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April 11, 2014

Ali Akbar Mahdi (A)(O)
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Oscar Ensafi (R)
Approved Plans, Inc.
6321 Van Nuys Boulevard
Van Nuys, CA 91401

CASE NO. ZA 2012-3329(ZV)(ZAD)
ZONEVARIANCE/ZONING ADMINISTRATOR'S
DETERMINATION
6340 - 6346 West Sister Elsie Drive
Sunland-Tujunga-Lake View-Shadow Hills-
East La Tuna Canyon Planning Area
Zone : RE40-1
D. M. : 204A205
C. D. : 7
CEQA : ENV 2009-2926-MND-REC1
Legal Description: Lot 496, 497, 498
Tract 8303

Pursuant to Charter Section 562 and Los Angeles Municipal Code Section 12.27-B, I hereby APPROVE:

a Zoné Variance granting construction, use, and maintenance of a 2,400 square-foot single-family dwelling and attached two-car garage in lieu of the Maximum Residential Floor Area of 1,147 square feet as required under Section 12.21-C,10(b)(2),

Pursuant to Los Angeles Municipal Code Section 12.24-X,28, I hereby APPROVE:

a Zoning Administrator's Determination granting construction of a 2,400 square-foot single-family dwelling and attached garage fronting on a street that is less than 20 feet wide and less than 20 feet wide from the driveway apron to the end of the Hillside Boundary as required under Section 12.21-C,10(i)(2) and (3),

a Zoning Administrator's Determination granting a reduced front yard setback of zero feet in lieu of the required 5 feet and a reduced east side yard setback of 5 feet 8 inches in lieu of 12 feet as required under Sections 12.21-C,10(a)(2) and 12.21-C,10(a), and,

a Zoning Administrator's Determination granting a height of 36 feet in lieu of 30 feet as required under Section 12.21-C,10(d),

upon the following additional terms and conditions:

1. All other use, height and area regulations of the Municipal Code and all other applicable government/regulatory agencies shall be strictly complied with in the

development and use of the property, except as such regulations are herein specifically varied or required.

2. The use and development of the property shall be in substantial conformance with the plot plan submitted with the application and marked Exhibit "A", except as may be revised as a result of this action.
3. The authorized use shall be conducted at all times with due regard for the character of the surrounding district, and the right is reserved to the Zoning Administrator to impose additional corrective Conditions, if, in the Administrator's opinion, such Conditions are proven necessary for the protection of persons in the neighborhood or occupants of adjacent property.
4. All graffiti on the site shall be removed or painted over to match the color of the surface to which it is applied within 24 hours of its occurrence.
5. A copy of the first page of this grant and all Conditions and/or any subsequent appeal of this grant and its resultant Conditions and/or letters of clarification shall be printed on the building plans submitted to the Development Services Center and the Department of Building and Safety for purposes of having a building permit issued.
6. The applicant shall defend, indemnify and hold harmless the City, its agents, officers, or employees from any claim, action or proceedings against the City or its agents, officers, or employees relating to or to attack, set aside, void or annul this approval which action is brought within the applicable limitation period. The City shall promptly notify the applicant of any claim, action, or proceeding and the City shall cooperate fully in the defense. If the City fails to promptly notify the applicant of any claim action or proceeding, or if the City fails to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City.
7. Within 45 days or mutually agreed upon time, a covenant acknowledging and agreeing to comply with all the terms and conditions established herein shall be recorded in the County Recorder's Office. The agreement (standard master covenant and agreement form CP-6770) shall run with the land and shall be binding on any subsequent owners, heirs or assigns. The agreement with the conditions attached must be submitted to the Development Services Center for approval before being recorded. After recordation, a certified copy bearing the Recorder's number and date shall be provided to the Zoning Administrator for attachment to the subject case file.
8. Short Term Construction Parking/Circulation Mitigation. The following is imposed to mitigate potential impacts caused by traffic during construction in the Hillside area on substandard Hillside Streets.
 - a. Construction Parking/Circulation Plan. Prior to the issuance of any grading or building permits, the project proponent, contractor, or designee shall submit a Short Term Construction Parking/Circulation Plan indicating the following:

- 1) Design of an area along the property frontage to be improved for allowing access, parking, and staging of materials or equipment at a minimum 15-foot width by 68 feet in length or more if feasible.
 - 2) A plan shall be submitted for inclusion into the case file identifying the location where contractor and subcontractor vehicles will be parked so as to prevent blockage of two-way traffic on streets in the vicinity of the subject property. Parking of vehicles associated with construction of the site shall not occur on Sister Elsie used for community access nor surrounding residential streets above or below the subject site.
 - 3) Community Notification List. Submit the addresses of the estimated 24 properties located above the subject site.
 - 4) Community Relations. A 24-hour "hot-line" phone number for the receipt of construction related complaints from the community shall be provided to those on the Community Notification List, Neighborhood Council, and Office of Zoning Administration. The project proponent, contractor, or designee is required to respond within 24 hours of any complaint received on this hotline.
- b. The Construction Parking/circulation Plan shall be submitted to the Neighborhood Council for their review and comment prior to submittal to the Office of Zoning Administration.
- c. Throughout the construction period, the project proponent, contractor, or designee shall comply with:
- 1) Construction Parking/Circulation Plan. Non-compliance with the Plan or conditions herein may result in an Order to Comply or Stop Work Order.
 - 2) Community Relations.
 - a) Log. The project proponent, contractor, or designee shall keep a log of complaints received, the date and time received and the disposition of the response. The log shall be retained for consideration by the Zoning Administrator.
 - b) During the time of pre-construction and construction, an aggrieved party may contact the Zoning Administrator to help resolve any ongoing issue. Pursuant to the Municipal Code, the Zoning Administrator is authorized to request the Department Building and Safety to issue an Order to Comply or Stop Work Order.
 - 3) Prior to construction of a building foundation, the street improvements along the street frontage shall be completed enough to allow use

staging of construction equipment and vehicles without impeding traffic along Sister Elsie community access.

- 4) Deliveries of Equipment and Supplies. All deliveries during construction shall be coordinated so that only one vendor/delivery vehicle is at the site at one time and that a construction supervisor is present at such time to mitigate any potential traffic impacts.
 - 5) Truck Traffic Restricted Hours. Truck traffic directed to the project site for the purpose of delivering materials, construction machinery or removal or graded soil shall be limited to the hours beginning at 9:00 a.m. and ending at 3:00 p.m., Monday through Friday only. No truck deliveries shall be permitted on Saturdays and Sundays and outside the time periods specified on Monday through Friday.
 - 6) Any street blockage above or below the site with the exception of the street improved along the property frontage, shall require advance notice to the Community Notification List, use of a flag person(s) to direct traffic, and shall not exceed 20 minutes if technically feasible.
 - 7) Construction Noise. Construction activities that generate substantial noise levels, such as the use of power tools and the like, are restricted to between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Saturday, and at no time on Sundays.
 - 8) Storage of Equipment and/or Material. All construction related material must be placed on the subject lot or another lot with owner approval for storage. No construction equipment or material may be stored on the street, except the improved area along the property frontage.
9. Environmental Mitigation Measures. Comply with the environmental mitigation measures of Mitigated Negative Declaration No. ENV 2009-2926-MND-REC1 attached (complete copy of mitigation measures in Environmental case file). Pursuant to California State Public Resources Code Section 21081.6, the City shall monitor or require evidence that any mitigation conditions are implemented and maintained throughout the life of the project and the City may require any necessary fees to cover the cost of such monitoring.
10. Street Dedications and Improvements:
- a. The project may provide a less than 20 feet wide street along the property frontage and less than 20 feet wide from the driveway apron to the end of the Hillside Boundary as required under Section Nos. 12.21-C, 10(i)(2) and (3). (Refer to Condition No. 8.a.1 above for detail.)
 - b. Prior to obtaining an Occupancy Permit from the Department of Building and Safety, the project proponent shall submit proof of repairing the approximately 450-foot distance of Sister Elsie Drive to Day Street, if

necessary. This does not require compliance with street standards pursuant to Los Angeles Municipal Code, only repair to return the street to pre-construction condition or better. It is recommended that the project proponent submit photographs of the current condition of the street to be compared to photographs taken after repairs.

