

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: *Lucille Sunders* Date: 9 Aug 2018

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).
- All appeals require noticing per the applicable LAMC section(s). Original Applicants must provide noticing per the LAMC, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of the 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, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of receipt.
- 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)].

This Section for City Planning Staff Use Only		
Base Fee: <u>\$ 8900</u>	Reviewed & Accepted by (DSC Planner): <u><i>E. M. Reed</i></u>	Date: <u>8-9-18</u>
Receipt No: <u>0101927260</u>	Deemed Complete by (Project Planner):	Date:
<input checked="" type="checkbox"/> Determination authority notified		<input type="checkbox"/> Original receipt and BTC receipt (if original applicant)



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August 8, 2018

Los Angeles City Council
200 North Spring Street
Los Angeles, California 90012

Re: JUSTIFICATION REGARDING APPEAL OF THE JULY 30, 2018 LETTER OF DETERMINATION FROM THE CENTRAL LOS ANGELES AREA PLANNING COMMISSION

Case Number: VTT-76054-SL-1A
Project site: 836-838 Poinsettia Place

I. INTRODUCTION

Pursuant to the Los Angeles Municipal Code (“LAMC” or “Code”), Lucille Saunders and the La Brea Willoughby Coalition (“Appellants”) appeal to the Los Angeles City Council the June 30, 2018 determination of the Central Los Angeles Area Planning Commission (“CAPC”), sustaining the Deputy Advisory Agency’s (“DAA”) decision to approve a Vesting Tentative Tract Map for the subdivision of a parcel located at 836-838 Poinsettia Place into five small lots (“Project”).

In its June 30, 2018 Letter of Determination (“CAPC Determination”), CAPC sustained the DAA’s decision to approve the Vesting Tentative Tract Map and adopted its Conditions of Approval and Findings. (CAPC Determination, p.1) In approving the project, the CAPC and DAA exceeded their powers and erred and abused their discretion in the following respects: 1) they failed to comply with the required zoning classification under Los Angeles Municipal Code (“LAMC”) § 12.10C relating to front yard setbacks along public right-of-ways (Poinsettia Place); 2) they failed to comply with the procedures for granting an adjustment under LAMC § 12.28C; 3) they failed to comply with the procedures for granting a variance under under LAMC § 12.27D; 4) they issued a determination that violates the Subdivision Map Act and 5) they denied the Appellants a fair hearing when they did not maintain all records submitted by the appellants in the case file for review by the Commissioners.

Thus, pursuant to the LAMC, Appellants respectfully request that the City Council grant Appellant's appeal and overrule the CAPC's approval of 10 foot setback that is inconsistent with the underlying zoning classification relating to front yard setbacks along public right-of-ways (Poinsettia Place) and remand the case back to CAPC to make a determination, after a fair hearing, that: the front yard setback along Poinsettia Place must be in compliance with the zoning classifications under LAMC § 12.10C and that any deviation from this underlying zoning classification must be made in compliance with the LAMC.

While this appeal is pending, Appellants further request that all permit and construction activities related to the project be stayed until the City Council has issued its decision.

II. APPELLANTS' STANDING

Appellant La Brea Willoughby Coalition is a neighborhood association that represents homeowners, renters, and businesses in the LaBrea-Willoughby neighborhood of Hollywood. It has been and continues to be involved in protecting the quality of life of its members, and the character and scale of the neighborhood of which it represents. The project is located within the La Brea-Willoughby Coalition's service area.

Appellant Lucille Saunders lives in the vicinity of the Project (approximately 3 blocks away) and frequents the area where this project is located. Given this proximity, and the Coalition's interest in preserving the mass, scale and character of its neighborhoods, Appellants, and both of them, have an interest in construction-related activities that violate the Code. Appellants are therefore considered "aggrieved" under the LAMC.

