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APPLICATIONS:

## 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: ENV-2018-827-CE

Project Address: 462 Crane Blvd. Los Angeles, CA 90065

Final Date to Appeal: 01/06/2020

Type of Appeal:

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

### 2. APPELLANT INFORMATION

Appellant's name (print): Daniel Wright

Company: Crane Boulevard Mitigation Coalition

Mailing Address: 438 Crane Blvd.

City: Los Angeles

State: CA

Zip: 90065

Telephone: (626) 449-4200

E-mail: fiberflash@gmail.com

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

Self     Other: Crane Boulevard Mitigation Coalition

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

### 3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Daniel Wright

Company: \_\_\_\_\_

Mailing Address: 215 N. Marengo Avenue 3rd Floor

City: Pasadena

State: CA

Zip: 91101

Telephone: (626) 449-4200

E-mail: fiberflash@gmail.com

Wet original signature

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
- 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: Daniel Wright

Date: 01-03-20

6. FILING REQUIREMENTS/ADDITIONAL INFORMATION

- Eight (8) sets of the following documents are required for each appeal filed (1 original and 7 duplicates):
  - o Appeal Application (form CP-7769)
  - o Justification/Reason for Appeal
  - o Copies of Original Determination Letter
- A Filing Fee must be paid at the time of filing the appeal per LAMC Section 19.01 B.
  - o 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>\$ 109.47</u>	Reviewed & Accepted by (DSC Planner): <u>Fern Osborne</u>	Date: <u>1/3/2020</u>
Receipt No: <u>0110136668</u>	Deemed Complete by (Project Planner):	Date:
<input type="checkbox"/> Determination authority notified		<input type="checkbox"/> Original receipt and BTC receipt (if original applicant)

## **Appeal Attachment Crane Boulevard Mitigation Coalition**

This is a CEQA appeal under Pub. Res. Code Section 21151(c) after the Planning Director unlawfully “deemed denied” a pending land use appeal under the Mount Washington/Glassell Park Specific Plan. Binding federal and state constitutional law mandates that the City give notice of and conduct a hearing and afford a meaningful right to be heard prior to taking action that negatively impacts the constitutionally protected rights of property owners and tenants that might be affected by the Project. LAMC 11.5.7 contains a sentence that purports to authorize the City to “deem denied” a land use appeal without a hearing – which is in direct conflict with the United States and California Constitutions. Thus, as applied in this case, the City has clearly violated the constitution, and no inferior City ordinance or code provision that purports to authorize the City to deny a right to notice and hearing can overrule binding constitutional rights of affected land use appellants.

Additionally, the City’s municipal code purports to elevate a Project’s applicant’s right to a decision within a particular time period over the right of a constitutionally aggrieved person to notice of a hearing and a meaningful hearing before a decision making body. The City’s code provision which purports to allow a Project applicant to withhold permission to extend time for the area planning commission to conduct a hearing is particularly constitutionally infirm in this case because the appellant exercised its statutory right under the state’s opening meeting law to point out that the meeting agenda for the originally scheduled public hearing was fatally defective. The City Attorney advised the Commission to re-notice the public hearing for a future date and to not conduct the hearing that day based upon the open meeting law violation. However, subsequent to the Commission’s following the City Attorney’s advice to conduct the hearing after proper open meeting notice, the Project applicant in this case purported to use the City’s defectively drafted ordinance to deny appellant a hearing by refusing to reasonably extend the time for hearing so that the constitutionally mandated hearing could take place. Based upon the Project applicant’s withholding of extension of time to act on the appeal, the City Planning Director, without any action taken by the East Los Angeles Planning Commission, purported to rely on LAMC Section 11.5.7 to “deem denied” the land use appeal without ever conducting an appeal hearing of the land use entitlements.

The City should correct its conduct by withdrawing the December 20, 2019 “Letter of Determination” and instructing the Project applicant that he may not reasonably use LAMC Section 11.5.7 as a state created mechanism to deny the fundamental constitutional right to a due process hearing notice and conduct of a meaningful hearing.

Assuming that the City will persist in its unconstitutional conduct, the Crane Boulevard Mitigation Coalition appeals the City’s flawed determination based upon violations of the California Environmental Quality Act (CEQA).

The grounds for the appeal based upon violations are set forth in the original appeal document filed on July 31, 2019 – for which the City refused to conduct a public hearing. That previous appeal document is attached hereto. The Crane Boulevard Mitigation Coalition’s investigation of the facts continues and will be supplemented for the City Council’s hearing.

## **Appeal Attachment Crane Boulevard Mitigation Coalition**

This land use appeal arises from the failure of the City Planning Director and his Department to conform their conduct to the Mount Washington/Glassell Park Specific Plan ("Specific Plan") and related sections of the Los Angeles Municipal Code, and California Environmental Quality Act ("CEQA") as to making findings, evaluating negative environmental impacts on sensitive receptors along Crane Boulevard. Although there are currently numerous house construction projects proposed or under construction along Crane Boulevard, the City has shown no interest in exercising its discretion to condition this project and other upcoming projects to address the unusually high fire and safety issues during construction of these projects along Crane Boulevard and adjacent streets that rely upon Crane Boulevard as a means of access of multiple construction sites along the street.

