Application:

ORIGINAL

APPEAL APPLICATION

This application is to be used for any appeals authorized by the Los Angeles Municipal Code (LAMC) for discretionary actions administered by the Department of City Planning.

1. APPELLANT BODY/CASE INFORMATION

Appellant Body:

Area Planning Commission | City Planning Commission | (City Council) | Director of Planning

Regarding Case Number: CPC-2014-3706-VZC-HD-ZAA-SPR

Project Address: 1523 - 1541 Wilcox Avenue

Final Date to Appeal: November 3, 2015

Type of Appeal:

- Appeal by Applicant
- X Appeal by a person, other than the applicant, claiming to be aggrieved
- Appeal from a determination made by the Department of Building and Safety

2. APPELLANT INFORMATION

Appellant's name (print): David Carrera

Company:

Mailing Address: 6530 Leland Way

City: Los Angeles State: CA Zip: 90028

Telephone: 323-646-2047 E-mail: davidcarrera@prodigy.net

- Is the appeal being filed on your behalf or on behalf of another party, organization or company?

  (Self) Other:

- Is the appeal being filed to support the original applicant's position? Yes (No)

3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable):

Company:

Mailing Address:

City: State: Zip:

Telephone: E-mail:

4. JUSTIFICATION/REASON FOR APPEAL

Is the entire decision, or only parts of it being appealed? (Entire) Part

Are specific conditions of approval being appealed? (Yes) No

If Yes, list the condition number(s) here: See attached

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- The reason for the appeal
- How you are aggrieved by the decision
- Specifically the points at issue
- Why you believe the decision-maker erred or abused their discretion

5. APPLICANT'S AFFIDAVIT

I certify that the statements contained in this application are complete and true:

Appellant Signature: _____ Date: 10-31-15

6. FILING REQUIREMENTS/ADDITIONAL INFORMATION

- Eight (8) sets of the following documents are required for each appeal filed (1 original and 7 duplicates):
  - Appeal Application (form CP-7769)
  - Justification/Reason for Appeal
  - Copies of Original Determination Letter
- A Filing Fee must be paid at the time of filing the appeal per LAMC Section 19.01 B.
  - Original applicants must provide a copy of the original application receipt(s) (required to calculate their 85% appeal filing fee).
- Original Applicants must pay mailing fees to BTC and submit a copy of receipt.
- Appellants filing an appeal from a determination made by the Department of Building and Safety per LAMC 12.26 K are considered original applicants and must provide noticing per LAMC 12.26 K.7.
- A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.
- Appeals of Density Bonus cases can only be filed by adjacent owners or tenants (must have documentation).
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (ZA, APC, CPC, etc.) makes a determination for a project that is not further appealable. (CA Public Resources Code ' 21151 (c)). CEQA Section 21151 (c) appeals must be filed within the next 5 meeting days of the City Council.

This Section for City Planning Staff Use Only		
Base Fee: $89.00	Reviewed & Accepted by (DSC Planner): C. van der Zweep	Date: 11/2/2015
Receipt No: 26599	Deemed Complete by (Project Planner):	Date:
Determination authority notified	Original receipt and BTC receipt (if original applicant)	

The City Planning Commission abused its discretion in modifying the Planning Department's recommendation to limit the hours of operation for the rooftop from 12 AM to 1 AM

The condition that the rooftop should close at 12 AM was imposed by the Planning Dept.in response to community input, Council District 13 input, and I'm assuming the recently established precedent in the immediate area. DIR-2014-4657-SPR and ZA 2014-3016(CUB)(ZV), located at 1523-1529 Cahuenga Boulevard and 6500 Selma Avenue, respectively, both limited hotel rooftop activities to 12 AM.

Therefore, the City Council should reverse the Commission's approval to allow the use of the rooftop until 1 AM and instead limit the use of the rooftop until 12 AM.

The City Planning Commission erred and abused its discretion in adopting the MND.

Noise
CEQA requires that an EIR be prepared when a fair argument can be made the a project may have a significant may occur. The MND states that the project would have significant construction noise impacts to abutting residential uses (Pages 4-94 to 4-100). The MND then proposes 7 mitigation measures to reduce the project impacts to less than significant.