III. PROJECT BACKGROUND

836-838 Poinsettia Place ("Subject Property") is located within the R3 zoning classification. (See DAA's Appeal Recommendation Report, p. A-1 and Exhibits B and D attached thereto [Vicinity, Radius/Zimas Map and Vesting Tentative Tract Map].)¹ It is also within the Hollywood Community Plan. (*Ibid.*) The subject property abuts other lots to the north, east and south, however, to the west, it abuts a public right-of-way, Poinsettia Place. (*Ibid.*)

The applicant proposed to subdivide the lot into five (5) small lots, pursuant to the Small Lot Subdivision Ordinance No. 176,354 ("SLSO No. 176354"). (DAA Appeal Recommendation Report, p. A-1.) The front yard of Lot 1 of the proposed subdivision faces west, towards Poinsettia Place. (See Exhibit 1 to this appeal.) The applicant originally proposed a 5 foot front yard setback for Lot 1. (DAA Appeal Recommendation Report, p. A-2.)

At the March 29, 2018 public hearing, Appellants argued that a 15 foot front yard setback for Lot 1 was required under the R3 zoning classification, as opposed to the proposed 5-foot front yard setback under SLSO No. 176354. (DAA Appeal Recommendation Report, p. A-1 – A-2.)

The Department of Building and Safety ("DBS") actually admitted that the underlying R3 zoning classification applies to Lot 1. (June 21, 2018 DAA Determination, p. 3 ["Lot 1 do[sic] not comply

¹ For the convenience of the members of the City Council, the Vicinity, Radius, Zimas and Vesting Tentative Tract Maps are collectively attached to this appeal as Exhibit 1.

with the minimum 15ft front yard setback along Poinsettia Place after required street dedication is taken as required for the [Q]R3-1XL zone.)²

Nevertheless, the DAA assumed SLSO 176354's 5 foot setback requirement controlled the front yard setback for Lot 1. Thus, in approving the project, the DAA believed that its provision of a 10 foot front yard setback for Lot 1 was actually "greater" than required. (DAA Appeal Recommendation Report, p. A-2.)

Appellants filed an appeal with the CAPC and a hearing was conducted on July 24, 2018, where the Appellants and their attorney submitted written and oral statements into the record. (See Declaration of Lucille Saunders, Exhibit A transcribed audio recording.) On July 30, 2018 the CAPC issued a written decision approving the project and adopting the DAA's Determination. Appellants now file this appeal.

IV. REASONS AND POINTS ON APPEAL

A. THE CAPC AND DAA IGNORED THE FRONT YARD SETBACK REQUIREMENTS UNDER LAMC § 12.10C

The CAPC and the DAA exceeded their powers, erred, and abused their discretion by failing to provide and maintain the yard setback requirements under LAMC § 12.10C.

LAMC § 12.10 applies to properties in R3 zones. More specifically, LAMC § 12.10C indicates that no building or structure nor the enlargement of any building or structure shall be hereafter erected or maintained unless the following yards...are provided and maintained in connection with such building, structure or enlargement: 1) Front Yards of not less than 15 feet, however, on key lots the minimum front yard shall be 10 feet³; 2) Side yards of not less than 6 feet for three-story houses and 5 feet for houses with two-stories or less and 3) Rear yards of not less than 15 feet in depth.

SLSO No. 176354 reads that Small Lot Subdivisions may be permitted in R3 zones and that **"no front, side, or rear yard shall be required between lots within an approved small lot subdivision. However, a five-foot set back shall be provided where a lot abuts a lot that is not created pursuant to this subdivision."**(emphasis added.)

The relationship between SLSO No. 176354 and LAMC § 12.10C demonstrates that SLSO No. 176354 controls yard setbacks between lots within a small lot subdivision, as well as yard setbacks for the perimeters of the small lot subdivision that abut other lots not created under the SLSO. However, SLSO No. 176354 is silent on setbacks for areas of a small lot subdivision that do not abut a lot at all, but instead, as is the case here, abut a public right-of-way. This gap under the SLSO is filled, where applicable, by LAMC § 12.10C.

