims they are in a "bowl" and the site is lower than the surrounding streets. This is only true for a portion of Bellagio Road. The applicant's own submissions show that the elevation of the first floor of the house is above the elevation of Stone Canyon Road.

In conclusion, what is the point of having a BHO, which was adopted after extensive public discussion and input, if the City ignores the BHO and gives special privileges to some applicants? We hope the Planning and Land Use Management Committee and the City Council understand and recognize that the proposed project is not consistent with overwhelming public opinion and can be resubmitted in a way that complies with height limits and other requirements, while providing a spectacular house for the applicant.

Again, please deny the request for any additional height above 30 feet for the proposed house.

Respectfully submitted,



Guy Hackbarth and Tania Hackbarth

P.O. Box 27404
Los Angeles, CA 90027



PRESIDENT
Marian Dodge
CHAIRMAN
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Wendy-Sue Rosen
SECRETARY
Carol Sidlow
Donna Messinger
TREASURER
Don Andres

Planning and Land Use Management Committee
City Hall, Room 350
200 N. Spring Street
Los Angeles, CA 90012

February 24, 2014

Date: _____

Submitted in _____ Committee

Council File No: 14-0191

Item No.: _____

Deputy: _____

Beachwood Canyon Neighborhood
Bel Air Knolls Property Owners
Bel Air Skycrest Property Owners
Bel Air Ridge Association
Benedict Canyon Association
Brentwood Hills Homeowners
Brentwood Residents Coalition
Cahuenga Pass Property Owners
Canyon Back Alliance
Crests Neighborhood Assn.
Franklin Ave./Hollywood Bl. West
Franklin Hills Residents Assn.
Highlands Owners Assn.
Hollywood Dell Civic Assn.
Hollywood Heights Assn.
Hollywoodland Homeowners
Holmby Hills Homeowners Assn.
Kagel Canyon Civic Assn.
Lake Hollywood HOA
Laurel Canyon Assn.
Lookout Mountain Alliance
Los Feliz Improvement Assn.
Mt. Olympus Property Owners
Mt. Washington Homeowners All.
Nichols Canyon Assn.
N. Beverly Dr./Franklin Canyon
Oak Forest Canyon Assn.
Oaks Homeowners Assn.
Outpost Estates Homeowners
Pacific Palisades Residents Assn.
Residents of Beverly Glen
Roscomare Valley Assn.
Shadow Hills Property Owners
Sherman Oaks HO Assn.
Studio City Residents Assn.
Sunset Hills Homeowners Assn.
Tarzana Property Owners Assn.
Torreyson Flynn Assn.
Upper Mandeville Canyon
Upper Nichols Canyon NA
Upper Riviera Homeowners Assn.
Whitley Heights Civic Assn.

Re: Item 5 CF #14-0171
10550 West Bellagio Road

Honorable Councilmembers:

The Federation of Hillside and Canyon Associations, Inc., represents 42 resident and homeowner associations spanning the Santa Monica Mountains and their more than 200,000 constituents. The Federation urges you to uphold the decision of the West Area Planning Commission to approve the appeal of the Zoning Administrator's decision to grant a height variance at 10550 W. Bellagio Road. Council should *not* assert jurisdiction, pursuant to Charter Section 245.

The ZA's decision to grant a height variance is an error and constitutes an abuse of discretion. The required findings cannot be made.

A year ago the City *lost* a lawsuit in a similar situation where Council also asserted jurisdiction under Charter Section 245 on variances requested for 1100 Stearns Dr. The Judge ruled that the City Council abused its discretion in granting three variances. The Court held that substantial evidence did *not* support the granting of the variances. The Court further noted that policy goals "may not be used by the City Council to dismantle the City's zoning scheme in a piecemeal fashion."

The Bellagio Road 245 is very similar. The findings cannot be met. There is no hardship. There are no special circumstances. Granting these variances would be tantamount to exactly what the Judge ruled cannot be done – Council cannot dismantle the City zoning scheme in a piecemeal fashion. In the case of Bellagio Road, Council would be dismantling the Baseline Hillside Ordinance that it enthusiastically adopted.

I am attaching the decision in the Stearns lawsuit so that you can see what happens when decisions are not made in a thoughtful, reasoned manner.

