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October 7, 2024

Los Angeles City Council  
c/o Office of the City Clerk  
City Hall, Room 395  
Los Angeles, California 90012

Attention: PLUM Committee

Dear Honorable Members:

**STAFF RESPONSE TO APPEAL, CASE NO. DIR-2023-5300-RAO-1A, 10540 WEST LINDBROOK DRIVE; CF 24-0418**

SUMMARY

The Director of Planning issued a Reasonable Accommodation determination, Case No. DIR-2023-5300-RAO, to authorize various deviations from the Zone Code in conjunction with proposed additions to an existing single-family dwelling located in the R1-1 Zone, to accommodate an individual with a Disability (the applicant/appellant). As part of the Determination, portions of the request were granted, modified, denied, and/or dismissed. In response to the Determination, the applicant has appealed those portions of the Determination that were modified or denied. Planning staff recommends a modification to the grant language, amendment of a condition to reflect the modified grant, amend one of the conditions of approval, and denial of the remainder of the requests as they do not meet the necessary standard for approval, or fall outside the authority of the Reasonable Accommodation Ordinance, or because alternatives were found to exist that can meet the needs of the applicant without the granting of a deviation to the Zone Code.

BACKGROUND

The Reasonable Accommodation Ordinance (RAO), Ordinance No. 177,325, incorporated into the Los Angeles Municipal Code (LAMC) as Section 12.22 A.27 (now Section 13B.5.5 of Chapter 1A), seeks to establish "a formal procedure for an individual with a Disability seeking equal access to housing to request a reasonable Accommodation as provided by the Federal Fair Housing Amendments Act of 1988 and California's Fair Employment and Housing Act." (LAMC Sec. 13B.5.5.A.1 of Chapter 1A). The Ordinance defines an "Individual with a Disability" as a "person who has a physical or mental impairment that limits one or more major life activities, anyone who is regarded as having that type of impairment or, anyone who has a record of that type of impairment" and "Reasonable Accommodation" as "[p]roviding an individual with a Disability or

developers of housing for an individual with a Disability, flexibility in the application of land use and zoning regulations or policies (including the modification or waiver of certain requirements), when it is necessary to eliminate barriers to housing opportunities.” (LAMC Sec.13B.5.5.A.2 of Chapter 1A)

LAMC Sec. 13B.5.5.F.2 of Chapter 1A states: “If the Director [of Planning] grants the request, the request is granted to an individual and does not run with the land unless the Director determines that: a. the modification is physically integrated into the residential structure and cannot easily be removed or altered to comply with this Code; or b. the accommodation is to be used by another individual with a Disability.”

On May 17, 2024, the Director of Planning issued a Reasonable Accommodation determination, Case No. DIR-2023-5300-RAO (Determination), taking the following actions:

Approved 5,762 square feet of Residential Floor Area (RFA) in lieu of the maximum 3,523.5 square feet of RFA allowed on an approximately 7,830 square-foot lot in the R1 Zone, pursuant to LAMC Sec. 12.08 C.5(a); a waiver of the western and northern 45-degree encroachment plane that originates from a point that is 20 feet in height from the existing or finished grade, pursuant to LAMC Sec. 12.08 C.5(a); the use and maintenance of one covered parking space in lieu of the two otherwise required to be provided by LAMC Sec. 12.21 A.4(a); and a deviation from the locally protected tree replacement requirements of LAMC Sec. 46.02.

Denied 6,422 square feet of Residential Floor Area in lieu of the maximum 3,523.5 square feet allowed on an approximately 7,830 square-foot lot in the R1 Zone, pursuant to LAMC Sec. 12.08 C.5(a); a waiver of the southern 45-degree encroachment plane that originates from a point that is 20 feet in height from the existing or finished grade, pursuant to LAMC Sec. 12.08 C.5(a); to allow parking within the front yard setback, as otherwise prohibited by LAMC Sec. 12.21 C.1(g); and to allow more than 50 percent of the required front yard setback to be designed, improved or used for access driveways, as otherwise prohibited by LAMC Sec. 12.21 C.1(g).

Dismissed a request to deviate from the street tree removal and replacement requirements of LAMC Section 62.170 as these regulations are outside of the Zoning Code.

On March 27, 2024, the Determination was appealed by the applicant.

### RESPONSE TO APPEAL

Below are the appellant’s and their representatives’ appeal statements, and Planning staff’s response to them. The appellant’s statements are indented and italicized for clarification. Portions of the appellant’s and their representatives’ submitted statements have been edited to remove references to the applicant’s disability in order to protect their confidential medical information.

#### Appeal Justification, submitted by the Appellant, March 27, 2024:

*As a disabled person with [...], I was disappointed to find many of my requests were not granted and that I had less than two weeks to file this appeal. Let me begin with the intended rationale for the renovation and then I will discuss the specifics. This renovation was intended to accommodate the physically difficult conditions I endure on a daily basis, while also addressing the need to update our one-hundred-year-old home.*

*I have [...] which leads to [...] I now have [...] In addition, I also have [...]*

*As previously mentioned, my family and I live in home that is almost one hundred years old and other than some minor work we have done over the years; it has never undergone a major full renovation in the almost 20 years we have lived here. What we thought was going to be more of a renovation to make some aspects easier, has now become more of a necessity [...]*

*While on the surface the concessions offered by the administrator may appear favorable, the rejection of certain essential aspects of the plan has resulted in the project becoming untenable. Therefore, I have no choice but to begin the appeal process. There are several issues we respectfully ask to be reconsidered for approval.*