² A copy of the that excerpt from the June 21, 2018 DAA Determination is attached as Exhibit 2 to this appeal.

³ A key lot is the first interior lot to the rear of a reversed corner lot and not separated by therefrom by an alley. An interior lot, is a lot other than a corner lot. (LAMC 12.03) Front Lot Line in the case of an interior lot, is the line separating the lot from the street or place, and in the case of a corner lot, a line separating the narrowest street frontage of the lot from the street, except in those cases where the latest tract deed restrictions specify another line as the front lot line. (Ibid.)

Here, the project is a small-lot subdivision that is surrounded on the north, east and south by other lots not a part of this project. (See Exhibit 1.) However, Lot 1 fronts and abuts Poinsettia Place to the west. (Ibid.) While SLSO No. 176354 would control the setbacks to the north, east and south, it would not control the setback for Lot 1 facing West to Poinsettia Place, because SLSO No. 176354 is silent on setbacks for lots abutting public right-of-ways.

LAMC § 12.10C provides the setbacks for lots abutting public right of ways. The project is in a R3 zone. (See Exhibit 1.) Thus, LAMC § 12.10C, containing the underlying R3 front yard setback requirement, applies and a minimum 15 foot front yard is required for Lot 1 facing Poinsettia Place, as Lot 1 is not a key lot. (See Exhibit 1.) DBS even admits that LAMC § 12.10C applies to Lot 1. (See Exhibit 2.) Accordingly, the CAPC erred when it adopted and sustained the DAA's decision that permitted a front yard setback for Lot 1 of only 10 feet.

In the alternative, Appellants contend that the new and current version of the SLSO, SLSO No. 185462, applies because this case, VIT-76054-SL-1A, and the corresponding vesting tentative map were both filed after the amended ordinance's effective date of April 2018. SLSO No. 185642 states that "the provisions of the front yard of the underlying zone shall apply to front lot line of the perimeter of the subdivision. (See Exhibit 3 attached to this appeal)

Here, the front lot line would be located at the western boundary of Lot 1 abutting Poinsettia Place and thus, the provisions of LAMC § 12.10C are also applicable under this analysis and would require the same minimum 15 foot setback discussed above. Since the CAPC and the DAA did not make this finding, they have erred and abused their discretion. Accordingly, under either iteration of the SLSO, the project violates the LAMC and the SLSO guidelines.

B. AN ADJUSTMENT FROM THE UNDERLYING ZONING CLASSIFICATION IS NOT WARRANTED BECAUSE THE CAPC AND DAA FAILED TO COMPLY WITH LAMC § 12.28

The CAPC and DAA exceeded their powers, erred and abused their discretion by failing to make all of the required findings for a deviation from the front yard setback classification contained in LAMC § 12.10C. Appellants have already shown that LAMC § 12.10C applies and that DBS agrees. (See Exhibit 2) Thus, if the applicant wanted to deviate from the regulations under LAMC § 12.10C and obtain a smaller setback, an adjustment or variance was required.

The grounds for an adjustment do not exist in this case. Pursuant to LAMC § 12.28, the Zoning Administrator shall have the authority to grant adjustments in the yard requirements of Chapter 1 of this Code. (LAMC § 12.28(A)) The initial decision-maker for adjustments or slight modifications shall be the Zoning Administrator and his or her decision shall be supported by written findings of fact based upon written or oral statements and documents presented to him or her. (LAMC § 12.28C(3)). Under LAMC § 12.28C(4), the Zoning Administrator shall not grant an application for an adjustment unless he or she finds:

(a) that while site characteristics or existing improvements make strict adherence to the zoning regulations impractical or infeasible, the project nonetheless conforms with the intent of those regulations;

(b) that in light of the project as a whole, including any mitigation measures imposed, 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; and

(c) that the project is in substantial conformance with the purpose, intent and provisions of the General Plan, the applicable community plan and any applicable specific plan.

