ORIGINAL

Application:

# 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-ZAA-SPR

Project Address: 1523-1541 Wilcox Avenue

Final Date to Appeal: 11/03/2015

Type of Appeal:
☐ Appeal by Applicant
☑ 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): Stephan Nourmand

Company: Sunset Landmark Investment. LLC

Mailing Address: 6525 SUNSET BLVD STE 100

City: Los Angeles State: CA Zip: 90028

Telephone: (323) 460-6360 E-mail: snourmand@nourmand.com

- 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): Jayesh Patel

Company: Pumilia, Patel & Adamec LLP

Mailing Address: 600 Wilshire Blvd., Suite 1450

City: Los Angeles State: CA Zip: 90017

Telephone: (213) 622-3006 E-mail: jpatel@pumilia.com

## 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: _____

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

- The reason for the appeal
- Specifically the points at issue
- How you are aggrieved by the decision
- 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: 11-3-2015

## 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: 11/3/2015 |
| Receipt No: 26431 | Deemed Complete by (Project Planner): | Date: |
| ☐ Determination authority notified | ☐ Original receipt and BTC receipt (if original applicant) | |

**ATTACHMENT**
**FORM CP-7769**

CASE NO.: CPC-2012-3436-DB-SPR
CEQA: ENV-2012-3437-MND

Location: 1523-1541 N. Wilcox Avenue
Council District: 13- O'Farrell
Plan Area: Hollywood
Requests: Vesting Zone Change, Height District, Site Plan Review, Zoning Administrator's Adjustment

Applicant: 1541 Wilcox Hotel, LLC
Representative: Michael Gonzalez Law Group

Appellant: Sunset Landmark Investments. LLC

Representative: Jayesh Patel, Pumilia, Patel & Adamec LLP

## I. REASON FOR APPEAL

The Los Angeles City Planning Commission ("CPC") took action on the above-referenced application ("Application") at its meeting held on September 10, 2015, as set forth in the attached copy of action with a Determination Mailing date of October 19, 2015 (the "Determination"). Appellant is the owner of contiguous property commonly known as the Hollywood Athletic Club and located at 6525 Sunset Blvd, Los Angeles, CA 90028 and is directly impacted by the Determination. The project is the construction of a new 12-story plus penthouse hotel with ancillary uses (the "Project").

Appellant appeals the entire Determination in this case on the grounds that the CPC misinterpreted, misapplied and/or ignored relevant laws and facts, erred legally, and abused its discretion in granting the Application to construct an inordinately large, unwarranted, unneeded and unlawful Hotel facility off of a Major Highway, in the midst of a residential community.

As set forth below, the Project exceeds the 2:1 D limitation in the Hollywood Community Plan (as well as the 3:1 D limitation in the now-rescinded Hollywood Community Plan Update) without establishing any significant justification for an increase to a FAR of 5.5:1 and without adequately addressing the impact on the surrounding properties.

In addition, as stated below the Determination was not made in compliance with law.

## II. APPELLANT IS AGGRIEVED BY THE DECISION

Appellant's property is a complex of five parcels located at 6525 Sunset Blvd, and 1520, 1522, 1530 and 1540 Schrader Blvd. Appellant's property consists of 5 parcels.

The parcel at 6525 Sunset Blvd. is home to the Hollywood Athletic Club. The Hollywood Athletic Club was founded in 1924 by Charlie Chaplin, Rudolph Valentino and Cecil B. DeMille. Meyer & Holler, the architectural firm famous for both Grauman's Egyptian and Chinese Theaters, were commissioned for the Project. The tower was the tallest structure in Los Angeles when it

opened on New Years Eve in 1924. More information on the historic significance of the Hollywood Athletic Club can be found at www.thehollywoodathleticclub.com.

The remaining parcels consist of commercial office space and parking lots. See the parcel map and aerial depiction attached hereto as Exhibit A.

The Project is detrimental, and causes irreparable harm, to the Appellant's property in the following ways:

It interferes with the aesthetic of the Appellant's property by among other things detracting from the height differential that is a significant characteristic of the Hollywood Athletic Club building and other buildings on Sunset Blvd.; by causing shadows to be cast over the Appellant's property and the neighboring properties; by increasing noise; and by increasing traffic and congestion.

There is no demonstrable need for this specific facility at this specific location, the construction of which will adversely affect neighboring properties and the community in general, and, without good and compelling reason, destroy the lifestyle and quite enjoyment of the existing, surrounding property owners.