### **The Violation of the Northeast Community Plan Findings/Evidence Requirement**

Each Project approved under the Specific Plan is a discretionary decision. Accordingly, under the provisions of the Northeast Community Plan, the Planning Director is required by law to make findings supported by substantial evidence that the Project complies with the land use designation, policies and programs of the Northeast Community Plan. The Letter of Determination at page 7 states that the Project "is consistent with the applicable Northeast Los Angeles Community Plan designation and policies and all applicable zoning designations and regulations," however, the Planning Director has failed to cite the applicable residential unit density authorized by the Northeast Community Plan in order to establish the required substantial evidence that the Project complies with general plan. Instead the Letter states this is shown "in the case file," however, the case file does not contain information or calculations establishing with substantial evidence that the Project complies with the residential unit density requirement of the Northeast Community Plan. For this reason, the City's findings of general plan conformity are unsupported by substantial evidence in the Letter of Determination where such findings and supporting evidence must be established to constitute a valid project approval.

### **The City's Assertion That The Square Footage Of The Carport Is Not Part Of The Square Footage Calculation Violates The Area Planning Commission's Decision For Mavis Avenue That Definitively Interpreted The Specific Plan**

The Letter of Determination asserts that under the Specific Plan the carport square footage is not included in the calculation of the Project's floor area ratio. This assertion is inconsistent with the East Los Angeles Planning Commission's decision in Case No. DIR 2006-0404-SPP-1A for a carport project proposed at 315 West Mavis Drive.

In the 315 Mavis Drive case, owner Monica Graham, represented for entitlements by Bradley/EBE Associates, Inc.,<sup>1</sup> obtained a Director's Determination that failed to comply with the Specific Plan and LAMC's definition of building and floor area ratio. That the hearing of the appeal on October 11, 2006, after hearing arguments from both the Planning Staff and representatives of the Mount Washington Homeowner's Alliance and neighbor Charles Faithorn, the Commission voted to grant Mr. Faithorn's appeal directing the Planning Department to interpret the Specific Plan and LAMC to determine that a covered parking area is a building includable within the meaning of the floor area ratio calculation of the Specific Plan. The Planning Department was directed by the Commission to apply this interpretation to future project determinations.

The Letter of Determination for the Project in this case violates the Commission's prior interpretation. At page 5 of the Letter of Determination, the City Planning Director asserts: "The project also proposes a new 360-square-foot detached two (2)-car carport which is not included in the total floor area." Additionally, at page 2 of the Letter of Determination, the City Planning Director asserts that the Floor Area calculation excludes the carport square footage.

Because the City Planning Department is applying the Specific Plan floor area ratio, the carport, under the Commission's previous interpretation, is counted as part of the floor area ratio. While if the 360 square foot carport is included, the Project still appears to comply with the FAR limit of the Specific Plan, the community cannot allow the City Planning Department to ignore the Area Planning Commission's previous precedent that all carports are included in the FAR calculation of the Specific Plan. Additionally, this factual misstatement could become significant in the future if there is a later proposal to add more habitable space to the Project site. – a future owner might rely on the City's erroneous interpretation of the carport issue to obtain more square footage than authorized in law. The City must voluntarily withdraw this Letter of Determination and issue a revised Letter of Determination that properly reflects the lawful entitlement in conformity with this Commission's previous interpretation of includable carport square footage in all Specific Plan projects proposing carports. In the alternative, the Commission must revise the Project's findings to include the carport square footage in the Determination.

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<sup>1</sup> Bradley/EBE Associates, Inc. has been attempting to process projects on Mount Washington inconsistent with law for quite some time. This Commission currently has before it a cumulatively significant project proposed by Bradley/EBE Associates, Inc. as owner builders at 300 Crane Boulevard that was originally approved by the Planning Director with significant violations of both the Specific Plan and LAMC. The Project is currently being revised when it became obvious that the pending appeal was meritorious on multiple grounds.

**The Letter of Determination Fails To Demonstrate That The Hillside Ordinance Limits On Floor Area Are Not More Restrictive**

Section 2 of the Specific Plan directs that the LAMC applies for all construction issues unless the Specific Plan's FAR requirement is more restrictive. When enacted in 1993, the Specific Plan was more restrictive than the LAMC. But with the enactment of the more restrictive provisions in the LAMC for sensitive, steep, fire prone, safety challenged hillside areas of the City, lots with steep slopes are more severely restricted as to square footage.

While it is true that the subject Project is modest in overall square footage, it is also true that the lot proposed for development includes a very steep downhill drop and the LAMC provisions may actually allow less than the proposed square footage. The City has failed to ask the applicant to provide a slope analysis in order to have the necessary information for the Planning Department staff to make an informed decision. The Planning Commission should not accept unsubstantiated assertions by planners that the LAMC calculation is likely less restrictive, as it did at the recent hearing on the project on Cynthia Avenue.