Written findings are required to be set forth in the Determination Letter. (*Topanga Ass'n for a Scenic Community v City & County of Los Angeles* (1974) 11 Cal.3d 506, 515.) Findings that fail to bridge the analytic gap between the evidence and the final decision are insufficient. (*Ibid.*; see also *West Chandler Blvd. Neighborhood Ass'n v City of Los Angeles* (2011) 198 Cal.App. 4th 1506, 1521 [findings insufficient to show how agency "traveled from evidence to action"]; *Glendale Mem. Hosp. & Health Ctr. v State Dep't of Mental Health* (2001) 91 Cal.App.4th 129.)

Here, there is no evidence that the applicant has made an application for an adjustment. The DAA did not note a request from the applicant for a deviation from the zoning classification relating to the front yard setback for Lot 1, he only noted a request for **height** adjustment. (DAA Appeal Recommendation Report, p. A-1 – A-2.) There is also no evidence that the approval of the deviation was from a ZA, AZA or by a AA acting in the capacity of a ZA or AZA after a valid delegation.⁴

There are also no sufficient findings by the CAPC or DAA in their determinations to support an adjustment relating specifically to the front yard setback for Lot 1. This may be because the CAPC believed an adjustment was not needed because it was providing a 10ft setback, i.e. a "greater" setback than required under SLSO No. 176354. However, as indicated above, LAMC 12.10C controls the setback for Lot 1 and requires a 15ft front yard setback. If the CAPC and DAA wanted to provide a deviation from the 15ft setback under LACM 12.10C, it required a deviation, but none of the findings required to grant a setback adjustment were included in determination of the CAPC and DAA. (DAA Appeal Recommendation Report, p. A-2; see also June 21, 2018 Determination, DAA Appeal Recommendation Report, July 30, 2018 CAPC Determination.)

Had the CAPC actually made all of the required findings under LAMC § 12.28(C)(4) there is still no substantial evidence in the record to support those findings. As it relates to the setback, there is no evidence that this property is somehow unique, or that the proposed 10 foot setback would somehow be compatible with the surrounding neighborhood, or that it is conformance with the general plan. (June 21, 2018 Determination, DAA Appeal Recommendation Report, July 30, 2018 CAPC Determination.)

Appellants have previously fought for and have preserved the prevailing front yard setback in the area of 15-20 feet in small lot subdivision cases at 800, 807, and 853 N. Detroit, 806-14 and 818 North Formosa and 800 and 829 North Martel. This project must not be allowed to deviate from the prevailing front yard setbacks of the neighborhood.

⁴ Only a AZA, ZA or AA acting in that capacity after appropriate delegation, can approve adjustments for yard area. (See LAMC § 17.03(A), 12.28C(3))

C. A VARIANCE IS NOT WARRANTED BECAUSE THE CAPC AND DAA FAILED TO COMPLY WITH LAMC § 12.27

The CAPC failed to make all of the findings that are required to approve a deviation from the front yard setback requirements contained in LAMC § 12.10C. Appellants have already shown that LAMC § 12.10C applies and that DBS agrees. (See Exhibit 2.) Thus, if the applicant wanted to deviate from the regulations under LAMC § 12.10C and obtain a smaller set back, an adjustment or variance was required.

The grounds for a variance do not exist in this case. Pursuant to LAMC 12.28(A) and 12.27(B), the Zoning Administrator shall have the authority to grant variances in the yard requirements of Chapter 1 of the Planning and Zoning Code. Pursuant to LAMC 12.27(D), the decision of the Zoning Administrator shall 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.

Consistent with Charter Section 562, no variance may be granted unless the Zoning Administrator finds 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.