The letter, submitted to the record by Acentech, a multi-disciplinary acoustics, audiovisual, and vibration consulting firm, clearly argues that the proposed mitigation measures would not reduce project impacts to less than significant levels. The letter highlights that the MND acknowledges that, during construction, exterior noise levels at the abutting residential uses would be equivalent to being within 100 feet of a jet engine and interior noise levels would be equivalent to a gas-powered lawnmower.

As argued in the letter, the MND relies on several unsubstantiated facts and that the proposed mitigation measures are vague and must be further developed and evaluated to ensure that such measures would in fact reduce impacts to less than significant. Furthermore, the courts have found that compliance with a noise ordinance does not foreclose a fair argument of significant noise impacts under CEQA, thus reliance on such a mitigation measure would not trump a fair argument.

A fair argument has been made that the proposed project and associated mitigation measures would still result in significant noise impacts to abutting residential properties. Had the applicant chosen to prepare an EIR, such a fair argument may not have standing, however the courts have found that in the context of an MND, an EIR is required if fair argument exists that a project may have a significant effect on the environment. Such an argument has been made in this case and the expert noise

analysis by Acentech submitted into the record was never addressed or responded to by the City Planning Dept. or the CPC. The Acentech report was ignored completely.

Piecemealing
The original MND, published on March 5, 2015, included within the project description a Zone Variance to permit Outdoor Dining Areas above the ground floor. As demonstrated below, the project is not permitted, by-right, Outdoor Dining Areas above the ground floor for several reasons, but the most clear being that the Zoning Administrator's Interpretation, ZAI 1808, (attached) that the Planning Department is relying on does not apply to projects within the C4 Zone, which this project is located in.

The Planning Commission approved an Outdoor Dining Area above the ground floor (an err and abuse of its discretion as discussed below) using an MND which did not disclose that the project would be required to file for a Zone Variance, as it had in its original publication.

If the applicant does intend to use the rooftop as an Outdoor Dining Area, which would be approved, in part, through the approval of the Site Plan Review (i.e. to be indicated on the Site Plan Review plans), it must be disclosed as part of the MND and must be applied for in conjunction with the Site Plan Review application (discussed below).

The City Planning Commission erred and abused its discretion when it approved the Site Plan Review with a dedication based on the new Mobility Plan.

The applicant requested a Vesting Zone Change. The Code says "a vesting application shall confer a vested right to proceed with a development in substantial compliance with the... officially adopted policies of the City of Los Angeles in force on the date the application is deemed complete."

At the time the application was deemed complete, the Transportation Element and the street designations in place required a 10- and 15-foot dedication. The applicant never formally requested to modify the vested rights to reflect the new Mobility Plan.

Therefore, in approving the Site Plan Review without the required 10- and 15-foot dedication conflicts with the Vesting Zone Change application which conferred a vested right to proceed in substantial compliance with the officially adopted policies, and thus the project is not in substantial conformance with the purposes, intent and provisions of the General Plan (i.e. 1999 Transportation Element).

If the applicant seeks to amend those rights conferred by Vesting Zone Change application, that fact must be considered by the Planning Commission. Even if the applicant seeks to amend these rights through the City Council process, the approval of the Site Plan Review is in err and an abuse of the Planning Commission's discretion.

The applicant cannot use this appeal to correct an error in his own application. My appeal contends that the Planning Commission erred and abused its discretion when it approved a project in conflict with the street dedications required of the Vesting Zone

Change. To amend the requirements that should have been considered by the Planning Commission (as a matter of due process and full public disclosure) without affording the Planning Department, the Planning Commission and the public an opportunity to consider the request is a fatal flaw that can only be remedied through a new Site Plan Review application, or at a minimum, remanding the project back to the Planning Commission for their review and action.

The City Planning Commission erred and abused its discretion when it approved the Site Plan Review with an Outdoor Eating Area above the ground floor.