11. Prior to sign-off by the Office of Zoning Administration or a mutually agreed upon time for any building permit, the applicant shall submit proof of Revocable Permit application with the Department of Engineering, if any buildings or structures are proposed any public right-of-way.
12. Prior to sign-off by the Office of Zoning Administrator, proof of compliance with the San Gabriel/Verdugo Mountains Specific Plan Area shall be submitted in the form of a sign-off on the Summary Clearance Sign-off Sheet.

OBSERVANCE OF CONDITIONS - TIME LIMIT - LAPSE OF PRIVILEGES

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

TRANSFERABILITY

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

VIOLATIONS OF THESE CONDITIONS, A MISDEMEANOR

Section 12.29 of the Los Angeles Municipal Code provides:

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

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

APPEAL PERIOD – EFFECTIVE DATE

The applicant's attention is called to the fact that this variance is not a permit or license and that any permits and licenses required by law must be obtained from the proper public agency. Furthermore, if any condition of this grant is violated or not complied with, then this variance shall be subject to revocation as provided in Section 12.27 of the Municipal Code. The Zoning Administrator's determination in this matter will become effective after APRIL 28, 2014, unless an appeal therefrom is filed with the City Planning Department. It is strongly advised that appeals be filed early during the appeal period and in person so that imperfections/incompleteness may be corrected before the appeal period expires. Any appeal must be filed on the prescribed forms, accompanied by the required fee, a copy of the Zoning Administrator's action, and received and receipted at a public office of the Department of City Planning on or before the above date or the appeal will not be accepted. **Forms are available on-line at <http://planning.lacity.org>.** Public offices are located at:

Figueroa Plaza
201 North Figueroa Street,
4th Floor
Los Angeles, CA 90012
(213) 482-7077

Marvin Braude San Fernando
Valley Constituent Service Center
6262 Van Nuys Boulevard, Room 251
Van Nuys, CA 91401
(818) 374-5050

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.

NOTICE

The applicant is further advised that all subsequent contact with this office regarding this determination must be with the Zoning Administrator who acted on the case. This would include clarification, verification of condition compliance and plans or building permit applications, etc., and shall be accomplished **BY APPOINTMENT ONLY**, in order to assure that you receive service with a minimum amount of waiting. You should advise any consultant representing you of this requirement as well.

FINDINGS OF FACT

After thorough consideration of the statements contained in the application, the plans submitted therewith, the report of the Zoning Analyst thereon, the statements made at the public hearing on September 20, 2013, all of which are by reference made a part hereof, as well as knowledge of the property and surrounding district, I find that the five requirements and prerequisites for granting a variance as enumerated in Section 562 of the City Charter and Section 12.27-B,1 of the Municipal Code have been established by the following facts:

BACKGROUND

The property is an interior, steep downslope, mostly rectangular-shaped parcel of land consisting of three lots totaling approximately 6,205 square feet, with a width of 68 feet and depth of 84 to 98 feet from west to east. The property is a vacant hillside lot with mostly covered with natural grasses however includes what appears to be Scrub Oak Trees.

The property is located within the Sunland-Tujunga-Lake View-Shadow Hills-East La Tuna Canyon Planning Area, the San Gabriel/Verdugo Mountains Specific Plan Area, a Very High Fire Hazard Severity Zone, a High Wind Velocity Area, and Special Grading and within an Alquist-Priolo Fault Zone. The Community Planning Referral Form, signed December 4, 2012, confirms the subject request is not considered a project per the Specific Plan.

The surrounding properties are zoned RE40-1 with varied hillside topography and sparsely developed with single-family dwellings. Most of the lots are vacant and legal non-conforming in size. Most of the dwellings were built in the 1940s.

Sister Elsie Drive, adjoining the property on the north, is a Paper Substandard Hillside Street, currently consisting of grass area, with width of 30 feet. The improved portion of Sister Elsie Drive is approximately 340 feet in length, from Day Street to the subject property northwest corner and maintains a roadway width of approximately 16 feet. Sister Elsie Drive is classified as a Red Flag Street in ZIMAS, and is posted with "No Parking" signs on both sides of the street.

The unimproved portion of Sister Elsie Drive would provide access to approximately 10 to 15 vacant undeveloped hillside lots.

Previous Zoning related actions on the site/in the area include:

Subject Property

Building Permit No. 11010-20000-00970 – Submitted May 6, 2011, for a new SFD with attached garage. (See print out copy for clearances received and those still pending).

Building Permit No. 11020-20000-00957 – Submitted May 6, 2011, for a retaining wall.

Grading Pre-Inspection Report for Permit No. 11030-20000-02186 – Issued May 9, 2011, for a new single family dwelling and retaining wall – reads "Do Not Issue Until Below Requirements Have Been Satisfied." (See attached copy of checklist items that need to be addressed).

Case No. ZA 2009-2925(ZV)(ZAD)-A1- On May 17, 2011, the Zoning Administrator approved a Zoning Administrator's Determination granting the construction, use and maintenance of a 2,500 square-foot single-family dwelling that does not have a vehicular access road from a street improved with a minimum 20-foot wide continuous paved roadway width from the driveway apron that provides

access to the main dwelling to the boundary of the Hillside Area as required under Section 12.21-A,17(3) of the code; and approved a Zoning Administrator's Adjustment from Section 12.21-A,17(a) granting a 0-foot front yard setback in lieu of the required 5 feet, and from Section 12.21-A,17(b) to allow a reduced east side yard of 5 feet 8 inches in lieu of the required 12 feet, and dismissed a Zoning Administrator's Determination to permit the construction, use and maintenance of a 2,500 square-foot single-family dwelling on a lot fronting a Substandard Hillside Limited Street improved to a width of less than 20 feet adjacent to the subject property as required under Section 12.21-A,17(e)(2). The determination was appealed. On August 16, 2011, the North Valley Area Planning Commission sustained the Zoning Administrator's decision however modified some conditions having to do with Short Term Construction Parking/Circulation impacts.

Case No. CPC 25271 – On November 17, 1998, Ordinance No. 172,231 (SA480) was established, changing the zoning to RE40-1.

Case No. CPC 2007-2986(ICO) – On November 17, 1998, Ordinance No. 179,184 was established as the New Sunland-Tujunga Interim Control Ordinance which extended a similar early ICO and limited the size of structures based on FAR as follows: "No building permit or demolition permit shall be issued for any Project where the ratio of the total gross floor area of all buildings on the lot to the area of the lot (Floor Area Ratio or FAR) is equal to or less than 0.4: 1. However, if that FAR calculation would result in a total gross floor area of less than 2,400 square-feet, then the gross floor area of all the structures and buildings on the lot may be up to 2,400 square-feet." The subject ICO expired. The ICO intended to address out of scale incompatible developments on lots less than 8,000 square feet.

Surrounding Properties

Case No. ZA 2004-4793(ZAD) – On January 6, 2005, the Zoning Administrator approved a Zoning Administrator's Determination granting deviation from Section 12.21-A,17(a)(1) of the Los Angeles Municipal Code allowing a reduced front yard setback of 6 feet in lieu of the prevailing 19 feet 6 inches and to allow an improved roadway width of less than 20 feet from the property to the boundary of the Hillside Area for the construction of a three story, single family dwelling fronting a substandard hillside street located at 6339 Day Street (south adjoining property below the subject property). Staff Note: The applicant was required to dedicate and improve the roadway in front of the subject property.

PUBLIC HEARING

On May 17, 2011, the Office of Zoning Administration approved Case No. ZA 2009-2925(ZV)(ZAD) that granted construction, use and maintenance for a single-family dwelling with the following deviations from Hillside Regulations:

Waiver to permit vehicular access road from a street improved with a minimum 20-foot wide continuous paved roadway width from the driveway apron that

provides access to the main dwelling to the boundary of the Hillside Area as required under Section 12.21-A,17(3) of the code;

Waiver from Section 12.21-A,17(a) granting a 0-foot front yard setback in lieu of the required 5 feet, and

Waiver from Section 12.21-A,17(b) granting a reduced east side yard of 5 feet 8 inches in lieu of the required 12 feet.

The application included a request to waive street improvements along the frontage of the property. The Zoning Administrator believed the applicant would make street improvements. Therefore, this component of the request was dismissed requiring the project to provide Substandard Hillside Limited Street to a minimum width of 20 feet adjacent to the subject property, as required under Section 12.21-A,17(e)(2) of the Planning and Zoning Code.