*First, we believe that the decision to require us to revert to the original garage is flawed. There are structural changes needed for the structure of the garage to support the walls and roof of the patio. In addition, the inclusion of the approved hot tub, would require modifications to the garage structure. This weight would then need to be transferred to the garage below and while the engineering review has not yet occurred, I have already been told that reinforcement will be needed to the walls below. This includes the area specifically where the old garage door was located, requiring load bearing walls and supports that would prevent a new garage door.*

Finding No. 5 of the Determination letter states that “The conversion of the rear garage into an exercise room and the granting of the associated authorization to provide one covered parking space can be easily reverted to comply with the Zoning Code, once it is no longer used by another Individual with a Disability.” This statement is in conformity with LAMC Sec. 13B.5.5.F.2.b of Chapter 1A and Condition Nos. 5.a. and b. have been tailored to ensure compliance with this requirement.

At the time of initial project consideration, it was not apparent that potentially significant structural alterations were necessary to accommodate the enclosed second floor patio area or conversion of the garage into a therapy gym. Further, additional statements made by the appellant's representative provided additional details as to what changes may be required as part of converting this space into a therapy gym. In light of these statements, Planning staff agrees that some discretion should be exercised. Staff recommends the adoption of amended Condition No. 5.a as follows:

- a. When the Reasonable Accommodation is no longer needed to accommodate an individual with a disability, the Director of Planning, in consultation with the Department of Building and Safety, shall determine which part(s) of the project approved herein are physically integrated into the residential structure and cannot easily be removed or altered to comply with this Code. Those portions which can be easily removed or altered shall be required to do so in order to comply with this Code.

The amended Condition No. 5.a allows for future consideration of the construction utilized to convert the garage into a therapy gym and determine whether it should be reverted back into a garage in whole or in part. Making a definitive decision on whether the converted garage can be reverted back without the benefit of more detailed plans and comment from the Department of Building and Safety would not be advisable at this time. Enforcement of this condition would take place after the dwelling is no longer occupied by an individual with a Disability.

Planning staff recommends deletion of Condition No. 5 b. Deleting this condition removes a redundancy – if portions of the therapy gym can be reverted back into a garage to provide at least one parking space, then waiver to allow one covered parking space in lieu of the two otherwise required is no longer required. If not enough of the therapy gym can be reverted back into a garage to provide at least one parking space, then the waiver would still be necessary.

The proposed modified Condition No. 5.a meets the intent of LAMC Sec. 13B.5.5.F.2.a of Chapter 1A and clarifies its implementation regarding the converted garage and uncovered parking authorizations.

*Further, the sustained rains we have endured the last couple of seasons have already caused interior damage to the roof, walls, and garage door track support system which will require the entire finished garage to be fully gutted and refinished. Furthermore, this would not be easily removed as the roof and walls would be integrated with the rest of the homes existing roof and walls. Therefore, based on the requirements set forth, the garage could not be expected to be converted back to a simple garage, while still supporting the existing structure that sits directly above.*

The methods utilized by the appellant to convert, repair and maintain the garage as a result of its change of use into a therapy room are not within the purview of this discretionary action. Structural changes necessary to accommodate the second-floor hot tub and/or to convert the garage into a therapy room which irrevocably prevent the ground-floor therapy room's later reversion back into a garage use have been accounted for with the recommended amendment of Condition No. 5.a.

*It appears that the administrator is under the incorrect belief that my disability is not permanent. The request to revert the gym back to a garage is not possible because my condition is not temporary, it is permanent. This renovation was to cover medical concerns not only present, but also future facing. It was under these conditions that we planned to permanently remove the garage door and place the needed structural supports to the new wall and have an added exterior access door for the conversion of the garage to a therapy gym for my use– the period which would be for the term of my lifetime. This would then be accessible not only from the interior of the home and unfortunately require a mild three step difference from the first floor [...] however, as a ramp was planned for the nearest edge of the patio to the house, this hurdle could be easily resolved in the future when necessary. This is also why the patio was elongated to lessen the incline of the steps and allow future access to the gym from the exterior as needed.*

*Furthermore, after speaking with the RAO chairperson prior to my initial filing, I was told that changes that were incorporated into the essential structure of the property, would not require a reversion. Moreover, pursuant to Los Angeles Municipal Code Section 12.22 A.27(f), "this Reasonable Accommodation request is granted to an individual and shall not run with the land. Any transfer of the subject grant is prohibited unless the Director Determines that (1) the modification is physically integrated into the residential structure and cannot easily be removed or altered to comply with the Code or (2) the accommodation is to be used by another individual with a Disability as defined by Los Angeles Municipal Code Section 12.22.A.27(b)." It would seem the garage due to the upstairs patio as defined by the Los Angeles Municipal Code would become a structure that would not be required to be reverted and the administrator was incorrect in his analysis. Furthermore, I was available to answer questions at any time concerning my disability or the use of this structure or any other on the property, yet I was never contacted.*

*I believe that the decision on the garage was made with the misunderstanding that my disability was temporary.*

The reasonable accommodation authorization only lasts so long as the individual with a Disability has a need for it and ends when the individual recovers or no longer resides upon the property. The Determination makes no presumption about the duration of the disability. Amended Condition No. 5.a allows for future evaluation of the garage conversion to determine if it can, wholly or in part, be reverted back from therapy gym to vehicle parking garage.