Zone Variance Required
Section 12.03 of the LAMC defines an Outdoor Eating Area as "a covered or uncovered portion of a ground floor restaurant which is not completely enclosed within the building; is used primarily for the consumption of food and/or drinks by the patrons of the restaurant; and is not larger than 50 percent of the dining area of the ground floor restaurant."

I am aware of a 1961 Zoning Administrator's Interpretation (ZAI 1808) which is relied upon by the Planning Dept. and the Department of Building and Safety in approving Outdoor Dining Areas above the ground floor, but this application is flawed and an abuse of their authority. In applying that flawed application of the 1961 ZAI, the Planning Commission has committed the same err and abuse of discretion.

First, the ZAI only applies to C2 Zone and less restrictive zones. As established by the Code, the C4 Zone (the zone in which this project is located) is more restrictive than the C2 Zone therefore ZAI 1808 does not apply. Second, the definition of Outdoor Eating Areas was established in 1990 by legislation after the 1961 ZAI 1808 and therefore supersedes any application of ZAI 1808 when interpreting any rules and regulations applicable to Outdoor Eating Areas. Third, ZAI 1808 never considered Outdoor Eating Areas above the ground floor. Lastly, ZAI 1808 is very clear in allowing outdoor dining areas that are "incidental" to the main "Restaurant, Café, Eating Establishment or Refreshment Facility". In this case before you, the outdoor area approved by the CPC is not "incidental" to the enclosed restaurant area. Quite the opposite, the outdoor area (5000 sq. ft.) is superior to the enclosed portion of the rooftop restaurant (2000 sq. ft.).

To use ZAI 1808 (which does not apply to the C4 Zone and which never considered Outdoor Eating Areas above the ground floor) in establishing rules and regulations which conflict with the adopted legislation of the City Council is an err and abuse of discretion. Regardless of the Planning Dept. and LADBS's practice, the Planning Commission cannot rely on that practice if it can be demonstrated that such a practice is contrary to law.

Moreover, the City's approval of process for Outdoor Eating Areas in general demonstrates ambiguity and inconsistency.

The following are Zone Variances the City has recently granted to allow Outdoor Eating Areas above the ground floor.

CPC-2008-3440-ZC-CUB-CU-ZV-DA-HD (2013) - 1720-1770 Vine Street
CPC-2009-3416-TDR-CUB-CU-CUW-ZV-SN-DA-ZAD-SPR-GB (2010) - 695-699 Figueroa Street
CPC-2007-3931-ZC-HD-CUB-CU-ZV-SPR (2008) - 6415 Selma Avenue
ZA-2001-1210-CUB-ZV (2001) - 550 Flower Street

There are numerous other instances where a project included a Zone Variance for Outdoor Eating Areas above the ground floor, including this project.

If the City is to formally change the rules and regulations relating to Outdoor Eating Areas above the ground floor, it must do so through a Code Amendment or through a new ZAI that would inherently consider the 1990 legislation that defined Outdoor Eating Areas.

The City Council, if it does not want to do that on a citywide policy, should at least require that this project obtain a Zone Variance in order to permit the consumption of food and/or drinks by the patrons of the proposed rooftop restaurant/bar.

Zone Variance Required to be Filed per Multiple Approvals
As demonstrated above, a Zone Variance is required in order to permit an Outdoor Dining Area above the ground floor. As required by the Multiple Approvals Ordinance, "applicants shall file applications at the same time for all approvals reasonably related and necessary to complete the project."

If the applicant intends to have an Outdoor Dining Area above the ground floor, as it appears based on the Planning Commission's action, they must include the Zone Variance as part of the entitlements sought in conjunction with the Site Plan Review application. Site Plan Review reviews and approves, in part, the proposed operations and the proposed location of those operations of a given project. In this instance, the Site Plan Review approved a roof top deck and restaurant. It can been assumed that the applicant would intend to use the rooftop deck as an Outdoor Dining Area for the restaurant and thus a Zone Variance would be reasonably related and necessary to complete the project.

If the applicant does not intend to have an Outdoor Dining Area above the ground floor, then imposing a condition prohibiting an Outdoor Dining Area on the rooftop should be agreeable to the applicant.

