

14-1102

ARMBRUSTER GOLDSMITH & DELVAC LLP

LAND USE ENTITLEMENTS □ LITIGATION □ MUNICIPAL ADVOCACY

WILLIAM F. DELVAC
DIRECT DIAL: (310) 254-9050

11611 SAN VICENTE BOULEVARD, SUITE 900
LOS ANGELES, CA 90049

Tel: (310) 209-8800
Fax: (310) 209-8801

E-MAIL: Bill@AGD-LandUse.com

WEB: www.AGD-LandUse.com

September 5, 2014

VIA EMAIL

Ms. Terry Kaufmann-Macias
Office of the City Attorney
City of Los Angeles
200 North Main Street, Room 700
Los Angeles, CA 90012

terry.kaufmann-macias@lacity.org

RE: 1829 N. Kenmore; Council File No.14-1102

Dear Ms. Kaufmann-Macias:

As you may know, we represent Elan Mordoch, the owner (“Owner”) of the property located at 1829 N. Kenmore (“Property”), in connection with the City’s potential designation of the Property as a Historic-Cultural Monument (“Monument”). At the PLUM Committee meeting on August 19, 2014, the Owner testified regarding his strong concerns as to the fairness and orderly process regarding his Property and the City Council motion to initiate Monument designation (“Initiation Motion”) of his Property at this late date. We understand that the PLUM Committee requested that the City Attorney’s office report to the Council as to any liability issues. Beyond any statutory or code duties, the unique equitable issues here should be given full and meaningful consideration as set forth below.

BACKGROUND

The Owner received project approvals from the City of Los Angeles on November 8, 2013, to redevelop the Property as a small lot subdivision (Case Nos. VTTM 72296-SL; ZA 2013-1859(ZAA)(SPP)(SPPA); and CEQA NO.: ENV-2013-1858-MND) (the “Approvals”). The appeal period expired for the Approvals on November 18, 2013, without any appeal filed. Nine months later, with a demolition permit in hand and after the Owner spent hundreds of thousands of dollars on pre-development expenses, including City permit fees, a the Initiation Motion was introduced at the City Council.

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Among other things, the Initiation Motion states that the Mitigated Negative Declaration (“MND”) prepared by the City improperly evaluated the impacts on cultural resources. Although the City reviewed the potential cultural resources impacts in its MND, the Owner did not simply rely on the City’s preparation of the MND. The Owner took the further step of consulting with Office of Historic Resources. On October 8, 2013, the Office of Historic Resources confirmed, via email from Ken Bernstein, that the house is not an eligible property and is not listed on SurveyLA and “...**the property will not need any sort of Historical analysis.**” This determination is from the City’s expert on historic resources.

CEQA

Under CEQA, the period of limitations to challenge the conclusions of the MND have long since passed and, therefore, the City should respect its own conclusions. A claim alleging that a public agency failed to comply with CEQA is subject to a strict statute of limitations and must be filed within 30 days after the agency files a Notice of Determination. (Pub. Res. Code Section 21167(e).) Even in the event an NOD was not filed, a 180-day period applies. CEQA’s extremely short statute of limitations reflects the Legislature’s determination that “the public interest is not served unless CEQA challenges are promptly filed and diligently prosecuted.” (*Stockton Citizens for Sensible Planning v. City of Stockton* (2010) 48 Cal.4th 481, 500.) As the Supreme Court cautioned:

“Patently, there is legislative concern that CEQA challenges, with their obvious potential for financial prejudice and disruption, must not be permitted to drag on to the potential serious injury of the real party in interest. (Citation omitted.) ‘The Legislature has obviously structured the legal process for a CEQA challenge to be speedy, so as to prevent it from degenerating into a guerilla war of attrition by which project opponents wear out project proponents.’ (*County of Orange v. Superior Court* (2003) 113 Cal.App.4th 1, 12, original italics omitted.)” (Ibid.)

See also *American Canyon Community United for Responsible Growth v. City of American Canyon* (2006) 145 Cal.App.4th 1062, 1071 (“[T]he City adopted an MND for the Project and approved the Project in 2003. Since the time limitations for challenging the MND have expired, the City’s compliance with CEQA at that stage of the proceedings is conclusively presumed. (§ 21167.2.)”). Indeed, when the statute of limitations period for challenging an MND has elapsed – and no challenge has been brought as here – the MND is conclusively presumed to comply with CEQA. (CEQA Guidelines Section 15231.)