*The original driveway that stretches to the back of the home is elevated from the neighbor's property by three to five feet in various areas and separated by a wooden lattice fence that predates my ownership. This lattice fence needs to be replaced by something more substantial which I have told my elderly neighbors, I would be happy to replace once I know the status of this decision and where my home will sit so that I can have a cement wall placed to protect both our homes.*

Applicant has not presented a request or rationale to suggest that construction of a new fence or retaining walls along common property lines requires consideration for relief from Zone Code regulations under the RAO. Pursuant to the RAO, deviations from the Zone Code regulations have been granted to allow the construction of a one-car subterranean garage that is directly accessible from Lindbrook Drive. This grant ensures the individual with a Disability no longer needs to navigate the narrow driveway by automobile.

*Unfortunately, this driveway is much too narrow for most drivers to navigate, and many drivers are either forced to have someone guide them up the driveway or their vehicles are damaged, which has happened several times.*

The Determination grants deviations to allow the construction, use, and maintenance of a one-car subterranean parking garage that directly accesses Lindbrook Drive from the front of the property, so the existing driveway would no longer be utilized by the individual with a Disability. The existing driveway may be narrow, but this condition is not uncommon throughout the City. Approval of the proposed two-vehicle semi-subterranean garage would have resulted in a permanent narrowing of the existing driveway, resulting in it becoming too narrow to accommodate any vehicle. Additionally, as detailed in the Determination letter, feasible alternatives have been identified which allow for the preservation of the driveway and the property's ability to accommodate on-site parking.

*It is also my belief that the administrator's recommendations are faulty in this regard. The suggestion that we maintain the existing driveway, while at the same time install a singular subterranean garage with the existing driveway intact is not possible as it would prohibit the construction of the home. After reviewing this topic with my architect, we both determined that it would be virtually impossible to plan a subterranean garage that slopes downward at one plane and then attempt to have a competing parallel driveway that rises towards the back of the property rising at another plane. The property is not wide enough to accomplish this, especially as only a portion of the home was to have a basement. We did not and do not wish to knock down the entire home or tunnel under the full property for a basement. We were told that we did not have the resources to accomplish this. However, we could undertake a partial renovation under a portion of the house if we were to take down the living room, dining room, and study, with a portion of my office and then rebuild these rooms with basements underneath. However, to accomplish this goal, we would need to remove the existing driveway to of course provide the proper retaining walls for both my property and my neighbors which sits several feet below. This is the reason*

*we specifically chose to then place the two-car garage in the new subterranean location. I would require less driveway, while providing the same two parking spaces that our outdated and older garage could no longer provide as it was also too small to even accommodate the length of my vehicle or both my car and my wife's inside at the same time.*

The appellant suggests that the existing driveway cannot be maintained in conjunction with construction of the new driveway serving the approved subterranean parking garage. This suggestion presumes that the two driveways are required to share the same curb cut or are somehow required to be engineered together as one shared and combined driveway. As proposed, there is a substantial physical separation between the existing driveway and the approved one-vehicle driveway accessing the approved one-vehicle subterranean garage. There is more than enough space between the two to construct the new driveway and independently maintain the existing driveway. In addition, the appellant suggests that the existing driveway will need to be temporarily demolished to facilitate the project. Temporary removal of a driveway during construction activities is not an unusual occurrence; however, the appellant is cautioned that they are still obligated to provide a total of two on-site parking spaces at the conclusion of construction activities, and that those parking spaces are not permitted within the front yard setback. In order to comply with this requirement, the temporarily removed driveway will need to be replaced so that the rear of the property can be accessed by vehicle to provide that parking space.

*Additionally, the administrator suggests that a secondary vehicle could just park in the rear of the motor court and that the need for a second parking space is not necessary. As it is almost impossible to enter at while going forward, to exit in reverse would be perilous. This is not something that I believe was also not well thought out. It appears that I am then forced to choose. Do I want a garage or a gym? Which do I need more? As it appears that this decision will not allow me to have both. It may say on its surface that it does, but in reality, the two cannot be built based on the administrators' comments. We believe the plan will not be tenable. As my wife has then been denied her right to a safe and secure parking space if I am to have my therapy gym. Therefore, I respectfully request that the administrators plan to disregard LAMC Sec. 12.21 A.4(a) not be followed and that we in fact should be required to continue to have two covered parking spaces as required by city code.*

*The decision states that two garaged parking spaces are not required. However, my rationale is not only based in necessity for access to a vehicle, as both my wife and I work from home. Safety is a paramount concern. Within the last year, my family has had one vehicle broken into in front of our home. In addition, there is direct gate access from Wilshire Blvd. between the two buildings behind my home that leads directly to a path that accesses all the homes on Lindbrook and more specifically right behind my home. The path is elevated and can be easily climbed over the six-foot fence I have at the rear of my property. This pathway was used also used in a police standoff at one of the buildings, a couple of years ago when the home across the street from me was broken into. As many of the communities in Los Angeles, Little Holmby and Lindbrook Dr. have been hit with almost daily burglaries and car break-ins. It is not unreasonable, to want to have increased security for both my family and me when renovating our home.*

*Not allowing me the ability to fully move the garage is a taking of our right to a garage space. Again, I have already demonstrated the medical necessity for a therapy gym. Other occupants of our home are entitled to the same use of a garage as am I. My son and wife should have the ability to park their cars in a garage and close it without causing damage.*

*Yet, the arbitrator recommends that they can just drive up to the rear of the property. My question then would be how? How will it be possible to have two parallel driveways right next to each other when one is on a plane going up towards the backyard and the other is on a plane going down towards a basement? There is not enough room to build retaining walls and support these differing passages.*

There is no “right” to a covered parking space – the Zone Code only requires that covered parking be available. In this case, the decision-maker granted a reasonable accommodation to waive the requirement to provide a covered parking space for one vehicle in order to accommodate the appellant’s disability through the conversion of the existing two-car garage into a therapy gym. The Reasonable Accommodation Ordinance does not allow a decision-maker to make accommodations for individuals who are not disabled. Granting the additional floor area in conjunction with the proposed semi-subterranean garage would result in the existing driveway becoming too narrow to be utilized by any vehicle and cuts off access to viable parking spaces on the property. Granting a modification of the requirement to provide two covered parking spaces is less impactful than granting a deviation to allow additional floor area to be constructed.