## III. POINTS AT ISSUE

Appellant contends that the Determination was not in compliance with law. The Project has not obtained approval of the CRA/LA, a designated local authority (successor to the Community Redevelopment Agency of the City of Los Angeles). LAMC 16.05- D 3 exempts site plan review when a development is located within the boundaries of an adopted redevelopment project area and instead subjects it to an owner participation agreement and public hearing conducted in accordance with the CRA's adopted policies and procedure. The Hollywood Redevelopment Plan requires approval of the CRA/LA for individual development plans within the Regional Center Commercial designation that exceed a 4.5:1 FAR. Section 506.2.3 of the Plan provides for Agency review and approval of plans, compliance with all conditions applicable to development in excess of 4.5:1 and the provisions of adequate assurances and considerations for the purpose of effectuating the objectives of the Redevelopment Plan.

In addition, the Determination by the CPC repeatedly refers to the new "D" Development Limitation and repeatedly states that a height district change from a 3:1 FAR to a maximum 5.5:1 FAR may be obtained with the approval of the City Planning Commission. This is incorrect; the "D" limitation under the Hollywood Community Plan of 1988 permits a floor area ratio on the site of 2:1. The now-rescinded Hollywood Community Plan Update provided for a 3:1 FAR. Thus, the application has not been tested under the correct legal standard and the recommendation of the CPC is arbitrary and capricious. The change is not from a 3:1 FAR to a 5.4:1 FAR (maximum 5.5:1) as the determination states. It is a change from a 2:1 FAR to a 5.4:1 FAR (maximum 5.5:1) and the request should have been considered subject to that standard. Moreover, the rescinded plan contained a 75 foot height limit and the Project could only achieve its proposed height by the conditional use process, which has not been employed.

The CPC approved the Application despite the Applicant's failure to meet the requirements set forth in LAMC Sections 12.11, 12.32 and 16.05, all of which must be evidentially and legally supported to sustain the entitlement requested. The Commission abused its discretion by:

1. Approving a Vesting Zone and Height District Change from C4-2D to (T)(Q)C4-2D with a "D" Limitation to allow a maximum FAR of up to 5.5 to 1.

2. Approving a Zoning Administrator's Adjustment to permit zero-foot side yard setbacks in lieu of the 14 feet required by Section 12.11-C,2 of the L.A.M.C.

3. Approving a site plan review for a development Project which creates, or results in an increase of, 50 or more guest rooms.

Specifically:

A. The Project is not in conformance with the General Plan nor the Hollywood Community Plan.

B. The zone change is not in conformance with LAMC Sections 12.32 and 16.05 in that public necessity, convenience, general welfare and good practices.

C. The Zoning Administrator erred in finding that the Applicant has met All of the requirements of LAMC 12.11 and 16.05.

D. The Project's size is incompatible with the neighborhood and will adversely affect or degrade adjacent properties and the surrounding neighborhood.

E. The Project is not in conformance with the purpose, intent and provisions of the General Plan, the Hollywood Community Plan or the Hollywood Redevelopment Plan.

F. The Project's arrangement of buildings and structures, et al., is not compatible with existing and future development on adjacent properties and neighboring properties.

G. The Project does not provide recreational and service amenities that improve habitability for its residents and minimize impact on neighboring properties.

## IV. THE PLANNING COMMISSION ABUSED ITS DISCRETION

In order to grant a variance, the Zoning Administrator **must find all of the following**:

> "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;

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;

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;

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; and

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

A variance shall not be used to grant a special privilege or to permit a use substantially inconsistent with the limitations upon other properties in the same zone and vicinity. The Zoning Administrator may deny a variance if the conditions creating the need for the variance were self-imposed."

*See* LAMC 12.27-D.

The findings with respect to the foregoing requirements are in error. For the reasons set forth below, the correct determinations should have been as follows:

1. The strict application of the provisions of the zoning ordinance would NOT result in practical difficulties or unnecessary hardships inconsistent with the general purposes and intent of the zoning regulations.

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

3. The variance is NOT necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other property in the same zone and vicinity but which, because of the special circumstances and practical difficulties or unnecessary hardships, is denied to the property in question;

4. The granting of the variance WILL BE materially detrimental to the public welfare, or injurious to the property or improvements in the same zone or vicinity in which the property is located.