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PROCESS AND FAIRNESS

The City should not be allowed to undo its Approvals under the doctrine of estoppel: “The use of equitable estoppel to resolve land use issues is well-developed in California law. ‘The principle of estoppel . . . prohibits a governmental entity from exercising its regulatory power to prohibit a proposed land use when a developer incurs substantial expense in reasonable and good faith reliance on some governmental act or omission so that it would be highly inequitable to deprive the developer of the right to complete the development as proposed.’ (*Toigo v. Town of Ross*, 70 Cal. App. 4th 309, 321, 82 Cal. Rptr. 2d 649 (Cal. Ct. App. 1998) (citation omitted).) A developer's right to develop property pursuant to its proposed plans vests when: (1) a valid building permit issues, and (2) the developer performs substantial work and incurs substantial liabilities in good faith reliance on the permit. *See id.* (citations omitted).” (*Congregation Rtz Chaim v. City of Los Angeles* (2003) 371 F.3d 1122, 1124-1125.)

Here, the City prepared and approved the MND and granted the Approvals based on the approved MND.

The Owner has clearly acted in reliance on the approved MND and Approvals, including spending hundreds of thousands of dollars since the MND and Approvals. Further, all of the facts upon which the Initiation Motion was based were available to be known at the time the City approved the MND – the original building permit is a City record and SurveyLA is a publicly available database. As to the latter, the City has spent years and huge sums of money to develop the SurveyLA database. The public, property owners, and the City itself should be entitled to rely on it.

INITIATION IS UNECESSARY

The Property has also been nominated for Monument designation by members of the public. While the owner disputes eligibility as a Monument based on expert opinions which have been submitted to the City, it is one thing for the public to nominate the building and an entirely different matter for the City itself to attempt to undo its Approvals – *after it granted them*. The nomination was heard and continued by the City’s Cultural Heritage Commission at its August 19, 2014 meeting. At that meeting, the Owner committed to the Commission that he would not demolish the building until at least after the Commission considers the nomination again at its September 19, 2014 meeting. With the pending nomination, there is no need for the Council to initiate designation.

ARMBRUSTER GOLDSMITH & DELVAC LLP

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CONCLUSION

Under the state law, CEQA bars reconsideration of the environmental impacts. As an equitable matter, the City should not be allowed to undo its own Approvals. Further, at this point, the initiation is unnecessary, which further highlights the unfairness of the process and the City's actions.

Should you have any questions, please do not hesitate to call.

Very truly yours,

A handwritten signature in black ink, appearing to read "William F. Delvac", with a long horizontal flourish extending to the right.

William F. Delvac

cc: Hon. Councilmembers
Elan Mordoch

EMC Partners

1880 Century Park East Suite 300
Los Angeles, CA 90067

September 9, 2014

City of Los Angeles City Council
200 N. Spring Street
Los Angeles, CA 90012

Re: 1829 N. Kenmore Avenue, Los Angeles, CA 90027

Honorable Council Members:

On August 8, 2014 a motion was proposed for the Council to initiate designation of the existing structure as a historic monument. Before voting on this motion it is important for you to understand the reasons that make this motion both extremely unfair to me and highly problematic as a matter of policy. Below I present a history of the facts that evidence my efforts and commitment to public outreach and a transparent process:

Diligence on Historical Resource

The question of historic integrity was brought up and discussed with the **Office of Historic Resources** last year as part of the due diligence process. On October 8, 2013 the Office of Historic Resources confirmed, via email from Ken Bernstein, that the house is not an eligible property and is not listed on SurveyLA and "...the property will not need any sort of Historical analysis." We were given this information by OHR in no uncertain terms. Further, City staff prepared the mitigated negative declaration under CEQA that found that there was no historic impact.

Community and Public Outreach

Prior to any project entitlement requests and subsequent approvals, we engaged publically in good faith with the community and the Neighborhood Council. Please see the project's milestone summary attached. Before going public with the project, with Renee Weitzer of CD4 on May 9, 2013 to make her aware of the project and get feedback from the Council Office.

After a considerable amount of community and neighborhood outreach, on August 8, 2013 we presented the project to the **Planning, Zoning & Historical Preservation Committee of the Los Feliz Neighborhood Council**. Please see Exhibit A – letter to residents informing them of the project and requesting attendance for feedback from the stakeholders living close to the project. The project was presented and no mention of Historical consideration was voiced.