The appellant’s statements for a desire to provide greater security for his family and property are unrelated to the appellant’s disability and cannot be considered under the authority of the RAO.

*The more efficient long-term solution is a two-car garage in the front of the property that would also revert portions of the original driveway back to landscaping and at the same time place the second vehicle’s space in the basement. That would also provide security for both my family which is of paramount importance as well as remove the congestion of having three cars.*

The decision-maker considers the land use impacts of the project beyond the point at which the property is utilized by an individual with a disability. As proposed, the project will result in a much greater floor area than is allowed for the property in the R1 Zone. Preserving continued access to viable on-site parking spaces at the rear of the property reduces the degree to which development on the property does not conform with the regulations of the Zone Code, meets the individual with a Disability’s need for access to his dwelling, alleviates the request to provide an additional parking space within the front yard setback, and reduces demand for curbside parking.

*We further request that the requested basement two car driveway with new street cuts be granted within the front yard setback pursuant to LAMC Sec.12.21 C.1(g)*

Planning staff recommends that this request be denied as it results in significant deviations from the Zone Code that cannot be easily undone, and for which a more reasonable alternative exists. Proposed construction of the two-car subterranean garage results in the existing driveway being narrowed to the point of becoming impassable by motor vehicles. This would prevent current and future use of the rear of the property to accommodate additional parking demand, resulting in increased curbside parking demand in the neighborhood. Further, it would result in a significantly higher amount of developed floor area on the property. The appellant already anticipates a parking demand that is more than three vehicles. Making the existing driveway impassable results in the applicant’s request to allow parking within the front yard setback to accommodate anticipated additional parking demand.

*We further request to allow parking within the front yard setback, as otherwise prohibited by LAMC Sec.12.21 C.1(g)*

Planning staff recommends that this request be denied as there is a more reasonable alternative that does not require the granting of this deviation. The Determination authorizes the appellant to construct a new bedroom suite for a full-time on-site care-taker. Maintaining driveway access to the rear yard allows more vehicles to be accommodated on-site than would be provided by allowing the proposed two-car subterranean garage and eliminates the need to grant a deviation to allow parking within the front yard setback.

*I would like to highlight that when trying to locate the elevator we tried to find a location with the less impact but maximize the use. The proposed location was ideal in that it would allow elevator access to every location of the home, with the exception of the therapy gym. However, this could be mitigated by using an exterior ramp off the first-floor patio [...] This is why the patio was to be extended to make a future ramp incline less severe.*

*Unfortunately, this location had the impact of being within my son's bedroom. This also removed my office bathroom which as I previous explained was of importance as every step becomes an issue when [...] The secondary problem with the elevator's location is that [...] On a typical night, I am either I either working or watching movies. An elevator in my son's bedroom would not be functional as I would be waking him every evening as I navigate the floors of the house. This is the sole reason; we chose to move his bedroom as far away from the elevator as possible. Additionally, the elevator was purposely chosen to be in its location as it would be ideal to remove groceries or packages from vehicles or anything else from either my vehicle or my wife's vehicle.*

*The administrator did not look beyond the square footage or closets when determining that my son would be just as well off after the renovation in what we had labeled the sitting room as before with his bedroom. It is true there is a large closet in the room, larger than before, but this was not the intent. The only reason the closet is that large is because of the exterior washer and dryer we decide to include in the second story. I had suggested that we take my son's existing bathroom and repurpose the tub into a walk-in tub for my future use. The separate shower would become the location for a stacked washer/ dryer to easier allow access for both my wife and me. However, my architect recommended a side by side which are reflected in the plans. This resulted in the increase of size of the opposing closet. Additionally, when we extended my first-floor office to add back a bathroom, it caused the immediate second story room above to extend. This resulted in the addition of the closet to the side of the elevator which was otherwise dead space. Additionally, the thought was that would aesthetically look out of place to have the first floor extend five feet beyond the second rather than have the front of the house extend straight upwards from one floor to the next.*

Planning staff recommends that this request for additional floor area to facilitate the construction of a new bedroom suite be denied because the authority to grant deviations from the Zone Code under the RAO does not extend to able-bodied individuals who also reside in the same dwelling. The location and placement of the proposed elevator, bathrooms, and laundry service was not altered by the decision-maker. The location and size of the proposed addition to the front of the dwelling, expanding the ground-floor office and the second-floor bedroom, was not altered by the decision-maker. The appellant has proposed a project that may impact other occupants of the dwelling. The portions of the project which require a deviation from the requirements of the Zone Code and do not meet the standard of being necessary to accommodate the housing needs of the individual with a Disability (LAMC Sec. 13B.5.5.E.1.b of Chapter 1A) have been denied due to lack of authority to consider such under the RAO.