Written findings are required to be set forth in the Determination Letter. (*Topanga Ass'n for a Scenic Community v City & County of Los Angeles* (1974) 11 Cal.3d 506, 515.) Findings that fail to bridge the analytic gap between the evidence and the final decision are insufficient. (*Ibid.*; see also *West Chandler Blvd. Neighborhood Ass'n v City of Los Angeles* (2011) 198 Cal.App. 4th 1506, 1521 [findings insufficient to show how agency “traveled from evidence to action”]; *Glendale Mem. Hosp. & Health Ctr. v State Dep't of Mental Health* (2001) 91 Cal.App.4th 129.)

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There are also no sufficient findings by the CAPC or DAA in their determinations to support a variance relating specifically to the front yard setback for Lot 1. This may be because the CAPC believed a variance was not needed because it was providing a 10ft setback, i.e. a “greater” setback than required under SLSO No. 176354. However, as indicated above, LAMC 12.10C controls the setback for Lot 1 and requires a 15ft front yard setback. If the CAPC and DAA wanted to provide a deviation from the 15ft setback under LAMC 12.10C, it required a deviation, but none of the findings required to grant a setback variance were included in determination of the CAPC and DAA. (DAA Appeal Recommendation Report, p. A-2; see also June 21, 2018 Determination, DAA Appeal Recommendation Report, July 30, 2018 CAPC Determination.)

Had the CAPC actually made all of the required findings under LAMC § 12.27(D) there is still no substantial evidence in the record to support those findings. As it relates to the setbacks, there is no evidence that this property is somehow special, unique, would suffer hardship or that would establish all of the other requirements for a variance. (June 21, 2018 Determination, DAA Appeal Recommendation Report, July 30, 2018 CAPC Determination.)

D. THE CAPC AND DAA ISSUED A DECISION THAT VIOLATES THE SUBDIVISION MAP ACT

The CAPC and DAA, erred, exceeded their powers and abused their discretion, because the finding that the Project complies with the Subdivision Map Act is not supported by substantial evidence and the order is not supported by the findings of fact. California Government Code § 66474.60 grants an agency the authority to approve a subdivision project providing the procedures “are governed by the provisions of this chapter and by the additional provisions of local ordinances dealing with subdivisions.” (Emphasis added.) LAMC § 17.01, governing Tract Maps, provides that “no building or structure shall be constructed or enlarged on any land which has been subdivided in violation of the provisions of this article, nor shall any permit be issued therefor.” An agency must deny a tentative map if it finds that the subdivision fails to meet or perform any of the requirements imposed by the Map Act or local ordinance. (Ibid.)

Here, the CAPC and DAA approved a Project with setbacks that are in violation of: the applicable R3 zone requirements of the subject property set forth in LAMC Section 12.10C, the adjustment and variance requirements of LAMC §§ 12.28 and 12.27, and the SLSO's interpretive Guidelines.

However, the project is also inconsistent with the Hollywood Community Plan. The project does not comport with the Hollywood Community Plan in regards to neighborhood compatibility and the project will not result in more affordable units and has not lead to greater housing ownership.

⁵ Only a AZA, ZA or AA acting in that capacity after appropriate delegation, can approve adjustments for yard area. (See LAMC § 17.03(A), 12.28C(3))

Therefore the CAPC's and DAA's findings that the Project meets all the requirements and conditions of the Subdivision Map Act, the LAMC, and the applicable Community Plan was an abuse of discretion. (DAA Determination p. 16.)

E. THE CAPC AND DAA DENIED APPELLANTS A FAIR HEARING

Pursuant to California Code Civ. Proc. § 1094.5, Appellants are entitled to a fair administrative hearing. Appellants were denied a fair administrative hearing when they submitted documentation to the Department of City Planning in anticipation of the hearing in this matter only to be subsequently told that the documents were not in the file to be reviewed by the Commissioners because they had been taken out of the file and misplaced by Department staff. (Declaration of Lucille Saunders.) At the hearing before the CAPC, the DAA denied there were any documents missing from the file. (Ibid.)