Prior to the Zoning Administrator's May 17, 2011 decision (i.e., Case No. ZA 2009-2925(ZV)(ZAD)), the applicant submitted building permits for the following:

Grading Pre-Inspection Report for Permit No. 11030-20000-02186 – Issued May 9, 2011, for a new single family dwelling and retaining wall. A statement on the permit stated to not issue until a checklist of items were addressed.

Building Permit No. 11010-20000-00970 – Submitted May 6, 2011, for a new SFD with attached garage.

Building Permit No. 11020-20000-00957 – Submitted May 6, 2011, for a retaining wall.

The determination was appealed to North Valley Area Planning Commission (NVAPC). On August 16, 2011, NVAPC sustained the Zoning Administrator's decision (i.e., Case No. ZA 2009-2925(ZV)(ZAD)-A1) and modified several conditions related to Short Term Construction Parking/Circulation impacts.

After the NVAPC appeal decision and over a several month period, the applicant attempted to comply with requirements of Case No. ZA 2009-2925(ZV)(ZAD)-A1. However, Bureau of Engineering (BOE) insisted on street improvements along the property frontage that would require acquiring land outside the control of the applicant (i.e., across from the subject site) and require unnecessary street improvements beyond what is needed for use by the subject site.

It was then that the applicant realized it was a mistake to allow part of the original request in Case No. ZA 2009-2925(ZV)(ZAD) to be dismissed. If Case No. ZA 2009-2925(ZV)(ZAD) had been approved to waive improving the Substandard Hillside Limited Street with less than minimum width of 20 feet adjacent to the subject property, the applicant could have been issued a building permit and construction would have started.

On May 9, 2011, the Hillside Mansionization Ordinance became effective. This did not affect Case No. ZA 2009-2925(ZV)(ZAD) because the application was deemed complete prior to the effective date of the ordinance. However, the applicant's building permits expired triggering compliance with the new ordinance.

On December 4, 2012, the applicant applied for Case No. ZA 2012-3329(ZV)(ZAD) to deviate from the newly adopted Hillside Ordinance. On August 19, 2013, notice of the public hearing was mailed to 72 property owners/occupants and interested parties of which five were returned.

The following correspondence was received prior to the public hearing:

Dyle Henderson, 6270 Gyal, email dated September 13, 2013 (summarized as follows):

- Dangerous precedent if allowed – opens the door for all other vacant lots in immediate hillside area
- Why was Ordinance put in place in the first place
- Out of character with homes in area – applicant only used homes on Day St. as example, not Sister Elsie
- Potential risks to safety and security – My home has a wall that will be compromised with use of heavy trucks passing within inches of it – if it fails, there will be no access to the above 17 homes
- Construction and Staging – there is NO room for these enormous pieces of equipment – we were told we would receive a plan for how this would be staged, but have not received anything. Some residents on hill receive health care visits daily from medical professionals.

Gerhard and Elektra Kruger, 10544 Mahoney Dr., email dated September 8, 2013 (summarized as follows):

- This is not a variance needed due to unusual features of the property – properties in the area average half the requested square footage thus there is no need to allow the variance in square footage to preserve equal enjoyment of substantial right or general use possessed by others in the same neighborhood.
- Reduced side and front yards only needed to construct a house more than twice the size allowed in the zone/vicinity.

Paolina Milana, 6259 Gyal, email dated March 26, 2013: Opposed to a waived hearing. Appeal process assured that legitimate issues raised would be addressed/resolved/communicated before moving forward – yet based on new submittal, no changes have been made, no considerations to concerns included, and no communications have been shared, and inaccurate information still is listed falsely as facts and findings.

Prior to the public hearing, a site inspection was conducted by the Project Planner, staff of the Office of Zoning Administration. The following information was obtained from information presented in the application and research of the Project Planner.

The requests under consideration in Case No. ZA 2012-3328(ZV)(ZAD) include those of the prior approval with the addition of requests to deviate from the maximum hillside residential floor area allowed, maximum hillside height, and to waive street improvements along the property frontage.

Submitted with the application are plans dated May 4, 2011 with a revision date of October 20, 2012. The subject plans appear identical to the May 4, 2011 plans which were approved by the Planning Department on November 1, 2012. Staff cannot determine what revisions occurred on October 20, 2012, thus further discussion may be warranted. There are some differences regarding the elevations on Sheet A-3 in that a "Grade Plane" was added to the Existing Grade, and the West Elevation is noted at 36 feet in height versus 35 feet 9 inches. More height information has been added to the current plans. It should be noted the previous proposed dwelling size was 2,500 square feet which would require an additional on-site parking space. The current proposed dwelling is 2,400 square feet, which is just below the threshold for additional parking for a hillside home.

The plans show the structure will be two-story with a flat roof and will be cut into the downslope area such that part of the dwelling will be set into the hillside (i.e., acting as a retaining wall) and the rear half of the dwelling projecting outward will be supported by stilts with a crawl space underneath.

The Baseline Hillside Mansionization Ordinance provides an option where allowed residential floor area can be calculated via a slope analysis or in this case with a legal non-conforming lot size a guaranteed minimum of building per lot size of 18 percent (for RE40 zoned lots) or 1,000 square feet, whichever is greatest.

Staff review of the previous case file indicates there was no grading information provided with respect to the volume of earth removal, import/export, cut and fill. Additional entitlements may be required under the Hillside Ordinance.

The public hearing was held September 20, 2013 with the applicant, applicant's representative, and several interested parties in attendance. The Zoning Administrator began the public hearing citing case history as discussed above. He stated that all previous entitlement requests are moot requiring the applicant to re-file an application due to the new Baseline Hillside Mansionization Ordinance. Further, plans submitted with the application are dated May 4, 2011 with a revision date of October 20, 2012. Further, the plans appeared identical to the May 4, 2011 plans which were approved by the Planning Department on November 1, 2012, except there were several changes including:

The prior approved dwelling size was approximately 2,500 square feet which requires an additional on-site parking space. The current proposed dwelling is 2,400 square feet, which is just below the threshold for additional parking for a hillside home.

Elevations on Sheet A-3 added a "Grade Plane" to the Existing Grade and the west elevation of the dwelling was noted at 36 feet in height versus 35 feet 9 inches in the prior approval.

The applicant justified his requests as follows:

Regarding Residential Floor Area –

“The Baseline Hillside Ordinance was adopted for purpose of preserving established single family character from out of scale development. The proposed new two story single family dwelling has already once was submitted through plan check with building and safety, however there was not enough time for us to meet with public work B permit processing for our frontage improvement, so the 18 month plan check time expired on 11-6-12. Prior to building and safety application we had an approval from city planning case ZA-2009-2925-ZAD for front yard setback, side yard setback...and approval for continues road improvement...”

As, indicated above, this project has gone through city planning application and building and safety plan checks within last 4 years, we have grading approval for proposed site, building plans are approved for proposed 2400 sq-ft of living space and attached two car garage. However, the building permit was not issued just because our frontage improvement was not to the satisfactory of public work. This is special case that no other properties has gone through such difficulties.

According to the ZIMAS, there are properties on the south side of our project site that are subject to BHO and they exceed the limited floor area,

- 6339 Day St. existing house is 3,405 sq-ft, which should be 1,876 sq-ft
- 6338 Day St. existing house is 1,734 sq-ft, which should be 650 sq-ft
- 6361 Day St. existing house is 1,561 sq-ft, which should be 915 sq-ft

Our proposed construction of 2400 s.f. is still within the average of the surrounding Home sizes.

The proposed two story single family dwelling is located within the hillside area with topography of almost 45 degree slopping down which is consistent with two adjacent neighbors on west side on Sister Elsie Dr. and will not have any effect on public welfare not their safety.”

Regarding Building Height –

...”The proposed height for our new two story single family dwelling is 36 feet in lieu of 30 feet which is required by the same Hillside Ordinance. The proposed structure has a flat roof with 3 feet of parapet walls, there are only two single family structures in the same block which is 6358 and 6361 Day Street which is fronting Sister Elsie Dr., and these two structure’s height is min. of 36 feet of height.

...the proposed structure has only 14 feet in the Sister Elsie Drive elevation which is consistent with both adjacent structures in Sister Elsie Dr. block. Our request for such height approval is consistent with the area and there are no other ways to construct such structure less than 36 feet has shown on attached building sections and elevations.”