The Federation urges Council to reject this request for Charter Section 245 and uphold the decision of the West Area Planning Commission.

Sincerely,

Marian Dodge

Marian Dodge

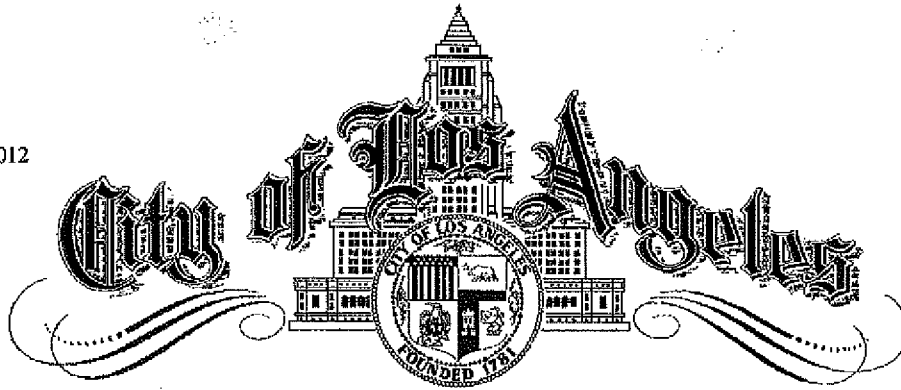
CHAIRPERSONS EMERITUS
Shirley Cohen
Jerome C. Daniel
Patricia Bell Hearst
Alan Kishbaugh
Gordon Murley
Steve Twining
Polly Ward

CHAIRMAN IN MEMORIUM
Brian Moore

Attachment: Court-Issued Writ Chazanov v. City of Los Angeles

City Hall East
200 N. Main Street
Room 701
Los Angeles, CA 90012

(213) 978-8069 Tel
(213) 978-8214 Fax
amy.brothers@lacity.org
www.lacity.org/atty



CARMEN A. TRUTANICH
City Attorney

REPORT NO. R 13 - 0090
MAR 29 2013

REPORT RE:

**COURT-ISSUED WRIT COMMANDING THE CITY COUNCIL TO SET ASIDE AND
RECONSIDER ITS OCTOBER 4, 2011 DETERMINATION GRANTING VARIANCES
AND AN ADJUSTMENT FOR 1100-1102 STEARNS DRIVE**

CHAZANOV v. CITY OF LOS ANGELES, et al.
LASC CASE NO. BS 135382 (COUNCIL DISTRICT 5)

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 11-1556

Honorable Members:

We are presenting to you for your action, consistent with its terms, a court-issued writ in *Chazanov v. City of Los Angeles, et al.*, LASC Case No. BS135382. A copy of the writ is attached. The writ of mandate commands the City Council of the City of Los Angeles to set aside and reconsider its October 4, 2011, determination granting three variances and an adjustment for 1100-1102 Stearns Drive, in light of the Court's January 17, 2013, order in this case.

Background

Eric Hammerlund and Terrence Villines, Real Parties In Interest in the lawsuit, purchased the property at 1100-1102 Stearns Drive on December 27, 2005. The property was improved with a duplex, a garage and a separate recreation room in a single-family residential neighborhood, zoned R1. The Los Angeles Housing Department issued an Order to Comply to the Real Parties for illegal use of the

recreation room as a third dwelling unit. On June 29, 2009, Real Parties sought three variances and an adjustment in order to legalize the recreation room as a dwelling unit. Specifically, the application sought a variance to allow use of the recreation room as a dwelling unit; a variance to forgo the required parking space for the third unit; a variance to allow automobiles to back out of the garage onto the street; and an adjustment to allow a smaller rear yard than the required 15 feet. The Zoning Administrator denied the requests for the variances and adjustment. The Real Parties appealed the Zoning Administrator's determination to the Central Area Planning Commission (APC). The APC denied the appeal and sustained the Zoning Administrator's determination. The APC determination was mailed August 30, 2011.

On September 13, 2011, the City Council asserted jurisdiction over the matter pursuant to Charter provision 245. On October 4, 2011, the City Council voted to grant the variances and the adjustment.