5. The granting of the variance WILL adversely affect elements of the General Plan.

6. The granting of the variance will operate to grant a special privilege.

7. The conditions creating the need for a variance were self-imposed.

**A. The Process of Approval Is Unlawful.**

LAMC 16.05 D 3 provides that:

"3. Any development project located within the boundaries of an adopted redevelopment project area shall be exempt from site plan review when:

(a) The Community Redevelopment Agency of the City of Los Angeles (CRA) and the City Council have approved an owner participation agreement, a disposition and development agreement, a loan agreement, a cooperation agreement or other discretionary agreement for the development project; and

(b) The project has been considered during a public hearing conducted in accordance with the CRA's adopted policies and procedures for public hearings.

(c) The residential (including Apartment Hotel or mixed-use) building is within the Greater Downtown Housing Incentive Area and has been determined by the Community Redevelopment Agency (CRA) to comply with the Urban Design Standards and Guidelines, prepared by the CRA and approved by the City Planning Commission when the City Planning Commission finds that the guidelines are consistent with the applicable community plans. "

The Determination has unlawfully bypassed the appropriate approval process.

**B. The Scope of the Project makes the Variance Inappropriate**

The Project is located on Wilcox Avenue between Sunset Boulevard and Selma Avenue. Wilcox Avenue is not a Major Highway. Selma Avenue to the north is a collector road.

The Determination states that a 5.4:1 FAR is compatible with existing and future surrounding developments, and lists 5 other developments within 1,000 feet of the Project. One of the developments listed is Appellant's property with a FAR of 2.4. Of the so-called comparable developments, three are on Sunset Boulevard, a major highway. The two others are hotel projects under construction on Selma. At best, only the developments on Selma should be considered. Those developments have floor areas of 31,885 and 79,409, respectively. The Project has a total floor area of 109,470, much larger than the other developments which are not located on a Major Highway. Thus, the Project is not comparable to similar developments on similar streets.

The Project will generate significant automobile traffic in and around the surrounding environs and, notwithstanding the claims of the developer, it is not designed to encourage foot traffic. The Project is planned to have 144 parking spaces in a subterranean garage. Contrast this with the hotel at 6500 Selma Avenue, which only has valet parking.

Given the subterranean garage, and the intention to have a restaurant, bar and banquet facility, it is clear that the Project is intended to be a destination reached by automobiles. In the absence of significant street widening, significant sidewalk widening and other mitigation efforts, this is an inappropriate location for a project of this size.

There are no findings that establish the necessity of a Project of this size on the property in order to make it viable. The variance will have a long term detrimental effect on the neighborhood because it will be used by other developers to justify similarly-sized projects in the future.

**B. Impact On Surrounding Properties Has Not Been Adequately Considered**

The Project is completely out of character for the neighborhood. The northern boundary line abuts the two-story Citizen-News building. The southern boundary line abuts a multifamily apartment building. The western boundary line abuts an existing one story low-income and rent-controlled residential property. Limited consideration has been given in the Determination to the impact on architectural appearance of the Citizen-News building, but no real consideration was given to the residential properties. The residential property is going to be significantly affected by the shadow of the hotel and will be severely impacted by the noise and traffic. It is self-evident that opening the rooftop pool deck to the public is going to cause noise issues for the nearby residents and property owners, including Appellant, but most particularly for the residents within 500 feet of the property.

The Project is subject to the Hollywood Community Plan of 1988. As stated in the Determination, objective 1 of the Plan includes the goal of perpetuating Hollywood's "image as the international center of the motion picture industry." Objective 7 of the Plan is "To encourage the preservation of open space consistent with property rights when privately owned and to promote the preservation of views, natural character and topography of mountainous parts of the Community for the enjoyment of both local residents and persons throughout the Los Angeles region.

There is absolutely no showing as to how objective 1 is achieved by the Project. In fact, the Project directly conflicts with objective 7 of the plan in a manner that causes irreparable harm to the Appellant's property and the residential neighbors.

**C. The Need for Hotel Rooms Is Not Adequately Addressed**

The Determination concludes that the Project advances the public necessity, convenience and welfare. As to necessity the Determination cites a 2013 report by the Chief Legislative Analyst (Council File No. 13-0991) for the proposition that there is a high demand for hotel rooms. However, there is absolutely no discussion of the number of new hotel rooms which were added since the time period covered by the report nor how many are currently under development. Numerous hotel projects have opened or commenced development since the cited report was issued rendering its conclusions arbitrary unless updated for current conditions.