Regarding Substandard Hillside Street –

“The widening and improvement of Sister Elsie Dr which is a paper street in reality, is impossible and unnecessary. Meanwhile the real road access for this neighborhood is the private road which is shown on the attached zoning map. The topography of the site is a good reason that widening of this paper street is not doable.

As shown on the plot plan, car will have enough space to back up and then exit through a gentle slope driveway which leads to Sister Elsie Dr. So as you see, to enter this site and to exit from it will have no negative impact to the existing traffic of the neighborhood, the private road was created for the same purpose of our kind of development that should benefit from it.

There are no structures on the north side of Sister Elsie Dr, nor on adjacent side of the subject property. So the development of our property and not improving the existing private or public road will have no injurious to our neighborhood nor adjacent properties, also there are no impact on properties on cross street.

We feel that granting such an adjustment will not require any unnecessary or impossible improvement will not have any negative impact to surrounding and adjacent neighborhood, also our proposed single-family dwelling project is consistent with the area and adjacent properties.”

Regarding Reduced Yards –

"There are no structures on both side of our property and across Sister Elsie Dr one single family dwelling which has only five feet side yard and their front yard is not facing the Sister Elsie Dr. on west side the property is already developed at lower elevation and fronting Day St. On east side a seven acre property that half of west portion of that is not buildable.

As long as this development is consistent with community and surrounding building, which we will have min 12ft side yard on west side and 5ft on east side.

We are asking for zero front yard setback in lieu of 5ft required by the zone, but in reality the setback for future two story structure will be 32 ft. from the top of the slope which is the edge of the existing road. So there will be no adverse impact because there will be no future structures or any other kind of development adjacent to our site. A copy of existing topographic with the proposed site plan are attached with our application that explains the required side or front yard is not a practical thing or possible for this development.”

Testimony was obtained from the following: ^{1/}

Oscar Ensafi, applicant's representative, (*For proposal*)

1/ Names as shown on speaker slips.

Ali Akbar Mahdi, owner and applicant, *(For proposal)*
Dyle and Kathy Henderson, resident on Gyril Drive, *(Against proposal)*
Charles (Chuck) Borom, resident on Sister Elsie Drive, *(Against proposal)*
Sona Armenian, resident on Sister Elsie Drive, *(Against proposal)*
Paolina Milana, resident on Gyril Drive, *(Against proposal)*
Greg Reed, resident on Gyril Drive, *(Against proposal)*
Zak Grausam, resident on Gyril Drive, *(Against proposal)*
Melina Begain, resident on Day Street, *(Against proposal)*
Cindy Cleghorn, Sunland-Tujunga Neighborhood Council (STNC), *(Against proposal)*
Gabriel Bapdste, resident on Gyril Drive, *(General Comments)*
Arsen Karamians, STNC Land Use Committee and Board member, *(General comments)*
Claudia Rodriguez, City Council representative, *(General Comments)*

The following letter from Sunland-Tujunga Neighborhood Council wholly reflects testimony obtained from those opposed or who had concerns:

This letter is being written to inform you of the opposition by the Sunland Tujunga Neighborhood Council's (STNC) Land Use Committee (LUC) to the proposed construction of a new 2,400 square foot residential dwelling and attached 2-car garage at 6342 W. Sister Elsie Drive in Tujunga for which a Notice of Public Hearing was published. This notice issued by your Office informs interested persons of a public hearing to be held on Friday, September 20, 2013 to consider approval of this proposed project and the concomitant adoption of a Mitigated Negative Declaration (MND): *We have determined that there simply isn't enough information regarding the status of this property and its proposed development to make an adequate and informed determination at this time.* Consequently, the public hearing for this project should be postponed until enough information is provided by the applicant and/or City representatives that address the numerous issues regarding this proposed project.

The LUC has reviewed this current application and also participated in the review of a prior application to develop this site in 2009-2010. A copy of a letter (addressed to Councilman Kerkorian) and dated September 8, 2010, is attached to this correspondence for your information. In addition, neighbors in the immediate vicinity of the proposed project have made several appearances before our Committee asking that we intervene on their behalf. As we did in 2009-2010, we stand with the local neighborhood residents in their opposition to the past project and the project which is currently being proposed. We were not supportive of the earlier project and do not support this current application based on the following summary factors:

- The proposed size of the dwelling and attached garage exceed the maximum amount of floor area allowed on the property (1,147 square feet).
- The grant of the requested variances would undermine the intent of the City's Hillside Ordinance (LAMC Section 12.21.A.17)
- Sister Elsie Drive in the vicinity of the proposed project is a poorly improved "paper street" which is inadequate to accommodate safe access to the site.

- Development of the site will threaten the health, safety, and welfare of residents that live in the area.
- Approval of the project will establish precedence and invite other speculative developers to build over-sized dwellings on narrow and steep lots in the area.
- The Mitigated Negative Declaration does not adequately address the impacts of the project and includes insufficient measures to address project impacts.
- There are no unique hardships associated with the development of this site which would support findings in favor of the applicant's request.

We appreciate this opportunity to comment on this current application and to express our concerns regarding this proposed project. In regards to the currently submitted plans for which the applicant is seeking approval of zone variance to construct the dwelling (2,400 square feet and 400 square foot 2-car garage requested; 1,147 square foot dwelling permitted), to permit the proposed dwelling less than 20 feet from the driveway apron to the end of the hillside boundary, a reduced front yard of 0 feet in lieu of the required 5-feet, a reduced east side yard of 5-feet 8- inches in lieu of the required 12- feet, and to permit a building height of 36-feet in lieu of a permitted 30-feet, to we ask the Zoning Administrator to consider the following:

Background

The subject property is an interior, steep down slope, mostly rectangular shaped parcel of land consisting of three lots totaling approximately 6,205 square feet, with a width of 68 feet and depth of 84 to 98 feet from west to east. The property is a vacant hillside lot covered mostly with natural grasses and what appears to be Scrub Oak Trees.

The surrounding properties are zoned RE40-1 with varied hillside topography and sparsely developed with single family dwellings. Most of the dwellings were built in the 1940's. Most of the lots are vacant and of legal non-conforming in size.

Sister Elsie Drive, adjoining the property on the north, is a substandard paper hillside street, currently consisting of a grass area, dedicated to width of 30 feet. The improved portion of Sister Elsie Drive is approximately 340 feet in length, from Day Street to the subject property northwest corner and maintains a roadway width of approximately 16 feet.

Neighborhood Concerns

Both with the past and current project applications, the applicant has chosen to ignore the concerns of the residents in the area which can be summarized as Traffic during construction will constrict resident's access to their properties.

- The proposed project infringes on public access ways and private property.
- Inadequate access will impede the ability of City agencies to use the road, including critical access for City water facilities, fire and sanitation trucks and other City vehicles that use this road constantly.

- o The proposed project sets a precedent for developers to avoid hillside regulations.
- o The project's effects on Sister Elsie need to be thoroughly understood.
- o Sister Elsie Drive is crumbling, with major potholes and sinkhole problems.

No Actual Hardships

The applicant has failed to adequately demonstrate that there are special circumstances or hardships related to the development of the site that warrant the granting of the requested variances. The required findings include the following:

There are special circumstances applicable to the subject property such as size, shape, topography, location, and surroundings that do not apply generally to other properties in the same zone and vicinity; and, There is a necessity for the preservation and enjoyment of a substantial right or use generally possessed by other properties 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 first variance being requested is to construct a dwelling which, at 2,400 square feet, would be more than twice the allowable 1,147 square feet. This type of variance is not required to be granted because of any unusual features of the property.

The sizes of dwellings in the immediate neighborhood average half the size of the proposed application, so there is no need to grant a variance to allow or preserve equal enjoyment of a substantial right or general use possessed by other properties in the same neighborhood.

The additional variances (pertaining to the front and side yard setbacks and building height) also are not a function of the unusual property shape which would make it difficult to construct an allowable 1,147 square foot dwelling. Instead, they are being requested solely to provide for construction of a house which would be more than twice the allowable size in this zone/vicinity.

Mandated Findings

Prior to rendering a Determination on the proposed application, the Zoning Administrator is required to make certain mandatory findings regarding the application. Our understanding of these findings and their application to the proposed project are as follows:

1. Approval of the subject use is not in conformity with the public necessity, convenience, general welfare and good zoning practice and the action will be in substantial non-conformance with the various elements and objectives of the General Plan.