*The administrator also took issue with the configuration of the primary bedroom, not acknowledging that this was reconfigured to accommodate the straight path of the hallway, but instead focusing on the closets and bathroom. The L shaped original access into the bedroom from the hallway would not ... when we were planning the renovation. As a result, we needed to reconfigure the hallway to remove this bend and allow a straight run that allowed access for the bathroom and closets. This did not let our existing hallway configuration work and unfortunately, we had to include our closets and bathroom in the remodel. Our bathroom had been one of the few items that had been updated not too long ago so I was not looking to add it to the list, but a straight hallway was required. While the administrator thought this was expansive, I believe the new bathroom is smaller in size than the existing and he rejected a small secondary closet. As I have explained the bedroom modifications were only done to accommodate ... and the small closet was added ... as were other closets in voids next to the spaces by the elevators.*

*Also, the answer as to why I might have an additional closet for my bedroom or so much closet space for a sitting room it is because I am disabled. I think it may be beneficial to ... I require in addition to what most people have. I need additional closet space to store ... In addition, the sitting room was planned to house a ...*

The configuration of the proposed second-floor main hallway was not altered by the decision-maker. The location and size of the proposed second floor master bathroom and existing bathroom has not been altered or denied by the decision-maker. The Determination denied the request to allow the additional square-footage to construct the additional closet space accessible through the Master Bedroom because there was no presented rationale to justify it based upon the individual with a Disability's stated medical needs and it appeared that this closet served as a convenience rather than a necessity. Based on the statements made by the appellant and the appellant's representative on appeal of the Determination, this rationale is fulfilled and a finding can be made to approve this 27 square-foot walk-in closet.

Planning staff recommends amending the grant clause to recognize this additional floor area:

5,789 square feet of Residential Floor Area in lieu of the maximum 3,523.5 square feet of RFA allowed on an approximately 7,830 square-foot lot in the R1 Zone, pursuant to LAMC Sec. 12.08 C,5(a);

Planning staff also recommends amending Condition No. 5 to recognize this additional floor area:

5. Approved herein is a Reasonable Accommodation to authorize approximately 5,789 square feet of Residential Floor Area; a waiver of the western and northern 45-degree encroachment plane that originates from a point that is 20 feet in height from the existing or finished grade, pursuant to LAMC Sec. 12.08 C.5(a); and, the use and maintenance of one covered parking space in lieu of two; all to be used for an individual Laurence Hilman, needing a Reasonable Accommodation.

*Finally, I want to address the theater in the basement. The simple answer that as I have attempted to explain in my original statements, having lived with [...] my mind needs an escape. My escape has always been to go to the movies. Watching a movie somehow lets my mind [...] As time has gone on and I have had to adjust I have started to watch movies at one home and at one point I had a sizeable collection, however for me [...] I need to immerse myself further. I also need to be in an environment where I am not disturbed. That is why when I am the theater, I am the person that sits in the front section by myself. I understand how this must sound to someone that doesn't see me at the*

*theater 3-5x a week or my family who can see me watch the same movie over and over to [...] but this is the escape that works for me. An isolated location that I can shut the outside noise and one in which I won't wake anyone and will be able to elevate my legs and not be disturbed. The basement theater was the perfect solution as a subterranean location could be easily soundproofed and allow me to put theater chairs that elevate to accommodate my medical conditions. Additionally, it was a separate space away from other people that I could just [...] I saw during the pandemic my condition drastically declined; I need to be prepared as I would not survive another quarantine without such an outlet. I realize this may come off as a luxury or an entitlement, but it is one I have purposely spent years saving for. I believe the location towards the rear of the property under the dining room and current office would allow this room to be fully underground without hindering any other determinations. It was also my understanding that basement rooms are not considered in the RFA when they are fully underground as most of this basement is and would therefore not in any way hinder with the existing driveway should that be required to be kept.*

Planning staff recommends that this request be denied as there are viable and feasible alternatives to respond to the needs of the individual with a Disability and because the proposal appears to exceed the medical needs of the appellant. The appellant states that he needs “[a]n isolated location [where] I can shut the outside noise and one in which I won’t wake anyone and will be able to elevate my legs and not be disturbed. The basement theater was the perfect solution as a subterranean location could be easily soundproofed and allow me to put theater chairs that elevate to accommodate my medical conditions.” According to the submitted plans, on the first floor, there is an existing guest room that is proposed to remain as such. This room can be repurposed to accommodate the appellant’s stated needs for isolation and media access without the deviations necessary to facilitate the construction of a new subterranean media room. If the existing guest room cannot accommodate the individual with a Disability’s needs, then the second-level Sitting Room can. The proposed 483 square-foot subterranean media room is designed to meet more than the needs of appellant’s medical condition. In addition, the size and location of the proposed subterranean theater directly impacts the accessibility of the existing driveway. The footprint resulting from the subterranean media room encroaches upon the existing driveway, permanently narrowing it, resulting in the loss of its ability to accommodate vehicles. A grant of appellant’s request for additional floor area to accommodate the subterranean media room would result in not only a significant permanent increase in the floor area on the property, but also negative impacts associated with diminished on-site parking availability.

*Additionally, the equipment racks were planned to service not only the theater but the entire home as I transition to a more centralized smart entertainment system. The small dead space/ closet that was disallowed in the hallway next to the elevator to the steps was meant to accommodate pre-existing network, phone, and satellite wires that are currently sitting in this location at the base of the steps now. They are in a rack at the base of the steps in the opening of the current California basement.*

Planning staff recommends denial of this request as it exceeds the authority of the RAO. The RAO only authorizes consideration of deviations from the Zone Code if they are necessary to make housing available to an individual with a Disability. Deviations from the regulations of the Zone Code for construction that is not supported by the medical needs of an individual with a Disability are not within the scope of consideration. The additional space in the basement requested by the appellant is not related to the appellant’s medical need but represents convenient additions to enhance the overall dwelling that are unrelated to the medical needs of the individual with a Disability. Approval of the request exceeds the authority of the RAO and would result in further permanent exceedances of the allowed floor area upon the property.