**D. The Determination Ignores the Hollywood Community Plan**

The Determination on the whole ignores the fact that specific requirements must be met first in order to support the requested entitlement. Instead, the Determination starts from the position that the entitlement is deserved, then either contorts or ignores facts, law and the applicable statutes to give the Applicant what it, and no one else, wants. This constitutes both legal error and abuse of discretion on the part of the zoning administrator and the Appellant urges that the Determination be overturned.

The Determination erred finding that the Project is in substantial conformance with the purpose, intent, and provisions of the Hollywood Community Plan. The Determination quotes from the Applicant's documents on this point and completely disregards the actual law and standards. The Determination does not even take real notice of the effective Community Plan. The burden is on the applicant to establish the need to vary from the statute and Community Plan. The Determination selectively quotes from the few provisions of the Community Plan. The quoted provisions fail to support the argument, and the Determination omits mention of the many other Community Plan provisions that the subject proposal directly contravenes. The project simply is incompatible with the neighborhood and must be denied on that basis alone. The Determination errs in failing to find sufficient recreational and service amenities will be provided to residents. LAMC Section 16.05 F (3). The conditions imposed by the Determination do not benefit the community at large nor the immediate neighbors.

In short, the only factors considered in the determination would support any project that promises to have jobs and amenities available to the public. That describes every project. There is a higher standard to justify a variance in entitlements.

### E. The Zoning Change Confers a Special Benefit

The Applicant's property can be put to "effective use" without the variance. California law is unequivocal: A variance is not intended to be used for the purposes of convenience or to increase the value of a property. "If a property can be put to effective use consistent with its existing zoning, the fact that a variance would make the property more valuable or increase the income of the owner is immaterial." *Hamilton v. Board of Supervisors*, 269 Cal. App. 2d 64, 67 (1969). The issue of hardship was addressed in *Stolman v. City of Los Angeles*, 269 Cal App. 2d 64, 66 (1969). Applicant operated a gas station in Santa Monica Canyon where it was zoned for single-family uses only. The gas station had been in operation since 1925 so it was grandfathered as a legal nonconforming use. Applicant's request for a variance allowing the auto detailing services was approved but overturned. The variance approval was overturned based on a lack of hardship justifying the variance. The key issue was whether the car-detailing operation was either so crucial that the property owner would "face dire financial hardship" without the variance, or the owner sought to provide additional services simply to make the gas station more profitable. Just as in this situation, *Stolman* found the evidence in the record was insufficient to support a finding of financial hardship. Some property owners have attempted to create a hardship to justify a variance, but courts have roundly condemned this practice. *Broadway Laguna Homeowners Ass'n v. Board of Permit Appeals*, 66 Cal. 2d 767, 778 (1967): *see also* L.A. Municipal Code Section 12.27 (D) ("The Zoning Administrator may deny a variance if the conditions creating the need for the variance were self-imposed."). The Determination fails to acknowledge or recognize that other hotel facilities compatible with the community do exist. Moreover, there is nothing in the LAMC or Community Plan that states that this Applicant is automatically entitled merely by application to special permission to build an out-sized facility in this specific location. To the contrary, the LAMC and Community Plan take great pains in attempting to assure that any facility approved under its auspices is wholly compatible and non-intrusive to the surrounding community, which the proposed facility quite clearly is not. There is no evidence in the record to illustrate the need

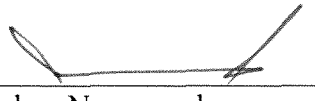
for this Project. The LAMC and Community Plan do not afford the Applicant the right to build a huge, unnecessary, incompatible, hotel on a secondary highway in the middle of a mixed-use, residential community. All property owners are subject to the same restrictions, and greed is an insufficient basis for allowing one property owner to ride roughshod over community interest and the law. To find otherwise would contravene the "general purpose and intent of the zoning regulations" which is to ensure equal treatment under the law for all members of a community for the overall good of that community, and not to single out individual property owners for unwarranted favored treatment.

In sum, the Applicant's only impact or hardship if the application is denied will be the inability to build the proposed facility. This a totally self-imposed hardship and as such is legally insufficient to support any special entitlement. The mere inability to do what it wants is insufficient as a matter of law to support a finding of unnecessary hardship that would entitle the Applicant to relief from existing zoning restrictions, and the CPC erred in failing to deny the Application outright on this basis alone.