The Neighborhood Council Committee unanimously approved the project.

Later that month on August 20, 2013, the Greater Griffith Park Neighborhood Council Governing Board meets and approves the project. See Exhibit B – approval letter for the project.

Entitlement Approvals and Public Hearing

On October 23, 2013 a public hearing was held for the consideration of the proposed project (See Exhibit C). There was no opposition to the project. Renee Weitzer of CD4 was present at the hearing; no mention of Historical consideration was presented.

The project was approved (See Exhibit D).

The Appeal Period that expired November 18, 2013.

No appeals were filed.

Building Permits & Other Clearances

After the appeal period, we moved forward in good faith and completed the architectural plans and submitted for plan check with LADBS. We have since obtained and paid for all departmental clearances required for building permit. Building permits have been obtained and are paid in full. This process alone took over 7 months and hundreds of thousands of dollars.

We prepared to start construction and were stopped the first day the fence was put up.

We had obtained Community and Council support, obtained all entitlement approvals, paid for all building permits, and yet because of this motion, the project has been stopped. As you are reading this, I continue to pay the carrying costs on millions of dollars. I urge the Council not to allow this to continue.

Since the motion was proposed we have taken the initiative to look into the historical value of the house. Two architectural historians were commissioned, Margarita Wuellner and Taylor Loudon, both of whom are recognized on the approved list of consultants published by the City of Los Angeles. Historical Analysis Reports were written and in both cases it was found that the house does not meet the standards of Historical Designation. However, I am not an architectural historian or expert and therefore this issue is for the consideration of the Cultural Heritage Commission. The Cultural Heritage Commission has taken this issue under review under a separate application by a member of the community and will make a determination next week to adopt the application on September 18th.

As a matter of policy, I urge the Council to see the negative implications of voting for this motion in the 11th hour. It destabilizes the reliance on City information and undermines the administrative process. This type of policy adds to the disconnect between businesses and City Government. It undermines the years of work and millions of dollars that went into SurveyLA to be a useful and reliable document. Instead it turns SurveyLA into a mere informal recommendation that cannot be relied on by developers or the City for that matter. All these factors increase the risk of developing in Los Angeles and will discourage future investment. I urge the Council to reject this motion.

As a matter of process and fairness, the community was engaged over the period of many months and had multiple opportunities to speak to this issue. The project obtained full approvals from planning and building permits have been obtained. It is unconscionable that a City Council will recognize a motion, which stops a fully approved project and causes us severe financial damage, when we acted in good faith throughout the entire process and did nothing to deserve this. I urge the Council to consider the fact that members of the community also have a responsibility. The few members of the community who are behind this motion chose not to speak up during the public administrative process and now it is too late in the game.

Respectfully,

A handwritten signature in black ink, appearing to read 'Elan Mordoch', with a long horizontal flourish extending to the right.

Elan Mordoch

cc: Terry Kaufmann-Macias, City Attorney's Office

RE: 1829 N. Kenmore Ave. Los Angeles CA 90027
Outline of Entitlement Milestones and Public Outreach
Process:

- **May 9th, 2013:** Met with Renee Weitzer to present the proposed small lot project and obtain feedback from Council Office prior to community outreach.
- Integrate feedback into the project design as per CD4 recommendations and begin Public Outreach.
- **August 7th, 2013:** Public meeting with Planning, Zoning & Historical Preservation Committee of the Los Feliz Neighborhood Council. The project was unanimously approved. (Letter from LFNC attached as Exhibit A).
- **August 20th, 2013:** Greater Griffith Park Neighborhood Council Governing Board meets and approves the project. (Approval letter for the project attached as Exhibit B).
- **October 8th, 2013:** Reconfirmed with Ken Bernstein of the Office of Historic Resources that the existing house is not an eligible property in the Hollywood Plan Area and is not listed on SurveyLA. In an email dated October 8th, 2013 Ken Bernstein confirmed that his that the property not needing any sort of Historic analysis “accurately represents our guidance, based on this property’s non-inclusion in the SurveyLA list of eligible resources.”
- **October 23rd, 2013:** Public Hearing for the proposed project: “Demolition of an existing single-family home and the development of six Small Lot single-family residences. (See Notice of Public Hearing as Exhibit C). Project was approved in the public hearing without opposition of any kind; no mention of existing historic relevance of existing house. Renee Weitzer was present at the public hearing.
- **Appeal Period:** There were no appeals
- **After Appeal Period Ends:** Developer moved ahead with the project based on the approved entitlements. Submitted project plans to LADBS for plan check and paid all plan check fees.
- **May 27th, 2014:** Plans were approved and all departmental clearances were obtained and all required fees were paid. Building Permit was Ready to Issue.
- **June 6th, 2014:** Building Permits were paid with the City of Los Angeles.
- **August 8th, 2014:** Council Motion filed and the project was stopped.