*We also request that both the theater room, basement bathroom, and equipment racks all be excluded from the included RFA calculation as these rooms fall below ground level elevation and thus should not be included. LAMC Sec.12.08 C.5(a)*

LAMC Sec. 12.03 defines "Floor Area, Residential" as "[t]he area in square feet confined within the exterior walls of a residential or non-residential Building on a Lot in an RA, RE, RS, or R1 Zone." An exception for "Basements" states: "... any Basement when the Elevation of the upper surface of the floor or roof above the Basement does not exceed 2 feet in height at any point above the finished or natural Grade, whichever is lower ... For all Lots, the following shall not disqualify said Basement from this exemption: (a) A maximum of one (1), 20-foot wide depressed driveway with direct access to the required covered parking spaces ..."

Planning staff recommends denial of these requests because they are not "necessary to eliminate barriers to housing opportunities" (LAMC Sec.13B.5.5.A.2 of Chapter 1A). While the one-car garage may be exempted from the floor area calculation, the remainder of the basement floor area is not exempted from this calculation. Authorizations have been granted to allow the construction, use, and maintenance of the one-car subterranean garage because it serves the purpose of facilitating an individual with a Disability's access to the dwelling. The proposed media room, basement bathroom, equipment racks, and other ancillary spaces do not meet this standard or reasonable alternatives have been found that negate the need for it.

Rachelle Taylor Golden, Golden Law, representing the Appellant, September 27, 2024:

1. The City has Mischaracterized the Current State of Mr. Hilman's Disabilities and Mobility Limitations and What is Needed to Accommodate Him in His Home

*First and foremost, while the City acknowledges that Mr. Hilman is a person with a disability, it has unilaterally decided that "there are alternatives to the proposed project that would accommodate the needs of the applicant ... ." (the Determination at p. 10.) This determination disregards and misinterprets the supporting medical documentation that has been submitted originally with the Hilmans' Request.*

*With all due respect, neither the Associate Zoning Administrator who issued the Determination, nor anyone at the Office of Zoning Administration for that matter, is a medically trained professional that has treated Mr. Hilman, and is therefore, not in a position to determine whether there are "alternatives" that "would accommodate" his disability. Attached hereto as Exhibit "1" is a copy of a letter by Mitchell D. Becker, M.D., who has treated Mr. Hilman since 1999. This letter has already been presented to the City with Mr. Hilman's Request, and it appears to have been completely disregarded by the City. It is worth pointing out that Dr. Becker states that Mr. Hilman has undergone [...] Further, Dr. Becker states that Mr. Hilman currently [...] Emphasis added. The City is not in a position to determine how Mr. Hilman can successfully navigate his home environment and what is needed in order to assist Mr. Hilman cope with his condition [...].*

*In an effort to further evidence the continuing care that is needed to treat Mr. Hilman 's [...] disabilities, attached hereto as Exhibit "2" is a letter from Ian Yip, M.D., F.A.C.P., a physician who has treated Mr. Hilman since 2013. Dr. Yip has determined that Mr. Hilman currently has physical disabilities that are getting worse or "degraded" and that there is almost "no chance of improvement throughout the duration of his life." Furthermore, Exhibit "3" also attached hereto, is a letter from Mr. Hilman's treating physical therapist, James Scherer. P.T., D.P.T., O.C.S PT #34898. Dr. Scherer opines that Mr. Hilman [...]*

*Both Dr. Yip and Dr. Scherer agree that disassociation is a method Mr. Hilman uses for pain management. Meaning, having a quiet room to watch movies for hours on end is a pain management method used by Mr. Hilman so that he can focus on other things, rather than his chronic and persistent pain.*

*The reason that the word "currently" is repeatedly used herein, is because the City has mischaracterized the present nature of Mr. Hilman 's disabilities. Specifically, the City states, "the applicant lives in the single-family dwelling and has degenerative medical conditions which will eventually limit his mobility." See the Determination at p. 9. Emphasis added. This is incorrect. Mr. Hilman's mobility is currently limited in his mobility and will worsen as his disabilities progress. Therefore, based on this fact alone, Mr. and Mrs. Hilman urgently request that the City reconsider its denial of portions of the Request that have not been approved. The City cannot stand in the shoes of Mr. Hilman's treating physicians and unilaterally determine that there are "alternatives" that would accommodate Mr. Hilman's disabilities and mobility impairments.*

The Determination recognizes the appellant as an individual with a Disability and makes no presumption about the duration of the disability. The term of the Determination's authorization is limited to occupation of the dwelling by the individual with a Disability, so long as the disability continues, or the dwelling is continued to be occupied by another individual with a Disability.

