

## FINDINGS

### MANDATED FINDINGS

In order for a variance to be granted, all five of the legally mandated findings delineated in City Charter Section 562 must be made in the affirmative. Following (highlighted) is a delineation of the findings and the application of the relevant facts of the case to same:

1. **The strict application of the provisions of the Zoning Ordinance would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the zoning regulations.**

On April 4, 2014, the Zoning Administrator approved Case No. ZA 2013-3504-ZV, granting several variances, including one to allow 14 off-site parking spaces by lease in lieu of recorded covenant.

On May 9, 2014, the Zoning Administrator issued a Correction Letter to Case No. ZA 2013-3504-ZV, correcting Condition No. 8 to require all off-site parking to be satisfied with evidence prior to issuance of a Certificate of Occupancy.

On July 10, 2014, the Department of Building and Safety issued Permit No. 13010-10000-03647 for the construction of a “10-story hotel building; parking, equipment and utility rooms, trash and recycle rooms at 1st and 2nd story levels, guest rooms from 3 to 9 story levels, with roof top stairway and elevator rooms; 10 story level core and shell. On June 30, 2020, a Temporary Certificate of Occupancy was issued.

On February 14, 2017, the Department of Building and Safety issued Supplemental Building Permit No. 13010-10007-03647 to convert parking areas at the 1st and 2nd levels to retail, fitness center, storage, utility rooms, machine rooms, employee cafeteria, treatment room, trash and recycle, and office spaces. On June 30, 2020, a Temporary Certificate of Occupancy has been issued.

On December 19, 2018, the present Plan Approval request was filed, including a request to expand on the variance authorizing 14 off-site parking spaces provided by lease, in lieu of covenant and agreement.

The applicant has made statements to indicate their intention to provide required parking via covenant and agreement at properties that are presently under development, and that use of lease-provided parking is a stop gap measure until those spaces are physically available. The applicant makes the following statement:

Pursuant to LAMC Section 12.21.A.4(g) and LAMC Section 12.26.E.5, the 65 auto parking spaces to be provided on-site will be provided within 750-feet of the Site by ministerial approval of a parking covenant by LADBS ...

However, while the Applicant intends to provide off-site parking by covenant at the specified parking facilities, these facilities are currently under construction and are unable to be encumbered by a covenant due to LADBS policy that requires a Certificate of Occupancy be issued prior to approving the parking covenants. Thus, in order to satisfy the Project's parking requirements, the Applicant is requesting to increase the number of parking spaces provided off-site by lease agreement from 14 spaces to required parking, or a total of 79 spaces off-site by lease agreement in lieu of covenant. Upon issuance of the Certificates of Occupancy for the nearby parking facilities, the Applicant will move 65 of these spaces to the two specified parking facilities, or other qualified parking facility as determined by LADBS.

The general purpose and intent of the zoning regulations is to ensure a consistent set of regulations that set expectations for how new development is to appear and be utilized. According to LAMC Section 12.02, part of the general purpose and intent of the zoning regulations is to:

... designate, regulate and restrict the location and use of buildings, structures and land, for agriculture, residence, commerce, trade, industry or other purposes; to regulate and limit the height, number of stories, and size of buildings and other structures hereafter erected or altered to regulate and determine the size of yards and other open spaces and to regulate and limit the density of population ...

Part of these regulations speak to parking regulations. Parking is generally provided on-site, but allowances exist within the Zoning Code to provide required parking off-site, via a recorded covenant and agreement that guarantees the use of those parking spaces for the life of the building.

The applicant finds themselves in a situation where the off-site parking spaces where they anticipate recording covenants and agreements to fulfill their parking requirement are not yet available. Given that the building has been issued Temporary Certificates of Occupancy, strict application of the provisions of the Zoning Ordinance would result in the shuttering of a completed and operational hotel and other on-site commercial uses. Condition No. 7 of the grant has been modified to allow a very limited period of time in which all of the project's parking requirement can be provided via lease agreement, so that the applicant is able to secure off-site parking covenants and agreements, all the while ensuring that the required off-street parking is provided.

A purpose and intent of the zoning regulations is to ensure that new development provides the necessary number of off-street parking spaces based on the intensity or density of the proposed use. It is not intended that a determination unnecessarily constrain a discretionary development more than is otherwise required of

ministerial, by-right, development. To restrict access to those regulations, without cause, would be contrary to the purpose and intent of the zoning regulations. On review of the original grant, it does not appear that there was any intent to require that parking spaces be necessarily provided on-site – only that the required number of off-street parking spaces be provided pursuant to the Zoning Code. Condition No. 7 of the grant has been clarified to allow access to existing by-right parking options.

In conjunction with the requirement of Condition No. 8, which requires that all parking be provided to the satisfaction of the Department of Building and Safety prior to the issuance of a (final) Certificate of Occupancy, the strict application of the provisions of the Zoning Ordinance would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the zoning regulations without the modifications granted herein.