EXHIBIT A



PRESIDENT
Linda Demmers

VICE PRESIDENTS
Lisa Sedano- administration
Chris McKinley- Communications

TREASURER
Nelson Bae

SECRETARY
Kris Anderson

LOS FELIZ NEIGHBORHOOD COUNCIL
"Your Neighborhood. Your Voice. Your Council!"

Planning, Zoning & Historical Preservation Committee

July 18, 2013



CERTIFIED COUNCIL #36

PO Box 27003
Los Angeles, CA 90027-
0003

(213) 973-9758

www.ggpnc.org

GGPNC@ggpnc.org

Dear Neighbor:

The Los Feliz Neighborhood Council invites you to a meeting of its Planning, Zoning and Historic Preservation Committee on **Wednesday, August 7, 2013 at 7:00pm** on the second floor of the Citibank building, 1965 N. Hillhurst Avenue.

th

On the agenda will be a discussion of a proposal by the applicant **Pursuant to LAMC Section 12.22 C.27 requesting for the construction use and maintenance of a 6 lot small lot subdivision on a 10,996 square foot lot in the RD1.5-XL zone with 1583 square feet of common usable open space with 6 single family dwellings each having a two car garage and each dwelling having a building height of 36 feet., The subject property is located at 1829 N. Kenmore Ave. CA 90027**

Your neighborhood council has the right to advise the Planning Department, and our Committee's **August 7, 2013** meeting is to allow us to consider the views of our stakeholders living close to this project in formulating our position.

Our committee is in the process of asking the Zoning Administrator to refrain from making a final determination on this case until after the motion resulting from our **August 7, 2013** Planning, Zoning and Historic Preservation Committee meeting is reviewed by Greater Griffith Park Neighborhood Council Governing Board on **August 20, 2013**.

This matter will be heard by a Zoning Administrator in the Planning Department at City Hall.

Los Angeles City Hall
200 North Spring Street, Room 1020
(Enter from Main Street)
Los Angeles, CA 90012

We encourage all those with an interest in the matter to attend the project presentation and to express their views regarding this matter. This letter is sent to you as a resident or owner of property abutting or near the subject property.

Linda Demmers, President
By Gary Khanjian - Chair, Planning, Zoning and Historic Preservation Committee

EXHIBIT B



LOS FELIZ NEIGHBORHOOD COUNCIL
"Your Neighborhood Your Voice Your Council"



CERTIFIED COUNCIL #36

PRESIDENT
Linda Demmers
VICE PRESIDENTS
Lisa Sedano - Administration
Chris McKinley - Communications
TREASURER
Nelson Bae
SECRETARY
Kris Anderson

PO Box 27003
Los Angeles, CA 90027-
0003

(213) 873-9756

www.lfnc.org

LFNC@lfnc.org

Hearing Officer
Office of the Zoning Administration
Los Angeles City Hall
200 North Spring Street 7th Floor
Los Angeles, California 90012

Re: 1829 N. Kenmore Ave
Kenmore Investments
1829 North Kenmore Ave.
Los Angeles, CA 90027

August 20, 2013

Dear Hearing Officer;

After consideration at a publicly noticed, regular meeting of its Planning, Zoning and Historic Preservation Committee (PZHP) on August 7, 2013 and its regularly scheduled Governing Board meeting on August 20, 2013, the Los Feliz Neighborhood Council (LFNC) approves the above referenced application requesting for use and maintenance of a six (6) lot small lot subdivision on a 10,996 sq. ft. lot in the RD1 5-XL zone comprised of six (6) single family dwellings with two (2) car attached garages, 36 feet in height measured to the top of the roof top guard rail; 1,583 sq. ft. of usable common open space and private individual roof decks. The maintenance agreement will state that the garage spaces cannot be used as storage space.