The project proponent initially proposed constructing a two-story dwelling with a two-car garage on the property, totaling 2,890 square feet including a 400

square-foot garage. Subsequently, the project was redesigned to not exceed 2,400 square feet (*current application*). The project applicant however is requesting deviations from the Hillside Ordinance regarding floor area, setbacks and building height.

Although the subject lot is legally subdivided and the density is permitted by the General Plan, the proposed project still exceeds the size requirements of the Hillside Ordinance and thus is not in conformance with zoning requirements or the intent of the General Plan which is to foster development that is compatible and consistent in scale with existing development in the area. Furthermore, the granting of the requested variances undermines and defeats the purpose of the existing City Hillside Ordinance regulations, thus contributing to the development of dwellings that are not compatible and which are out of scale with the neighborhood.

The Zoning Administrator should carefully consider the precedent-setting nature the requested variances. What is the purpose of adopting hillside residential development regulations only to turn around and grant exceptions that defeat the purpose of these existing regulations? Hillside mansionization has been effectively addressed in mansionization regulations adopted by other cities in the area, including the cities of Glendale and Pasadena. Once adopted, these regulations effectively halted the type of residential development proposed on Sister Elsie Drive. Neither of these two cities would consider the granting of variances to accommodate over-sized dwellings on steep hillside lots within their municipal jurisdictions.

2. The vehicular traffic associated with the building or structure will create an adverse impact on street access or circulation in the surrounding neighborhood.

Insufficient detail has been provided in regards to the design of the project and it's compliance with the Hillside Ordinance including consideration of Section 12.21-A.17(i)(2)(ii) of the Los Angeles Municipal Code which ensures no adverse impact on street access or circulation. In addition, the proposed mitigations included in the Mitigated Negative Declaration on are either not adequate or are based on insufficient or incorrect knowledge of the area where the impacts of the project will occur. Residents in the neighborhood and visitors have repeatedly complained of unsafe traffic conditions along Sister Elsie Drive.

3. The building or structure will be materially detrimental or injurious to the adjacent property or improvements.

Granting the deviations from the required setback standards for residences on hillside lots of the Los Angeles Municipal Code will be materially detrimental. The environmental review of the project has not adequately determined that the proposed project will not have an impact on the environment. Although many of the mitigation measures of the environmental review will likely be included as conditions of approval for the project, these mitigations are inadequate or are based on erroneous conclusions.

The project has also been unable to demonstrate compliance with Section 12.21-A, 17(i)(2)(ii) of the Los Angeles Municipal Code which ensures the area for the vehicular access does not contain any encroachment which could potentially impede the passage of emergency vehicles. The Fire Department has been unable to adequately serve the residences on Sister Elsie Drive because of the steep grade of the street and the lack of a turn-around area for fire trucks.

4. The building or structure will have a materially adverse safety impact on the surrounding neighborhood.

The project is in a Hillside area which is governed by the Hillside Ordinance. As such, it is subject to established and clearly defined limitations on building square footage, setbacks, and structural height. The purpose of these limitations is to protect the health, safety, and welfare of residents in the area and to ensure that future development is in scale with existing development and which does not negatively impact the visual character of the existing area.

The proposed project cannot comply with the most basic set of development standards which underpin the Hillside Ordinance. Consequently, its construction will impede the implementation of Hillside policies and programs in that the resulting development and subsequent development (spurred by a precedence-setting approval of the project) will likely *not* meet the most current and demanding requirements relating to fire and geologic hazards, mountainous brush areas being supplied with an adequate water supply, and providing streets adequate to accommodate emergency vehicles or traffic.

5. The site and/or existing improvements do not make strict adherence to the Hillside Ordinance impractical or infeasible.

The project applicants are not being denied the ability to construct a residence and garage on the project site. A single-family dwelling and 2-car garage can be constructed on this property which conforms to all applicable standards of the Hillside Ordinance. Furthermore, no requirement is being imposed on the applicants to widen Sister Elsie Drive. Thus, the applicant is relieved from the costs of street improvements that could potentially exceed the value of the proposed dwelling.

The difficulty with this current application is not only its inability to comply with basic Hillside Ordinance requirements, but also with the threat it poses to adjacent property owners and residents that live on this narrow and sub-standard street. Residents in the area have effectively documented the access issues posed by future development on this street. They have also effectively demonstrated to the LUC the need for the City to address infrastructure needs first before allowing additional development to occur in an area that is poorly served by deteriorating infrastructure (deteriorating street) and emergency City services (Fire Protection Services).

ADDITIONAL FINDINGS

The project applicants have requested the approval of specific variances for the project and the Zoning Administrator has the authority to grant these variances from the Code, provided they can be supported by written findings of fact based upon evidence taken written or oral statements and documents presented, which may include photographs, maps and plans, together with the results of any staff investigations. The findings of fact required to be met for this project and our understanding of their applicability to the proposed project are presented below:

1. That the strict application of the provisions of the zoning ordinance would result in practical difficulties or unnecessary hardships inconsistent with the general purposes and intent of the zoning regulations.

We do not believe that the strict application of the provisions of the zoning ordinance cause unnecessary hardship or practical difficulties in the development of the project site. It is the intent of the adopted Hillside Ordinance to address development issues on narrow and steep hillside lots identical to the applicant's lot on Sister Elsie Drive and to limit the scale of development on these lots.

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

As addressed previously, we do not believe that there are special circumstances applicable to the subject property that does not apply generally to other properties in this general area. To a large degree, many of the vacant and undeveloped lots in this area are similar in size and topography. There are no

special or unique circumstances that would justify granting variances for the proposed application.

3. That the variance is necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other property in the same zone and vicinity but which, because of the special circumstances and practical difficulties or unnecessary hardships, is denied to the property in question.

As addressed previously, the first variance being requested is to construct a dwelling which, at 2,400 square feet, would be more than twice the allowable 1,147 square feet. This type of variance is not required to be granted because of any unusual features of the property. Furthermore, the sizes of dwellings in the immediate neighborhood average half the size of the proposed application, so there is no need to grant a variance to allow or preserve equal enjoyment of a substantial right or general use possessed by other properties in the same area or vicinity.

4. That the granting of the variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in the same zone or vicinity in which the property is located.

As previously stated and often expressed by residents in this neighborhood, future development on Sister Elsie Drive poses a threat to the health, safety, and welfare of existing residents and property improvements in the area by overburdening existing and deteriorating public infrastructure including drainage facilities and streets.

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

While the granting of the variance is unlikely to adversely affect any element of the General Plan, it will undermine the intent of the General Plan and of the Hillside Ordinance by furthering development of hillside dwellings that are out of scale and which are incompatible with existing development in the area. The granting of these variances will encourage future developers to ask for and be granted similar variances for their projects. The end result will be an abrogation of the City's responsibility to uphold its own hard-fought regulations to control mansionization in the City's hillsides.

Your deliberations in this matter should take into account the community's goals for improving their neighborhoods without allowing development that is incompatible or out of scale with existing development in the area and which jeopardizes public safety. In order to avoid a costly and time-consuming appeal, you should base your determination on what is considered not only best for the applicant but best for the neighborhood as well.

At the conclusion of the public hearing, the matter was "Taken under Advisement" to allow the Zoning Administrator to conduct a comprehensive review of the request. The applicant was asked to submit additional information. Also, the Zoning Administrator asked interested parties to coordinate a site visit in order to correct or clarify inaccurate testimony that may have been simply due to speakers' misunderstanding of the requests including which property was under consideration. Subsequently, the Office of Zoning Administration received additional information that included more detail on the equipment staging area, location for parking workers' vehicles, topography and boundary map, foundation and retaining wall plan, slope cross-section, and photographs. Also, the applicant informed the Zoning Administrator that a meeting was scheduled at the site to show all interested parties the proposed project and how their concerns are addressed.

After review of the entire administrative record, the Zoning Administrator found justification for deviation from strict application of the Zoning and Planning Code and determined that the requests are in compliance with intent and purpose of the Code and furthers the action of the North Valley Area Planning Commission in Case No. ZA 2009-2925(ZV)(ZAD)-A1.

ZONING ADMINISTRATOR'S COMMENTS

In the adopted Findings, readers will read how the Zoning Administrator "bridged the gap" between evidence in the administrative record and the decision.^{2/} What follows are several planning topics that provide context to the affirmative to the Findings.