## V. CONCLUSION

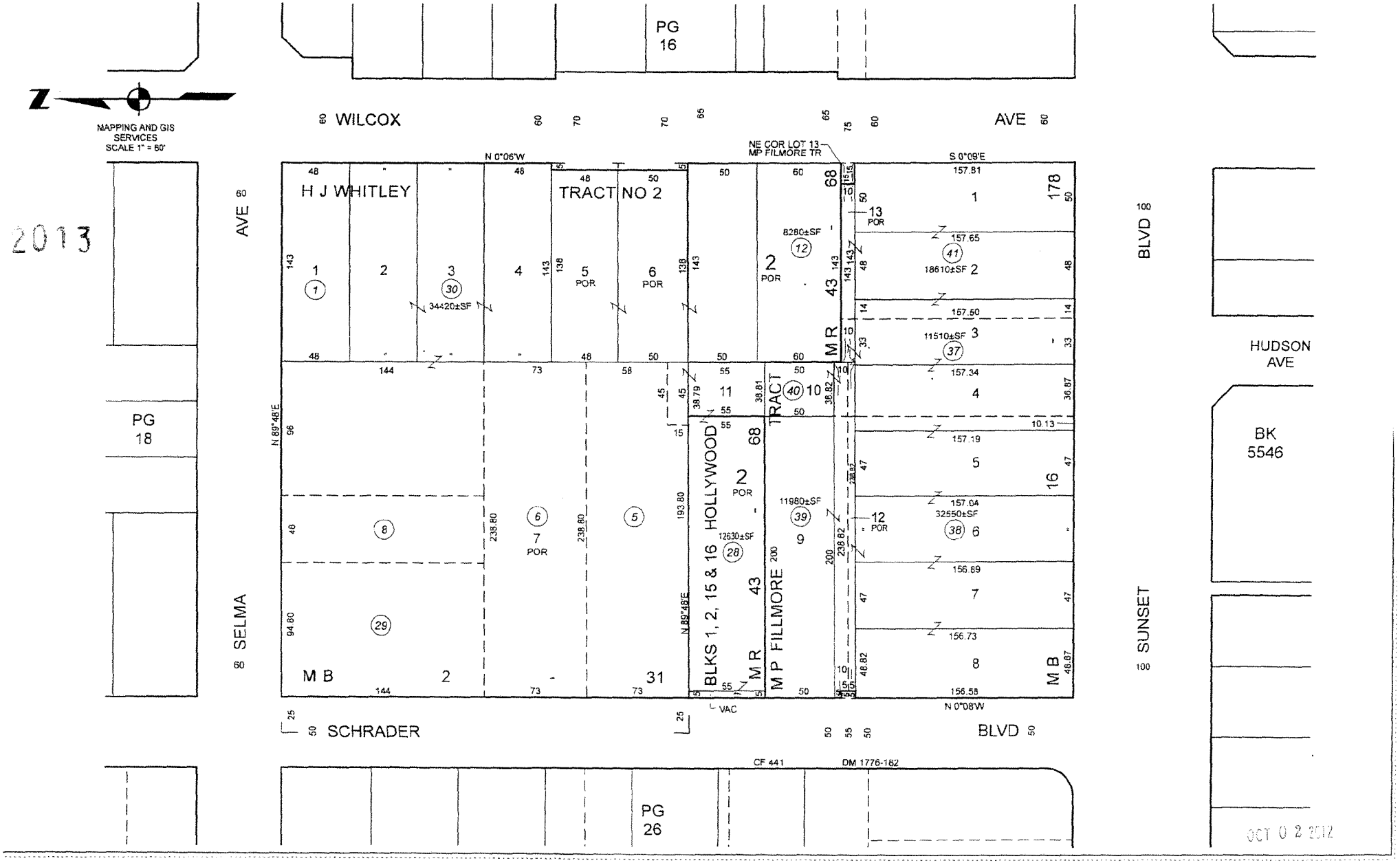
The Applicant has not established grounds for the special privilege accorded by the Determination. Moreover, the Determination is not in accordance with law. Accordingly, we urge the Commission to overrule the Determination in this case for this and all of the other reasons stated above.