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

The applicant has requested a modification of Condition No. 7 of Case No. ZA-2013-3504-ZV, to allow all required parking to be provided off-site via lease agreement in lieu of the covenant and agreement otherwise required.

The property is developed with a recently constructed 10-story, 182-room hotel and commercial building, with no on-site parking.

On April 4, 2014, the Zoning Administrator approved Case No. ZA-2013-3504-ZV, to approve a Variance from Section 12.26E.5 to allow 14 off-site parking spaces by lease in lieu of a recorded covenant, among other variances.

On May 9, 2014, the Zoning Administrator issued a Correction Letter to Case No. ZA 2013-3504-ZV, correcting Condition No. 8 to require all off-site parking to be satisfied with evidence prior to issuance of a Certificate of Occupancy.

On July 10, 2014, the Department of Building and Safety issued Permit No. 13010-10000-03647 for the construction of a “10-story hotel building; parking, equipment and utility rooms, trash and recycle rooms at 1st and 2nd story levels, guest rooms from 3 to 9 story levels, with roof top stairway and elevator rooms; 10 story level core and shell. On June 30, 2020, a Temporary Certificate of Occupancy was issued.

On February 14, 2017, the Department of Building and Safety issued Supplemental Building Permit No. 13010-10007-03647 to convert parking areas at the 1st and 2nd levels to retail, fitness center, storage, utility rooms, machine rooms, employee cafeteria, treatment room, trash and recycle, and office spaces. On June 30, 2020, a Temporary Certificate of Occupancy was issued.

On December 19, 2018, the present Plan Approval request was filed, including a request to expand on the variance authorizing 14 off-site parking spaces provided by lease, in lieu of covenant and agreement.

The applicant argues that that the grant and conditions of approval for Case No, ZA-2013-3504-ZV are overly restrictive and specific, only applicable to a project that no longer exists, and that these “specific conditions prohibit the property to make changes and alterations that would otherwise be permitted as-of-right with approval by LADBS.” As a result, the applicant believes that they are prohibited from taking advantage of the parking location alternatives offered by Los Angeles Municipal Code (LAMC) Sections 12.21A.4(g) (parking shall be provided either on the same lot as the use for which they are intended to serve or on another lot not more than 750 feet distant therefrom) and 12.26E.5 (off-site parking is required to be provided via recorded covenant and agreement).

The applicant also states:

... while the Applicant intends to provide off-site parking by covenant at the specified parking facilities, these facilities are currently under construction and are unable to be encumbered by a covenant due to LADBS policy that requires a Certificate of Occupancy be issued prior to approving the parking covenants. Thus, in order to satisfy the Project’s parking requirements, the Applicant is requesting to increase the number of parking spaces provided off-site by lease agreement from 14 spaces to required parking ... Upon issuance of the Certificates of Occupancy for the nearby parking facilities, the Applicant will move ... these spaces to the two specified parking facilities, or other qualified parking facility as determined by LADBS.

The project has been issued building permits, completed construction, and issued a Temporary Certificate of Occupancy, and now finds themselves in the situation where they cannot provide the parking spaces required by the project on-site. The applicant states that their intention is to provide the balance of their off-street parking requirement via covenant and agreement, however, the parking garages that will provide those spaces have not yet become available. The Department of Building and Safety does not allow parking spaces still under construction to fulfill the required parking spaces of an off-site project. This situation is a fairly unique and temporary one.

Many surrounding properties been granted the ability to provide parking off-site via lease agreement in lieu of covenant and agreement. These projects involved changes of use within existing buildings, where the provision of additional on-site parking would be impractical or infeasible. Allowing off-site parking via lease agreement is not an uncommon authorization within the surrounding area.

Condition No. 7 of the grant has been modified to temporarily authorize all project-required parking spaces to be provided via lease agreement, in lieu of covenant

and agreement. The time-limited grant should be of sufficient length to see the completion of the parking garage(s) and the applicant's securing of a permanent covenant and agreement for parking spaces thereon.

Condition No. 7 of the grant has been clarified to reflect the applicant's ability to conform their parking location(s) with the regulations permitted by Zoning Code.

These two modifications, in conjunction with Condition No. 8, which requires that all parking be provided to the satisfaction of the Department of Building and Safety prior to the issuance of a (final) Certificate of Occupancy, will ensure that the project maintains code-required off-street parking spaces at all times.

For the reasons stated above, there are special circumstances applicable to the subject property that do not apply generally to other property in the same zone and vicinity.

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

The applicant has requested a modification of Condition No. 7 of Case No. ZA-2013-3504-ZV to allow all required parking to be provided off-site via lease agreement in lieu of the covenant and agreement otherwise required.