Retroactive Application of the Revised Hillside Ordinance

As noted above, pursuant to Case No. ZA 2009-2925(ZV)(ZAD)-A1, the applicant was previously approved to deviate from the earlier Hillside Ordinance. Over several months that extended into mid-2013, the applicant attempted to comply with requirements of Case No. ZA 2009-2925(ZV)(ZAD)-A1, but discovered Bureau of Engineering (BOE) insisted on street improvements along the property frontage that would require acquiring land outside the control of the applicant (i.e., across from the subject site) and require unnecessary street improvements beyond what was needed for use of the subject site.

During this time, the applicant's building permits expired because of factors not wholly within his control which triggered discretionary review required under the new Hillside Ordinance. This is even though the applicant is requesting similar rights as previously granted.

There is little ambiguity on how to treat this case, if the City acted in bad faith in delaying consideration of the applicant's question on how the street frontage should be improved. Such action would be a "special fact" in support of the applicant. In this instance, there is no bad faith. Rather, just a delayed response resulting in the applicant not being issued a building permit which triggered having to now comply with the new Hillside Ordinance.

A literal application of the new Hillside Regulations has two affects. First, possible substantive effect on interests previously created; whereby, disrupting settled expectations reached in Case No. ZA 2009-2925(ZAD)(ZAA)-1A. Second, a procedural effect requiring a new application which allows for discretionary review and "Due Process", but does not change the legal significance of Case No. ZA 2009-2925(ZAD)(ZAA)-1A.

This Zoning Administrator is of the opinion that changing the rules after the game has been played is an element of fundamental fairness (i.e., substantive). This would occur if a new decision impinged upon rights previously granted. However, filing an application and conducting a public hearing establishes a quasi-judicial process to determine the merit of events that occurred resulting in the applicant's inability to obtain a building permit in a timely manner and how to further the intent of the new regulation in the least restrictive means so to not impinge upon rights granted and interests created by Case No. ZA 2009-2925(ZAD)(ZAA)-1A.

^{2/} The *Topanga* court defined Findings as legally relevant sub-conclusions which expose the agency's mode of analysis of facts, regulations, and policies, and which bridge the analytical gap between raw data and ultimate decision. (*Topanga, supra* at pp. 515 and 516.) In other words, Findings are the legal footprints local administrators and officials leave to explain how they progressed from the facts through established policies to the decision.

Why Bureau of Engineering Delay?

On City maps, Sister Elsie is a “paper street” shown to traverse the subject site and travel east then northeast. This is not the Sister Elsie that the community uses. The street that provides access to properties north of the subject is not a public right-of-way. What the community uses north of the subject site consists of private property that Bureau of Engineering (BOE) does not know who has rights to use and what rights they have.

It was difficult for BOE to determine how Sister Elsie paper street should be improved because the finished street would only be used by the applicant and not by others in the community. However, City maps identify the paper street as providing legal access for other properties east of the subject site. As such, BOE believes full Hillside Street standards are required even if it poses several complications.

One complication is that the applicant is not able to provide full street width without acquiring private property across the street. The other complication is the improved street would likely function only as a private driveway for the subject site because the topography is too steep east of the subject site for continuing the street. Another complication is to improve the paper street to full Hillside Street standards would significantly change the building pad elevation causing excessive grading and unnecessary prohibitive cost if the street only serves the subject site.

Even though BOE doesn't believe Sister Elsie paper street would provide access beyond the subject site, they would not exercise their authority to terminate the paper street because it could lead to law suits from property owners who would lose the right to develop their paper subdivisions.

Potential Damage to Sister Elsie

The core planning issue has been potential damage to Sister Elsie and additional construction traffic on Sister Elsie. During the Office of Zoning Administration's September 2013 public hearing, concerns were broadened beyond those presented to the North Valley Area Planning Commission in Case No. ZA 2009-2925(ZAD)(ZAA)-1A.

North Valley Area Planning Commission addressed the concerns regarding potential damage to Sister Elsie in Condition Nos. 7.a.2), 7.a.4, 7.c.1), and 7.c.8). Then, at the September 2013 public hearing, the issues were broadened to include potential damage to private property caused by construction vibration. A recommendation was presented to the Zoning Administrator that property owners should be reimbursed for damage caused by vibration of heavy trucks and site preparation. Further, that the City should establish a bond to ensure property owners are compensated.

A bond is used with haul routes (i.e., 12.24-X,28(c)(1) for the “benefit of the city”, but not private property owners. The Zoning Administrator was told that other cases required a bond. However, verification of this procedure was not submitted as requested. Nevertheless, such condition may not be appropriate since the matter relates to private interests. Rather, it's a civil matter between property owners and would be better arranged through contractual agreements or litigated in court.

Construction Staging without Impacting Others

Construction of the project will occur in stages where the paper street will be improved to provide access to the subject site and operate as a staging area for equipment without significantly impacting traffic on Sister Elsie used by the community. The applicant submitted a plan showing temporary construction crew parking on Day Street below the subject site. Any street blockage above or below the site will require advance notice to surrounding residents, use of a flag person, and shall not exceed 20 minutes, if technically feasible. Next, the building pad will be graded providing additional space for staging equipment.

The applicant submitted a plan showing temporary construction crew parking on Day Street below the subject site. There are conditions imposed establishing additional measures to ensure Short Term Construction Impacts are kept at minimum. Additional enforcement is granted to the Office of Zoning Administration and Department of Building and Safety by a condition that states non-compliance with the Construction Parking/Circulation Plan or other conditions may result on an Order to Comply or Stop Work Order.

Conclusion

The propose project is slightly smaller than that approved in Case No. ZA 2009-2925(ZAD)(ZAA)-1A. What has changed is the Hillside Ordinance. But the applicant merely wants what he was previously approved to do.

At the September 20, 2013 public hearing, the Zoning Administrator heard the following issues and concerns:

- The proposed project infringes on public access ways and private property.
- Inadequate access will impede the ability of City agencies to use the road, including critical access for City water facilities, fire and sanitation trucks and other City vehicles that use this road constantly.
- The proposed project sets a precedent for developers to avoid hillside regulations.
- The project's effects on Sister Elsie need to be thoroughly understood.
- Sister Elsie Drive is crumbling, with major potholes and sinkhole problems.

These are exactly the same issues and concerns previously settled by North Valley Area Planning Commission in Case No. ZA 2009-2925(ZAD)(ZAA)-1A. Without evidence of new matters or unmitigated impacts, the Zoning Administrator does not want to impinge upon rights previously granted and interests created.

VARIANCE 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 must be made in the affirmative. Following (highlighted) 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 result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the zoning regulations.

The applicant is seeking a Zone Variance to construct a 2,400 square-foot single-family dwelling and attached two-car garage in lieu of the Maximum Residential Floor Area of 1,147 square feet as required under Section 12.21-C,10(b)(2). An applicant seeking a Variance bears the burden of proving that circumstances exist to justify its granting (*PMI Mortgage Ins. Co. v. City of Pacific Grove (1982) 128 Cal.App.3d 724*).

In this instance, the applicant's burden is lessened due to affirmative Findings previously made in Case No. ZA 2009-2925(ZAD)(ZAA)-1A for an approximate 2,500 square-foot dwelling.^{3/} The applicant submitted analysis that according to ZIMAS, there are properties on the south side of the subject site that were subject to Baseline Hillside Ordinance that exceed the limited floor area. These being:

- 6339 Day St. existing house is 3,405 sq. ft. which should be 1,876 sq. ft.
- 6338 Day St. existing house is 1,734 sq. ft. which should be 650 sq. ft.
- 6361 Day St. existing house is 1,561 sq. ft. which should be 915 sq. ft.

Further, the proposed construction is 2,400 square feet and within the average of the surrounding home sizes. Lastly, the proposed two-story single-family dwelling is located within a hillside area with nearly 45 degree downhill slope down which is consistent with two adjacent neighbors on west side on Sister Elsie Drive and will not have any effect on public welfare nor their safety.

Research of the Project Planner determined the average dwelling size in the surrounding hillside is 1,429 square feet. Also, statements in opposition believe the intent of the adopted Hillside Ordinance is to address development issues on narrow and steep hillside lots identical to the applicant's lot on Sister Elsie Drive and to limit the scale of development on these lots.

The applicant states, the project has gone through City Planning application and Building and Safety plan checks within last five years. The project obtained grading approval for proposed site and building plans are approved for proposed 2,400 square feet of living space and attached two car garage. However, the building permit was not issued because the proposed frontage improvement was not to the satisfaction of public work. In conclusion, the applicant believes this is special case where no other properties have gone through such difficulties.