There were two public comments. Both speakers expressed concerns about limited parking space in the neighborhood. The motion to approve this application was passed by the Los Feliz Neighborhood Council Governing Board by a vote of 11 to 2.

Sincerely,

Linda Demmers
Linda Demmers, president of LFNC

by Gary Khanjian, Chair of PZHP

Cc: Owner/applicant or owner/applicant's contact person

EXHIBIT C

CITY OF LOS ANGELES
CALIFORNIA



DEPARTMENT OF CITY PLANNING

NOTICE OF PUBLIC HEARING

To Owners: Within a 100-Foot Radius
 Within a 500-Foot Radius
 Abutting a Proposed Development Site

And Occupants: Within a 100-Foot Radius
 Within a 500-Foot Radius
And: Others

This notice is sent to you because you own property or are an occupant residing near a site for which an application, as described below, has been filed with the Department of City Planning. All interested persons are invited to attend the public hearing at which you may listen, ask questions, or present testimony regarding the project, prior to a decision is rendered.

Hearing By: Deputy Advisory Agency and
Zoning Administrator
Date: Wednesday, October 23, 2013
Time: 9:30 AM
Place: Los Angeles City Hall
200 North Spring Street, Room 1020
Los Angeles, CA 90012

Staff Contact: Jae Kim
Phone No.: (213) 978-1383
jae.h.kim@lacity.org

Case No.: VTT-72296-SL
CEQA No.: ENV-2012-1858-MND
Incidental Cases: ZA-2013-1859-ZAA-SPP-
SPPA
Related Cases: N/A
Council No.: 4
Plan Area: Hollywood
Specific Plan: Vermont/Western SNAP
Certified NC: Greater Griffith Park
GPLU: Low Medium II Residential
Zone: RD1.5-1XL

Applicant: Kenmore Investments, LLC
Representative: QES, Inc. (Eric Lieberman)

PROJECT LOCATION: 1829 N. Kenmore Avenue

PROPOSED PROJECT: Demolition of an existing single-family home and the development of six Small Lot single-family residences.

REQUESTED ACTIONS:

- (1) Pursuant to LAMC Section 17.03, a Vesting Tentative Tract Map to permit a 6-lot subdivision for Small Lot purposes for the development of 6 single-family residences with 12 on-site parking spaces on a 10,996 net square-foot site, in the RD1.5-1XL Zone.
- (2) Pursuant to LAMC Section 12.28, an Adjustment from Section 12.21.1-A to permit an increase in the height of the building of 36 feet in lieu of the maximum of 30 feet, in the RD1.5-1XL Zone.
- (3) Pursuant to LAMC Section 12.28, Adjustments for early start construction prior to the recordation of the Small Lot Subdivision;

EXHIBIT D

DEPARTMENT OF
CITY PLANNING
200 N. SPRING STREET, ROOM 525
LOS ANGELES, CA 90012-4801
AND
6262 VAN NUYS BLVD., SUITE 351
VAN NUYS, CA 91401

CITY PLANNING COMMISSION
RENEE DAKE WILSON
INTERIM PRESIDENT
DANA M. PERLMAN
INTERIM VICE-PRESIDENT
ROBERT L. AHN
DAVID H. J. AMBROZ
MARIA G. CABILDO
CAROLINE CHOE
RICHARD KATZ
JOHN W. MACK
MARTA SEGURA
JAMES WILLIAMS
COMMISSION EXECUTIVE ASSISTANT II
(213) 978-1300

CITY OF LOS ANGELES CALIFORNIA



ANTONIO R. VILLARAIGOSA
MAYOR

EXECUTIVE OFFICES

MICHAEL J. LOGRANDE
DIRECTOR
(213) 978-1271
ALAN BELL, AICP
DEPUTY DIRECTOR
(213) 978-1272
LISA M. WEBBER, AICP
DEPUTY DIRECTOR
(213) 978-1274
EVA YUAN-MCDANIEL
DEPUTY DIRECTOR
(213) 978-1273
FAX: (213) 978-1275
INFORMATION
www.planning.lacity.org