The property is developed with a recently constructed 10-story, 182-room hotel and commercial building, with no on-site parking.

On April 4, 2014, the Zoning Administrator approved Case No. ZA-2013-3504-ZV, to approve a Variance from Section 12.26E.5 to allow 14 off-site parking spaces by lease in lieu of a recorded covenant, among other variances.

On May 9, 2014, the Zoning Administrator issued a Correction Letter to Case No. ZA 2013-3504-ZV, correcting Condition No. 8 to require all off-site parking to be satisfied with evidence prior to issuance of a Certificate of Occupancy.

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rooms, employee cafeteria, treatment room, trash and recycle, and office spaces. On June 30, 2020, a Temporary Certificate of Occupancy was issued.

The project has been issued building permits, completed construction, and issued a Temporary Certificate of Occupancy, and now finds themselves in the situation where they cannot provide the parking spaces required by the project on-site. The applicant states that their intention is to provide the balance of their off-street parking requirement via covenant and agreement, however, the parking garages that will provide those spaces have not yet become available. The Department of Building and Safety does not allow parking spaces under construction to fulfill the required parking spaces of an off-site project. This situation is a fairly unique and temporary one.

Many surrounding properties been granted the ability to provide parking off-site via lease agreement in lieu of covenant and agreement. These projects involved changes of use within existing buildings, where the provision of additional on-site parking would be impractical or infeasible. Variances authorizing off-site parking via lease agreement is not uncommon within the surrounding area.

LAMC Section 12.21A.4(g) requires parking to be provided either on the same lot as the use for which they are intended to serve or on another lot not more than 750 feet distant therefrom. LAMC Section 12.26E.5 states that off-site parking is required to be provided via recorded covenant and agreement. Use of these development regulations are ministerial, by-right, for new development.

The applicant believes that due to the wording of Condition No. 7, they are precluded from locating their required parking off-site via covenant and agreement.

On review of the grant's determination letter, it does not appear that there was any intent to require that parking spaces be necessarily provided on-site – only that the required number of off-street parking spaces be provided pursuant to the Zoning Code. It is not intended that the determination unnecessarily constrain a discretionary development more than is otherwise required of ministerial development.

Therefore, due to the unique, though temporary, situation of having been issued a Temporary Certificate of Occupancy prior to the availability of intended off-site parking facilities to fulfill the project's off-street parking space requirement, a lack of clarity in the applicant's ability to utilize by-right off-site parking provision regulations under the terms of the original grant, and widespread authorizations to permit required parking via lease agreement, such variance is necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other property in the same zone and vicinity but which, because of such special circumstances and practical difficulties or unnecessary hardships, is denied the property in question.

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

The applicant has requested a modification of Condition No. 7 of Case No. ZA-2013-3504-ZV to allow all required parking to be provided off-site via lease agreement in lieu of the covenant and agreement otherwise required.

As a part of this approval, Condition No. 7 has been modified to allow the applicant a very limited period of time to provide all required parking to be provided via lease agreement in order to secure off-site parking covenants and agreements, while ensuring that the required off-street parking is provided during this time. Further, Condition No. 7 has been clarified to make clear that, excepting the 14 off-site parking spaces authorized to be provided by lease agreement, all remaining code-required parking may be provided and located pursuant to zoning code regulations and do not necessarily need to be provided on-site. Approval of the grant does not relieve the applicant of their responsibility to provide all code-required off-street parking spaces; Condition No. 8 requires that all required parking is provided prior to issuance of the (final) Certificate of Occupancy; therefore, 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.

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

The General Plan is the City's roadmap for future growth and development. The General Plan Elements establish goals, policies, purposes, and programs that provide for the regulatory environment in managing the City, and for addressing environmental concerns and problems. The majority of the policies derived from these elements are implemented in the form of Municipal Code requirements. The General Plan is comprised of the Framework Element, seven state-mandated elements, and four additional elements.

The Land Use Element of the City's General Plan divides the City into 35 Community Plans. The subject property is located within the Hollywood Community Plan area, where the Community Plan Area Map designates the property for Regional Center commercial land uses, with corresponding zones of C2, C4, P, PB, RAS3 and RAS4 Zones. The property is zoned (T)(Q)C4-2D; the property's zoning is consistent with the General Plan's land use designation for the site.

The Plan Text does not discuss specifically the issue of variances from "Q" Conditions or parking by lease in lieu of by covenant as the Plan is more general than the specificity of the instant request. Overall compliance with the Plan is predicated upon all projects complying with the land use designations, zoning code

regulations, Building and Safety codes, etc. Inasmuch as the granted modifications to Condition No. 7 result in the provision of all code-required off-street parking spaces, the approval does not affect any elements of the General Plan.

#### **ADDITIONAL MANDATORY FINDINGS**

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