The Zoning Administrator agrees with the applicant that strict application of the current regulations create a hardship. Firstly, the size of the dwelling complies with the prior Hillside Ordinance where no request to deviate in size was required.

^{3/} A Variance was not previously required because the size of the dwelling conformed to Hillside Regulations. The revised Hillside Ordinance established a Maximum Residential Floor Area contained in all buildings and accessory buildings based on Slope Band analysis.

Secondly, the applicant's building permits expired because of factors not wholly within his control which triggered having to comply with the revised ordinance. However, pursuant to Case No. ZA 2009-2925(ZAD)(ZAA)-1A, the prior action approved a dwelling size of approximately 2,500 square feet and the applicant merely wants to continue with a slightly smaller dwelling than that approved in Case No. ZA 2009-2925(ZAD)(ZAA)-1A. The Zoning Administrator does not want to impinge upon rights previously granted and interests created unless there are unmitigated environmental factors.

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

The applicant states, the project has gone through City Planning application and Building and Safety plan checks within last five years. The project obtained grading approval for proposed site and building plans are approved for proposed 2400 square feet of living space and attached two car garage. However, the building permit was not issued because the proposed frontage improvement was not to the satisfaction of public work. In conclusion, the applicant and the Zoning Administrator are in agreement that this is a special case where no other properties have gone through such unique circumstances.

This approval does not create a precedent for subsequent Variance requests. Furthermore, each variance is based upon special circumstances relating to the site for which it is proposed and past grant or denial of Variances for other properties in the area does not mandate similar action on the part of the hearing body (*Miller v. Board of Supervisors of Santa Barbara County (1981) 122 Cal.App.3d 539*).

3. **Such variance is necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other property in the same zone and vicinity but which, because of such special circumstances and practical difficulties or unnecessary hardships, is denied the property in question.**

The Variance is necessary for the preservation and enjoyment of a substantial property right that was previously established pursuant to Case No. ZA 2009-2925(ZAD)(ZAA)-1A. The applicant was previously approved to deviate from the earlier Hillside Ordinance which did not require deviation in dwelling size. Over a several month period that extended into mid-2013, the applicant attempted to comply with requirements of Case No. ZA 2009-2925(ZV)(ZAD)-1A, but discovered Bureau of Engineering (BOE) insisted on street improvements along the property frontage that would require acquiring land outside the control of the applicant (i.e., across from the subject site) and require unnecessary street improvements beyond what was needed for use of the subject site.

During the applicant's attempt to comply with Case No. ZA 2009-2925(ZV)(ZAD)-1A, his building permits expired because of factors not wholly within his control

and a new discretionary review was required. The applicant's project has not changed nor are there changed environmental conditions.

There is little ambiguity on how to treat this case, if the City acted in bad faith in delaying consideration of the applicant's question on how the street frontage should be improved. Such action would be a "special fact" in support of the applicant. In this instance, there is no bad faith just a delayed response and due to the delay. The Zoning Administrator does not want to impinge upon rights previously granted and interests created unless there are unmitigated environmental factors.

4. **The granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the same zone or vicinity in which the property is located.**

The size of the dwelling in Case No. ZA 2009-2925(ZV)(ZAD)-A1 was not a deviation from the prior Hillside Ordinance. Conditions were imposed to mitigate environmental impacts and the current project is no more intensive than that previously approved.

A condition to record a Master Covenant and Agreement (MCA) is added to improvement compliance and enforcement. The MCA is in case the applicant decides to sale the property and the MCA would be discovered during any title search and put any subsequent owner on notice of the conditions herein. Further, it clearly acknowledges the property owner's responsibilities to imposed conditions. The MCA will help ensure substantial compliance with the conditions.

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

The Sunland-Tujunga-Lake View-Shadow Hills-East La Tuna Canyon Community Plan Map designates the property for Minimum Residential. The applicant has combined three lots totaling approximately 6,205 square feet to create legally subdivided land. Therefore, the density is consistent with the Community Plan. Case No. ZA 2009-2925(ZV)(ZAD)-1A nor does this approval adversely affect use of the property for its intended purpose.

ZONING ADMINISTRATOR DETERMINATION FINDINGS

Following (highlighted) is a delineation of the findings and the application of the relevant facts of the case to same:

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

The applicant's building permits expired because of factors not wholly within his control which triggered having to comply with the revised Hillside Ordinance. The current requests, related to the Zoning Administrator Determination, are as follows:

One, a Zoning Administrator's Determination granting construction of a 2,400 square-foot single-family dwelling and attached garage fronting on a street that is less than 20 feet wide and less than 20 feet wide from the driveway apron to the end of the Hillside Boundary as required under Section Nos. 12.21-C.10(i)(2) and (3),

Two, a Zoning Administrator's Determination granting a reduced front yard setback of zero feet in lieu of the required 5 feet and a reduced east side yard setback of 5 feet 8 inches in lieu of 12 feet as required under Section 12.21-C.10(a)(2) and Section 12.21-C.10(a); and

Three, a Zoning Administrator's Determination granting a height of 36 feet in lieu of 30 feet as required under Section 12.21-C.10(d).

The Area Planning Commission approved housing which is essential to the community since Los Angeles is a housing poor area. Pursuant to Case No. ZA 2009-2925(ZAD)(ZAA)-1A, the prior action approved a dwelling as currently proposed. The Zoning Administrator does not want to impinge upon rights previously granted and interests created unless there are unmitigated environmental factors.

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

The project's size is discussed in Finding Nos. 1-5 and height is found in Finding No. 11. Generally, the basis for the Zoning Administrator, as the initial decision maker and NVAPC on appeal, was that the project is compatible with its surrounding and provides housing which is an essential benefit for the community and residents of Los Angeles. Further, that the deviations are not so substantial as to create a project that appears incompatible with other dwellings in the area.

The proposed project is in a Hillside area which is governed by the Hillside Ordinance. In City Council's adoption of both the prior and current Hillside Ordinances, they stated one purpose of the ordinance was to establish clearly defined and reasonable limitations on the overall height of single-family dwellings and therefore protect ridgelines and preserve the unique vistas afforded to all residents of the City. However, the majority of the Findings articulated reasons for the Hillside regulations are related to public health and safety.

The proposed project deviates from the current Hillside Ordinance but it will not hamper the implementation of Hillside policies and programs. The resulting development will meet the most current and demanding requirements relating to fire and geologic hazards, mountainous brush areas being supplied with an adequate water supply, providing streets adequate to accommodate emergency vehicles or traffic, whereby, providing for necessary safety for emergency equipment.

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

The Sunland-Tujunga-Lake View-Shadow Hills-East La Tuna Canyon Community Plan Map designates the property for Minimum Residential. The applicant has combined three lots totaling approximately 6,205 square feet to create legally subdivided land.

The property is within the Hillside designed area. Thus, in order to provide a practicable method for the development of land, the topography of which creates problems in development, to permit the efficient design and use of building sites and local streets, and to secure compliance with the General Plan in certain hillside or mountainous areas of the City of Los Angeles, certain portions of the city are classified as being in an "H" Hillside or Mountainous Area.^{4/}

Pursuant to Case No. ZA 2009-2925(ZAD)(ZAA)-1A, the prior action approved a dwelling as currently proposed. The proposed project is consistent with the Community Plan density and will comply with every standard of the current Hillside Ordinance except deviations as requested.

9. **The subject use is in conformity with the public necessity, convenience, general welfare and good zoning practice and that the action will be in substantial conformance with the various elements and objectives of the General Plan.**

The Sunland-Tujunga-Lake View-Shadow Hills-East La Tuna Canyon Community Plan Map designates the property for Minimum Residential. The applicant has combined three lots totaling approximately 6,205 square feet to create legally subdivided land. Therefore, the density is consistent with the Community Plan. Case No. ZA 2009-2925(ZV)(ZAD)-1A nor does this approval adversely affect use of the property for its intended purpose.