*2. The "Hillside Area" is Much Larger than "a 500-Foot Radius of the Subject Property," and the Radius Compared is Unreasonably Restrictive*

*The City states that "City Planning staff ... reviewed current and prior actions associated within the subject property and those within a 500-foot radius of the subject property." 500-feet from the Hilman' s property is a very small radius. Much smaller than the "Hillside Area." For example, 500-feet to the east of the Hilman's property is approximately one street over to and encompasses a nonresidential area. See Exhibit 4, p. 1. Therefore, the easternmost area within the radius is dissimilar to the Hilmans residence. To the north, 500-feet is approximately to the corner of Lindbrook and Warner Avenue, the next street over. See Exhibit 4, p. 2. To the west, the radius stops at Westholme Avenue, again, just one street over. To the south, the radius ends at essentially the end of Lindbrook Drive, at Westholme Avenue. The issue is that according to Ordinance 129,279, cited in the Determination, the Hillside area extends much farther than a 500-foot radius. See Exhibit 5. The 500-foot radius provides an incomplete picture of houses that have greatly expanded in the neighboring areas.*

Consideration of other land use cases within the surrounding area are to help characterize and contextualize the requested RAO deviations within the immediate neighborhood. Approval or disapproval of the RAO deviation requests are not dictated by these or other land use determinations but are considered based upon the project's merits to meet the required Findings for approval.

*For example, 10433 Lindbrook Drive, Los Angeles, CA 90024, is three streets over to the northeast of the Hilman's home, on Lindbrook Drive at the corner of Holmby Avenue. See Exhibit 6, p. 1. Records show that beginning in 2020, a comprehensive demolition of the existing "two-story residence with a partial basement and a swimming pool, which will be demolished and wasted from the site," was approved by the City. Exhibit 6, p. 2. The permit was issued on May 21, 2020. Exhibit 6, at p. 39. The new two-story residence was larger in square feet than the original residence and contained an attached two-car*

*garage. Exhibit 6, at pp. 48, 54. A simple Google Earth image search reveals the extent of the project. Exhibit 7.*

*Even closer to the Hilman residence is 10476 Lindbrook Drive, Los Angeles, CA 90024, which is two and a half streets to the northeast. Exhibit 8, at p. 1. Again, a simple Google Earth image search reveals an extensive addition to the property. Exhibit 8, pp. 2-3. In fact, a "2-story additional and int(erior) alterations to existing single family dwelling" was approved by the City on July 8, 2019. Exhibit 9, at p. 1. The two-story addition resulted in an additional 1,878 square feet to the residence, and also included a two-car garage. Exhibit 9, at p. 2, and Exhibit 8 at p. 4.*

There is no Zone Code regulation which prohibits the construction and use of a two-car garage on the subject property, at the proposed location - the deviation that is required for the proposal concerns the additional floor area that the proposed garage represents. If the appellant's project could have been accomplished within the maximum allowed floor area for the subject property, the proposed semi-subterranean two-car garage could have been constructed without the need for a discretionary action. The two properties cited above were completed within the maximum floor area allowed for their respective lot areas, and no discretionary action was needed.

*Slightly farther away is 700 S. Holmby Avenue, Los Angeles, CA 90024, which is less than one-half mile from the Hilman residence, but within the same "Hillside" area and within the "West LA Transportation Improvement and Mitigation Plan" cited to in the Determination at p. 8, the owners were issued a permit to add a basement, a total of two stories to the home, and three parking stalls in a covered garage, for a total of 8,336 square feet. Exhibit 10 and Exhibit 11.*

The cited development at 700 South Holmby Avenue does not help to characterize or contextualize the immediate neighborhood; further, the property is proportionally permitted to develop more floor area by-right due to its larger lot area (approximately 13,324 square feet) as compared to the subject property (approximately 7,829 square feet).

*Finally, it is clear from the Determination that the Zoning Administrator's search was limited to discretionary approvals in the ZIMAS and PCTS databases, not actual relevant cases for comparison purposes under the Americans with Disabilities, Fair Housing Amendments and the Fair Employment and Housing Acts. As stated above, there are certainly "relevant cases" within a short distance to the Hilman's residence that require consideration. See the Determination at p. 9.*

The projects cited by the appellant's representative are not comparable to the RAO deviation requests being sought because the circumstances of their construction were not pursuant to a request for relief from the Zoning Code, and their locations do not help to characterize or contextualize the immediate neighborhood surrounding the subject project. Approval or disapproval of the RAO deviation requests are not dictated by other land use determinations – they are considered based upon the project's ability to meet the required Findings for approval.

### **3. The Denial of the Totality of the Request for Accommodation Constitutes Discrimination by the City of Los Angeles Against The Hilmans Based Upon His Disabilities**

*Title II of the Americans with Disabilities Act ("ADA") and the Fair Housing Amendments Act of 1988 ("FHAA") prohibit housing discrimination because of a person's disability. Both Acts provide that a person is disabled, if he has 1) a mental or physical impairment that substantially limits a major life activity, 2) a record of such an impairment, or 3) is regarded*

*as having such an impairment. 42 U.S.C. § 12102(2); 42 U.S.C. § 3602(h). According to the Title 24 of Code of Federal Regulations, section 100.204(0), "It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit... ." Cities can discriminate against persons with disabilities when the denial of a permit is inconsistent with previous approval of the same or similar permit applications.*

*In Giebeler v. M & B Assocs., 343 F.3d 1143, 1148-49 (9th Cir. 2003), high Court provided robust insight into how reasonable accommodations should be applied in the housing context. Specifically, it observed:*

*"The plain language of the FHAA provides scant guidance concerning the reach of the accommodation requirement. See 42 U.S.C. § 3604(f)(3)(B); see also 42 U.S.C. §§ 3607; 3604(f)(5)(C); 42 U.S.C. § 3604(f)(9) (listing exemptions to FHAA coverage and limitations on the duty to accommodate).*

*Similarly, the FHAA's legislative history and regulations provide us with little specific guidance as to the scope and limitations of "accommodation" under the FHAA.*