On January 9, 2012, the Chazanovs initiated a writ petition against the City of Los Angeles and Real Parties in Interest Hammerlund and Villines in the matter entitled *Chazanov v. City of Los Angeles*, LASC Case No. BS135382. After holding a hearing and considering the briefing of the parties, the Court issued a decision and order finding that the City Council abused its discretion in granting the three variances and adjustment, and granted the Chazanovs' request for a writ. The Court held that substantial evidence did not support the first and third elements for granting a variance to use the recreation room as a dwelling unit.

The first element requires a finding that a variance is necessary because strict application of the zoning ordinances would result in practical difficulties or unnecessary hardships inconsistent with the purpose of the zoning ordinance. The Court explained that there was insufficient evidence that the Real Parties would suffer unnecessary financial hardship unless the variances were granted. No evidence was presented that Real Parties would not be able to pay their mortgage, taxes or insurance unless they continued to receive rental income from the illegal third dwelling. The Court also held that the City Council's finding that the Real Parties' tenant and the City would suffer a hardship due to a decrease in rental housing stock unless the variances were granted was neither relevant as a matter of law nor supportable as a matter of fact. The Court emphasized that the first element looks only to burdens placed upon the variance applicant, not the applicant's tenant or other third parties.

The third element requires a finding that the variance is necessary for enjoyment of substantial property right which, because of special circumstances and practical difficulties, is denied to the property in question. The Court held that the City Council's acknowledgement that, "No other similarly situated zoned properties in the same vicinity have been granted any variances to allow for conversion of more units beyond those which are currently permitted by the zoning or those which were permitted by prior

zoning," was fatal to the Real Parties' application, as it demonstrated there were no special circumstances for 1100-1102 Stearns Drive.

In conclusion, the Court noted that some City Council "members made eloquent and compelling statements about the need for the City to preserve and increase its housing stock. These laudable public policy goals, however, may not be used by the City Council to dismantle the City's zoning scheme in a piecemeal fashion."

The writ issued on February 15, 2013. The writ commands the City Council to set aside and reconsider its October 4, 2011, determination granting the three variances and an adjustment, in light of the Court's January 17, 2013, decision and order, within 90 days of the date of the writ's issuance. The writ is transmitted with this Report.

Recommendation

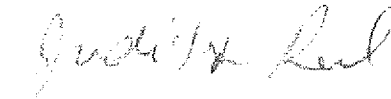
We request your action consistent with the enclosed court-issued writ, to set aside and reconsider the City Council's October 4, 2011, determination in light of the Court's decision and order.

If you have any questions regarding this matter, please contact Deputy City Attorney Amy Brothers at (213) 978-8069. She or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By



PEDRO B. ECHEVERRIA
Chief Assistant City Attorney

PBE:AB:gl
Attachment

RECEIVED
City Attorney
Land Use/Real Property

MAR 05 2013

RECEIVED
CITY CLERK'S OFFICE

2013 MAR -4 PM 4:13

BY EGG CITY CLERK
P/S 1571007

REFERRED TO CITY ATTORNEY
FOR DISPOSITION
MAR -5 2013 @ 7:30 am

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DONNA CHAZANOV, an individual;)
MATHIS CHAZANOV, an individual)
Petitioners)

vs)

CASE NO. BS135382

CITY OF LOS ANGELES, etc, CITY)
COUNSEL OF THE CITY OF LOS)
ANGELES, et al)
Respondents)

WRIT OF MANDATE

ERIC HAMMERLUND, an individual,)
TERRENCE VILLINES, an individual)

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TO THE CITY OF LOS ANGELES AND THE CITY COUNCIL OF THE CITY OF LOS ANGELES, Respondents:

WHEREAS a judgment on petition for writ of mandate having been entered in this action, ordering that a writ of mandate be issued from this Court,

YOU ARE HEREBY COMMANDED immediately upon receipt of this writ to set aside the determination of the City Council of October 4, 2011, to grant Real Parties In Interest's application for three variances and an adjustment and to reconsider your actions in light of the Court's decision and order in this case. Nothing in this writ shall control the discretion legally vested in the Respondent in accordance with Code of Civil Procedure Section 1094.5(f).

YOU ARE FURTHER COMMANDED to file a return to this writ not later than ninety days after the date of issuance.

LET THE FOREGOING WRIT ISSUE.

John A. Clarké

Kelly Encinas

DATED: FEB 15 2013



[Handwritten signature of Kelly Encinas]

CLERK OF THE SUPERIOR COURT