Decision Date: November 8, 2013

Appeal Period Ends: November 18, 2013

Eric Lieberman (A)
QES Incorporated
14549 Archwood Street
Van Nuys, CA 91405

Kenmore Investments, LLC (O)
12324 Montana Avenue, Suite 1
Los Angeles, CA 90049

Robert K. Kameoka (E)
5011 Acacia Street
San Gabriel, CA 91776

RE: Vesting Tract Map No.: 72296-SL
Address: 1829 N. Kenmore Avenue
Community Plan: Hollywood
Zone: RD1.5-1XL
Council District: 4
CEQA No.: ENV-2013-1858-MND

In accordance with provisions of Los Angeles Municipal Code (LAMC) Sections 17.15 and 12.22-C,27, the Advisory Agency approved Vesting Tentative Tract Map No. 72296-SL, located at 1829 N. Kenmore Avenue for a maximum of 6 **single-family lots** in accordance with the Small Lot Subdivision as shown on map stamp-dated June 20, 2013 in the Hollywood Community Plan. This unit density is based on the RD1.5-1XL Zone. (The subdivider is hereby advised that the LAMC may not permit this maximum approved density. Therefore, verification should be obtained from the Department of Building and Safety, which will legally interpret the Zoning code as it applies to this particular property.) For an appointment with the Development Services Center call (213) 482-7077. The Advisory Agency's approval is subject to the following conditions:

NOTE on clearing conditions: When two or more **agencies** must clear a condition, subdivider should follow the sequence indicated in the condition. For the benefit of the applicant, subdivider shall maintain record of all conditions cleared, including all material supporting clearances and be prepared to present copies of the clearances to each reviewing agency as may be required by its staff at the time of its review.

EXHIBIT D (cont.)

LINN K. WYATT
CHIEF ZONING ADMINISTRATOR

ASSOCIATE ZONING ADMINISTRATORS

R. NICOLAS BROWN
SUE CHANG
LOURDES GREEN
CHARLES J. RAUSCH, JR.
JIM TOKUNAGA
FERNANDO TOVAR
DAVID S. WEINTRAUB
MAYA E. ZAITZEWSKY

CITY OF LOS ANGELES

CALIFORNIA



ERIC GARCETTI
MAYOR

DEPARTMENT OF
CITY PLANNING
MICHAEL J. LOGRANDE
DIRECTOR

OFFICE OF
ZONING ADMINISTRATION
200 N. SPRING STREET, 7TH FLOOR
LOS ANGELES, CA 90012
(213) 978-1318
FAX: (213) 978-1334
www.planning.lacity.org

November 8, 2013

Kenmore Investments, LLC (O) (A)
12324 Montana Avenue
Los Angeles, CA 90049

Eric Lieberman (R)
QES, Inc.
14549 Archwood Street, Suite 308
Van Nuys, CA 91405

CASE NO. ZA 2013-1859(ZAA)(SPP)(SPPA)
ZONING ADMINISTRATOR'S ADJUSTMENT,
PROJECT PERMIT COMPLIANCE,
PROJECT PERMIT ADJUSTMENT

Related Case: VTT-72296-SL

1829 North Kenmore Avenue

Hollywood Planning Area

Zone : RD1.5-1XL

D. M. : 150B197

C. D. : 4

CEQA : ENV-2013-858-MND

Legal Description: Lot: 53, Lot 54, Arb. 1;
Block E, Holmby Avenue Tract No. 3

Pursuant to Los Angeles Municipal Code Section 12.28, I hereby APPROVE:

an Adjustment from Section 12.21.1-A to permit an increase in the height of the building of 36 feet in lieu of the maximum of 30 feet, in the RD1.5-1XL Zone; and

an Adjustment from Section 12.09.1-B,1 to permit zero-foot front yard setback in lieu of the otherwise required 15 feet in the RD1.5-1XL Zone; and

an Adjustment from Section 12.09.1-B,2 to permit a 5-foot side yard setback in lieu of the otherwise required 6 feet in the RD1.5-1XL Zone; and

an Adjustment from Section 12.09.1-B,3, to permit a 12-foot rear yard setback in lieu of the otherwise required 15 feet in the RD1.5-1XL Zone; and

an Adjustment from Section 12.21,G-2(a)(iii), to permit an open space area less than 400 square feet otherwise required and a horizontal dimension of 12 feet in lieu of the required 15 feet, in the RD1.5-1XL Zone; and

an Adjustment from Section 12.21-C,2(a), to permit a 2-inch separation between buildings in lieu of the otherwise required 10 feet, in the RD1.5-1XL Zone; and