CITY OF LOS ANGELES
CALIFORNIA

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CHIEF ZONING ADMINISTRATOR

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DEPARTMENT OF
CITY PLANNING

OFFICE OF
ZONING ADMINISTRATION

361 CITY HALL
LOS ANGELES 12
MADISON 4-5211

August 18, 1961

Department of Building and Safety
Room 212, City Hall

Walter C. Peterson
City Clerk
Room 195, City Hall

Re: Z. A. I. CASE NO. 1808
Dining Terraces or Outdoor Patios for Serving and Consuming Food and Refreshments in connection with Restaurants, Cafes, etc. C2 and Less Restrictive Zones

Greetings:

In the matter of the verbal request made by officials of the Department of Building and Safety and by several interested restaurant operators for an interpretation of the zoning regulations as they apply to the provision of dining terraces or outdoor eating patios in connection with restaurants, cafes, and other eating and refreshment establishments located in the C2 Zone, please be advised that the Chief Zoning Administrator has made the following interpretation and ruling that in the C2 or less restrictive zones it would be permissible to have dining terraces or outdoor eating patios for the serving and consuming of food and refreshment in connection with various eating and refreshment establishments, provided all other activities including any entertainment and dancing, other than incidental storage, are conducted wholly within a completely enclosed building.

INTERPRETATION AND RULING

There is some ambiguity, contradiction, and conflict between some of the provisions of the Comprehensive Zoning Ordinance as they concern activities of a restaurant, cafe, or other eating establishment when located in the C2 Zone, particularly as to the extent which food and refreshment may be served outside of buildings. No such conflict exists with respect to such establishments when located in the more restrictive C1 Zone since the limitations which apply to all commercial uses in said zone very clearly provide that "all activities are conducted wholly within an enclosed building.". The C2 Zone, however, is somewhat ambiguous and open to interpretation on this particular point. Said C2 Zone in addition to permitting all C1 Zone uses subject to the limitation

that "all activities other than incidental storage shall be conducted wholly within a completely enclosed building" also provides in paragraph 14 of Section 12.14-A that there may be drive-in businesses which among other things includes refreshment stands, restaurants, and the like. In any such drive-in restaurant or refreshment stand persons are served food and refreshment while sitting in their automobiles. It is common practice in connection with many restaurants, eating establishments, and refreshment stands, particularly during the summer months in our salubrious climate, to provide tables either on dining terraces, outdoors, or under shade-covered patios where persons may be served their food and drink. Such activity would be little different than the serving of food and refreshment to persons seated in their cars in a drive-in restaurant facility and would be no more objectionable to the public welfare than some of the other open type of uses permitted in the C2 Zone, provided any entertainment and dancing is conducted wholly within a completely enclosed portion of the building. Other provisions of the C2 Zone clearly indicate the intent that all dancing and entertainment type of facilities other than the modern drive-in motion picture theater, be conducted within completely enclosed buildings. It is apparent that in most instances the conduct of open-air entertainment or dancing in connection with restaurant and cafe facilities would be a source of annoyance to occupants of adjacent premises, particularly residential and hotel developments.

Therefore, by virtue of authority contained in Section 12.21-A, 2 of the Municipal Code, it is hereby determined that restaurants, cafes, eating establishments, or refreshment stands with incidental dining terraces or outdoor eating patios for serving and consuming of food and refreshments would be similar to and no more objectionable than other uses permitted in the C2 Zone, provided all other activities including any entertainment and dancing, other than incidental storage, are conducted wholly within a completely enclosed building. Furthermore, the List of Uses Permitted in Various Zones adopted under Z. A. I. Case No. 1350 is amended by inserting in its proper alphabetical order among the uses permitted in the C2 Zone, the following:

> "Restaurant, Cafe, Eating Establishment or Refreshment Facility with incidental dining terrace or outdoor eating patio with tables for serving and consuming food or refreshments, provided all other activities including any entertainment and dancing, other than incidental storage, are conducted wholly within a completely enclosed building."

Very truly yours,

HUBER E. SMUTZ
Chief Zoning Administrator

HES:at

cc: Associate Zoning Administrators
Branch Offices, Planning
William Dove - c/o Tahitian Restaurant