APPELLANT:



Stephan Nourmand
Sunset Landmark Investment, LLC

**EXHIBIT A**

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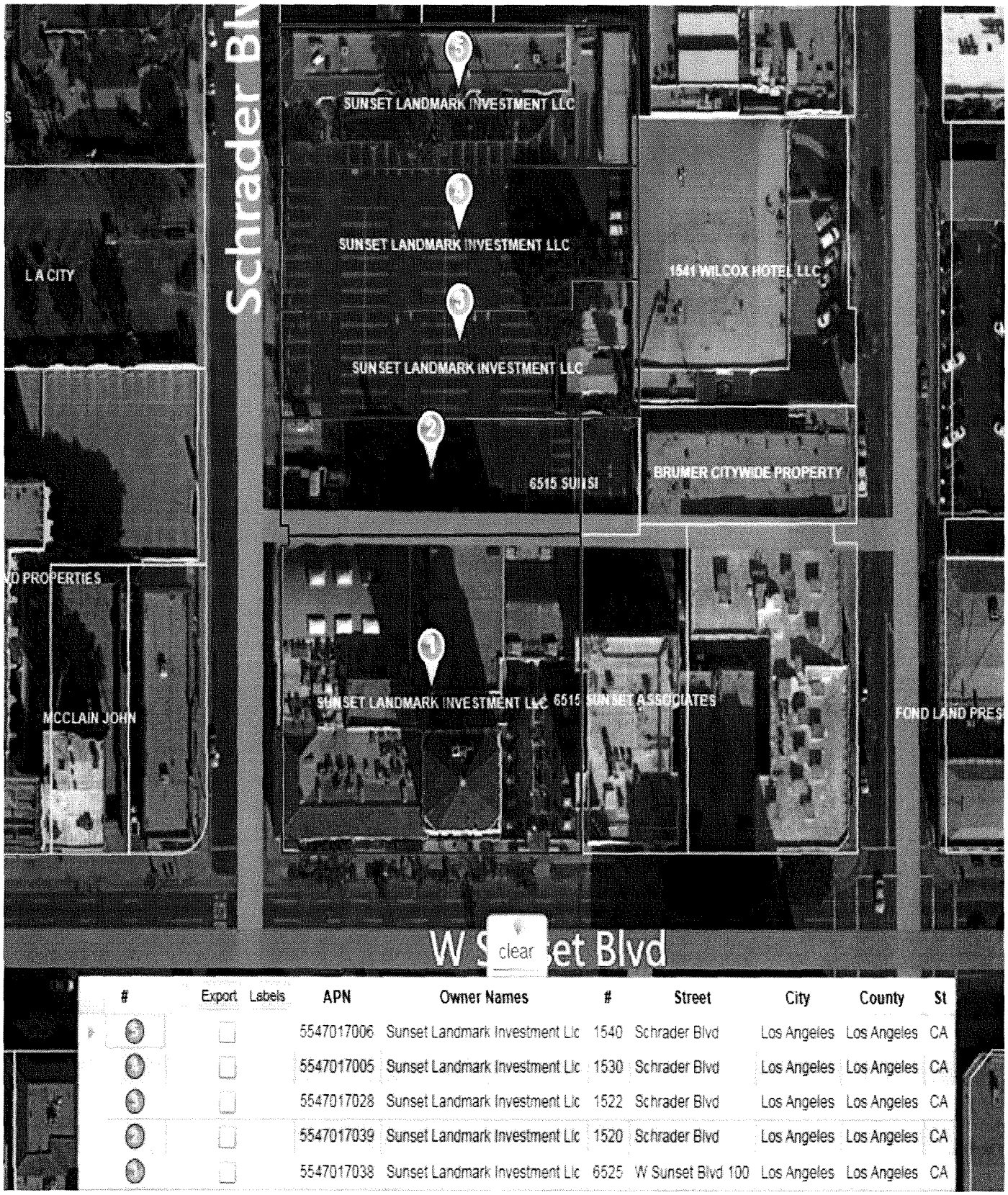