Why is it in the interest of the City and applicant to perform the FAR calculation both ways? The answer is that if the City sloppily approves a project without bothering to possess the information it needs to compare the LAMC FAR to the Specific Plan FAR, an aggrieved person may later file a Building and Safety appeal challenging the City's issuance of a building permit in violation of the LAMC. LAMC Section 11.00(m) makes it a misdemeanor to violate any provision of the LAMC. Additionally, LAMC Section 11.02 makes void any permit the City issues in violation of the LAMC or any other law. There is no point for the City to subject itself or an applicant to possible later invalidation of a building permit when the simple math calculations should have been done at the time of Specific Plan conformity review. For this reason, the Project must be now evaluated under the LAMC FAR provisions so that the record and revised Letter of Determination would have substantial evidence supporting the City's use of the Specific Plan FAR calculation and not the LAMC FAR calculation.

For these reasons, the Commission should direct the Planning Director to conduct the proper assessment of the LAMC FAR permitted for this Project - especially since the lot is steeply sloped raising a legitimate question whether the LAMC is more restrictive than the Specific Plan FAR applied by the Planning Director.

**An MND Is Required So That The City Can Protect Existing Residents From The Cumulative Impact Of Concurrent Construction Activities At Multiple Vacant Lots Proposed For Construction Within A Two-Block Stretch of Crane Boulevard**

The City's environmental compliance is a categorical exemption, based upon an unsupported assertion that regulatory compliance measures will avoid all

significant environmental impacts. While a categorical exemption might be appropriate in flat areas of the City where the street grid offers multiple detour options during house infill construction activities, it is not appropriate when the City's cookie cutter regulatory compliance measures have not been demonstrated, with substantial evidence, to positively mitigate impacts beneath the levels of significance.

The Project is in a Very High Fire Hazard Severity Zone mapped by the State of California. Mount Washington's streets, and especially Crane Boulevard between Museum Drive and Moon Drive, is curvy, steep, and very narrow. Conflicts between downhill and uphill vehicular traffic has become routine as the buildout of the hillside area continues. These unusual circumstances call for greater mitigation measures related to (1) construction noise, (2) construction delivery times, (3) hillside safety precautions, and (4) express coordination of major street access disruptions by multiple projects in close proximity of each other along Crane Boulevard.

The need to keep these narrow streets in a Very High Fire Hazard Severity Zone was driven home when Los Angeles Fire Department personnel were unnecessarily delayed on Avenue 44 by a truck blocking the street. This delay may have contributed to the death of the elderly occupant of a home at the top of Avenue 44. The Fire Department equipment literally did not make it to the burning home to save the occupant's life. The City's use of a categorical exemption, as if hillside areas are equally safe as flat areas of the City evidence a callous disregard for the safety and lives of the existing residents. In a time of climate change, when hotter and windy days are expected to rise increasing the fire danger, the City ought to be very carefully looking for creative ways to keep the streets of hillside area open to fire and safety access AT ALL TIMES. This has not been done in this and other cases in the Specific Plan area in recent years.

To this end, the Crane Boulevard Mitigation Coalition proposes that each future construction Project proposed along Crane Boulevard and its associated streets obtaining access (Cross, Sunnyside, Rustic, etc.), join a Facebook page to be used as a means to communicate with the affected residents and other project construction firms along Crane Boulevard. The Facebook page would be a routine means for the Project's construction team to inform residents of possible street closures/disruptions, seek resident cooperation regarding moving cars when major construction activities occur, and to help demonstrate a construction firm's awareness of and conformity with applicable mitigation measures and regulatory measures.

Additionally, given the close proximity of sensitive receptors 10 feet next door, and 30-50 feet across the street, the City's noise ordinance cannot fully mitigate significant construction noise activities during the hours when residents are likely to be asleep, working at home, or home for the evening. Accordingly, a categorical exemption is NOT the lawful environmental review for the unusual

circumstances outlined herein. Either the developer must enter into agreements with the Coalition to agree to scrupulous compliance with hours of construction noise, construction deliveries, construction crew parking, or the City needs to conduct a proper MND to consider the special circumstance and cumulative impact of as many as seven house projects under construction along Crane Boulevard over the next few years. Because the City failed to research and disclose a list of the approved, pending, and proposed Crane Boulevard Projects, and failed to assess the cumulative fire and safety access impacts on existing residents - who are owed safe conduct of these construction activities, the City has failed to proceed in accordance with law under CEQA and the Project cannot be approved without substantial evidence that all fire and safety risks have been addressed.

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### **Conclusion**

For all of the foregoing reasons, the City's approval of the subject project is not in conformity with applicable laws and places local residents at an unacceptable risk of loss of life or injury due to the cumulative impact of constructive activities in a highly concentrated steep, winding, narrow hillside street in a High Fire Severity Hazard Zone.

\* Per prior case for this address, a significant tree was also removed since 1993. DEW