10. **The reduction in yards will not be materially detrimental to the public welfare or injurious to the adjacent property or improvements.**

Section 12.21-C,10(a)(2) and Section 12.21-C,10(a). In regards to yards, they are to promote orderly, attractive and harmonious development. Also, the regulation is to prevent discordant sights and minimize potential traffic hazards that distract motorists. Such regulations are written on a citywide basis and cannot take into account individual unique characteristics of a specific property as well as consider dynamic changes in the economy and the use of land. However, a

^{4/} HILLSIDE AREA. Any land designated as a Hillside Area on the Bureau of Engineering Basic Grid Map, Map No. A-13372, excluding those areas specifically identified in maps entitled Hillside Ordinance Amended Exhibit "A" attached to Council File No. 91-1621. (Amended by Ord. No. 168,728, Eff. 5/30/93.)

variance is a grant of permission to depart from the literal enforcement of a zoning ordinance and allow the property to be used in a manner otherwise not permitted, provided that the spirit of the ordinance is observed and substantial justice is done without detrimental impacts to the community.

In this instance, the proposed project would comply with the 12-foot side yard setback along the west elevation and a reduced east elevation side yard and front yard. As noted above, as observed from the public street, the reduced yards and height are essentially undetectable and the dwelling appears compatible with the neighborhood and other steep hillside properties.

The deviations related to the yards were previously approved pursuant to Case No. ZA 2009-2925(ZV)(ZAD)-1A). The project proponent is seeking a Zoning Administrator's Determination from Section 12.21-C,10(a)(2) to allow a 0-foot front yard setback in lieu of the required 5 feet and from Section 12.21-C.10(a) to allow a reduced east side yard of 5 feet 8 inches in lieu of the required 12 feet.

The setbacks established for the subject site are based on RE40 Zone standards including 80 feet in lot width and 40,000 square feet in size. The Project Planner Report states the subject site consists of three lots totaling 6,205 square feet, with a width of 68 feet. Therefore, the subject site is a non-conforming lot with non-conforming development rights. Also, the site is within a Fault Zone and governed by Alquist-Priolo Fault Zone. The subject plans show a fault line at the rear of the property. These factors reduce the potential building area on the site; whereby, reductions in the front and east side yard setback are reasonable. Furthermore, moving the dwelling back from the front property line would increase the building height in excess of the Hillside Ordinance. In consideration of these development limitations, the applicant's requests are reasonable where the deviations adjust Code requirements in consideration with the physical features of the property.

The granting of this deviation will enhance the built environment in the surrounding neighborhood in that it will result in development compatible and consistent with the surrounding uses in that as observed from the public domain (i.e., public street) the reduced yards are essentially undetectable and overall the dwelling appears compatible (i.e., height and setback) with the neighborhood and other steep hillside properties. Furthermore, the adjoining property to the east is a large RE40 site under single ownership where the property owner has decided to build at the lower portion of the site not adjacent to the proposed dwelling.

11. **The increase in height will result in a Building or Structure which is compatible in scale with existing Structures in the vicinity; and that the approval is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the vicinity.**

Section 12.21-C,10(d): The applicant initially proposed to construct a two-story dwelling with a two-car garage, totaling 2,890 square feet including a 400

square-foot garage. The project was reduced in size prior to the Zoning Administrator's approval. On August 16, 2011, Case No. ZA 2009-2925(ZV)(ZAD)-1A was approved by the North Valley Area Planning (NVAPC) for a 2,500 square-foot dwelling to deviate from Hillside Regulations.

The currently requested deviation in height was not necessary in Case No. ZA 2009-2925(ZV)(ZAD)-1A). The Hillside Ordinance was revised now limiting the height to 30 feet versus 36 feet as previously approved. Strict adherence to the revised Hillside Ordinance would require the dwelling to be reduced in height by 6 feet. A denial would serve no legitimate governmental purpose since there is no known safety or adverse visual impact created by the height. Moreover, the height of 36 feet was previously approved and no objection was raised by any North Valley Area Planning Commissioner.

One basis for the Zoning Administrator as the initial decision maker and NVAPC on appeal was that the project is compatible with its surrounding and provides housing which is an essential benefit for the community and residents of Los Angeles. Further, that the approved deviations are not so substantial as to create a project that appears incompatible with other dwellings in the area.

12. **The vehicular traffic associated with the Building or Structure will not create an adverse impact on Street access or circulation in the surrounding neighborhood.**

Sections 12.21-C,10(i)(2) and (3): Because the subject property is on a Substandard Hillside Limited Street, the question is if the proposed development can be accommodated based on adequacy of the existing and potential street circulation system, both within the area and in the peripheral areas? (General Plan Policy) The property is within the Hillside designated area. In order to provide a practicable method for the development of land, the topography of which creates problems in development, to permit the efficient design and use of building sites and local streets, and to secure compliance with the General Plan in certain hillside or mountainous areas of the City of Los Angeles certain portions of the city are classified as being in an "H" Hillside or Mountainous Area.

In regards to Section No. 12.21-C,10(i)(3), Sister Elsie is a "paper street" shown to traverse the subject site and travel east then northeast. Sister Elsie, as it currently exists, is not a public right-of-way along the frontage of the property. What the community uses north of the subject site consists of private property that Bureau of Engineering (BOE) does not know who has rights to use it and what rights they have.

The Bureau of Engineering believes Sister Elsie paper street must be improved to full Hillside Street Standards which poses several complications. One, the applicant is not able to provide full street width without acquiring private property across the street. Two, the improved street would likely function only as a private driveway for the subject site because the topography is too steep east of the subject site. Three, to improve the paper street to full Hillside Street standards would significantly change the building pad elevation causing excessive grading at a prohibitive cost.

For these reasons, imposing a requirement to widen the paper street to full Hillside Standards would create practical difficulty and be infeasible.

In regards to improvements to the boundary of the Hillside Area (i.e., Section No. 12.21-C,10(i)(3)), it creates practical difficulty and would be infeasible for two reasons. One reason is there are existing homes and garages along the street to the boundary of the Hillside Area making strict adherence to this section of the Hillside Ordinance infeasible. Strict adherence to the code would require the applicant to coordinate dedications and/or street improvements with other property owners along an approximately 450 feet distance. Compliance with such condition is outside the control of the applicant and could prevent him from developing his property. Rather, such requirement will occur on a case-by-case basis without a sole property owner incurring the total responsibility and cost.

The second reason is the cost of the street improvements to the boundary of the Hillside Area could exceed the value of the proposed dwelling. This could make the proposed development very expensive without a corresponding increase in property value or functional use. To require such could be legally challenged as not being "roughly proportionate".

13. **The Building or Structure will not be materially detrimental or injurious to the adjacent property or improvements.**

Refer to Finding Nos. 2, 4, 10, and 11 regarding buildings and structures.

14. **The Building or Structure will not have a materially adverse safety impact on the surrounding neighborhood.**

Refer to Finding Nos. 2, 4, 10, and 11 regarding buildings and structures.

15. **The site and/or existing improvements make strict adherence to Paragraph (i) of Subdivision 10 of Subsection C of Section 12.21 of this Code impractical or infeasible.**

Precise compliance with street standards is not needed to implement the Community Plan or to ensure land use intensity and population density will be compatible with street capacity, public service facilities and utilities, and topography. To impose the street standards would require acquiring land outside the control of the applicant (i.e., across from the subject site) and require unnecessary street improvements beyond what was needed for use of the subject site. Furthermore, is precise compliance is not needed for public health, welfare, and safety.

ADDITIONAL MANDATORY FINDINGS

16. The National Flood Insurance Program rate maps, which are a part of the Flood Hazard Management Specific Plan adopted by the City Council by Ordinance No. 172,081, have been reviewed and it has been determined that this project is located in Zone C, areas of minimal flooding.

17. On March 11, 2013, the City Planning Department Environmental Staff Advisory Committee (ESAC) issued an Addendum (Reconsideration) of the previously issued Mitigated Negative Declaration (ENV 2009-2926 -MND). The project was reviewed and compared to the previously submitted project and determined the current project had no substantial change in the physical size, massing, height, location, or use, thus no new impacts were identified and no new mitigation measures are proposed. On the basis of the whole of the record before the lead agency including any comments received, the lead agency finds that with imposition of the mitigation measures described in the MND (and identified in this determination), there is no substantial evidence that the proposed project will have a significant effect on the environment. I hereby adopt that action. This Mitigated Negative Declaration reflects the lead agency's independent judgment and analysis. The records upon which this decision is based are with the Planning Department in Room 351, 6262 Van Nuys Boulevard.



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RNB:lmc

cc: Councilmember Felipe Fuentes
Seventh District
Adjoining Property Owners