| # | Export | Labels | APN | Owner Names | # | Street | City | County | St |
|---|---|---|---|---|---|---|---|---|---|
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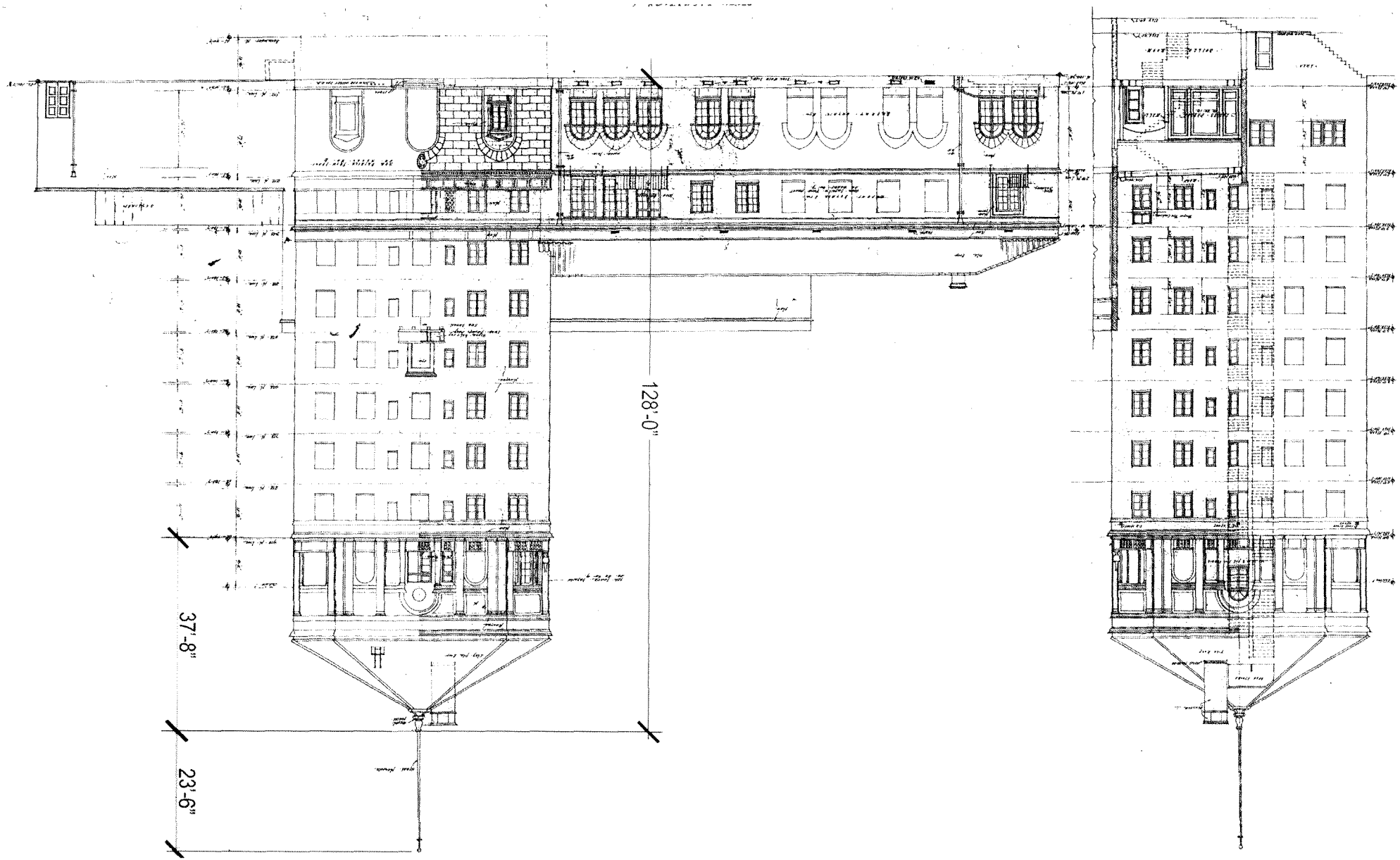
| 5 | ☐ | | 5547017005 | Sunset Landmark Investment Llc | 1530 | Schrader Blvd | Los Angeles | Los Angeles | CA |
| 4 | ☐ | | 5547017028 | Sunset Landmark Investment Llc | 1522 | Schrader Blvd | Los Angeles | Los Angeles | CA |
| 6 | ☐ | | 5547017039 | Sunset Landmark Investment Llc | 1520 | Schrader Blvd | Los Angeles | Los Angeles | CA |
| 1 | ☐ | | 5547017038 | Sunset Landmark Investment Llc | 6525 | W Sunset Blvd 100 | Los Angeles | Los Angeles | CA |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