*The House Committee Report on the FHAA does state, however, that the interpretations of 'reasonable accommodation' in Rehabilitation Act ("RA") regulations and case law should be applied to the FHAA's reasonable accommodation provision: New subsection 804(f)(3)(B) makes it illegal to refuse to make reasonable accommodation in rules, policies, practices, or services if necessary to permit a person with handicaps equal opportunity to use and enjoy a dwelling. The concept of 'reasonable accommodation' has a long history in regulations and case law dealing with discrimination on the basis of handicap. [Footnote citing, inter alia, 45 C.F.R. § 84.12.] A discriminatory rule, policy, practice, or service is not defensible simply because that is the manner in which such rule or practice has traditionally been constituted. This section would require that changes be made to such traditional rules or practices if necessary to permit a person with handicaps an equal opportunity to use and enjoy a dwelling. H.R. REP. NO. 100-711, at 25 (1988), reprinted in 1988 U.S.C.C.A.N. 2173, 2186. See also *id.* at 28 ('In adopting this amendment, the Committee drew on case law developed under Section 504 of the Rehabilitation Act of 1973.').*

*Consistent with the Report's recommendation, we have applied RA regulations and case law when interpreting the FHAA's reasonable accommodation provisions. See, e.g., Mobile Home I, 29 F.3d at 1417; City of Edmonds v. Wash. State Bldg. Code Council, 18 F.3d 802, 806 (9th Cir.1994) ('Reasonable accommodation is borrowed from the caselaw interpreting the Rehabilitation Act of 1973.'), *aff'd* City of Edmonds v. Oxford House, 514 U.S. 725, 115 S.Ct. 1776, 131 L.Ed.2d 801 (1995). Also, since the enactment of the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq., we have relied on ADA cases in applying the RA, because, as a general matter, 'there is no significant difference in the analysis or rights and obligations created by the two Acts.' Vinson v. Thomas, 288 F.3d 1145, 1152 n. 7 (9th Cir.2002). See also Zukle v. Regents of the Univ. of California, 166 F.3d 1041, 1045 n. 11 (9th Cir.1999) (discussing applicability of RA interpretations to the ADA).*

*The concept that policies and practices must be modified in some instances to accommodate the needs of the disabled is common to all three statutory schemes. See 45 C.F.R. § 84.12 (§ 504 regulation); see also Vinson, 288 F.3d at 1154 (citing 28 U.S.C. § 35.130(b)(7)(2001), an ADA regulation); Zukle, 166 F.3d at 1046. We therefore look to both RA and ADA interpretations of 'accommodation' of disabled individuals as indicative of the scope of 'accommodation' under the FHAA. In doing so, we interpret the FHAA's accommodation provisions with the specific goals of the FHAA in mind: 'to protect the right of handicapped persons to live in the residence of their choice in the community,' and 'to end the unnecessary exclusion of persons with handicaps from the American mainstream.' City of Edmonds, 18 F.3d at 806 (internal quotations omitted)." *Emphasis added.**

*"Under the FHAA, as under the RA and the ADA, only reasonable accommodations that do not cause undue hardship or mandate fundamental changes in a program are required." Giebeler v. M & B Assocs., supra, 343 F.3d 1143, 1154. The imposition of burdensome policies can interfere with the right of person with a disability to use and enjoy the dwelling of their choice. Id. In order for a plaintiff to be successful in showing that an accommodation was reasonable, they must show that the policy or rule caused discrimination based upon a person's disability, and that the request was reasonable. "In addition to causation, equal opportunity is a key component of the necessity analysis; an accommodation must be possibly necessary to afford the plaintiff equal opportunity to use and enjoy a dwelling." Id. at 1155. The initial burden of reasonableness is on the shoulders of the party requesting the accommodation, and once shown, the burden shifts to the party claiming that the request was unreasonable or that "the accommodation would cause undue hardship in the particular circumstances." Id. at 1157.*

*Other circuits agree. In Dadian v. Village of Wilmette 269 F.3d 831 (7th Cir. 2001), the plaintiffs were in their mid-70s and had lived in their current house with a detached garage since 1959. Both husband and wife had disabilities that affected their mobility. Due to their mobility impairments, they hired an architect to design a one-story house on their lot with rooms and hallways wide enough for a wheelchair, along with an attached garage in the front of the residence, with a 30-foot driveway. The defendant denied portions of the request and granted others. Defendant ultimately held a meeting to determine whether to grant the front driveway permit. At the hearing, the plaintiffs physician stated that the proposed driveway would be best to accommodate the disability of the wife, because she was only able to navigate shorter distances. The defendant expressed safety concerns, and the permit was ultimately denied.*

*The court of appeal observed that, "A public entity must reasonably accommodate a qualified individual with a disability by making changes in rules, policies, practices or services, when necessary. 42 U.S.C. § 12131(2); 42 U.S.C. § 3604; see Washington, 181 F.3d at 847-48." Dadian v. Vill. of Wilmette, supra, 269 F.3d 831, 838. *Emphasis added.* "Whether the requested accommodation is necessary requires a 'showing that the desired accommodation will affirmatively enhance a disabled plaintiff's quality of life by ameliorating the effects of the disability.' (Citation.) The overall focus should be on 'whether waiver of the rule in the particular case at hand would be so at odds with the purposes behind the rule that it would be a fundamental and unreasonable change.'" Id. at 838-839. *Emphasis added.* Evidence was presented at trial that there were several other blocks on the street that had curb cuts via front driveways. Ultimately, the jury was reasonable in finding that the plaintiffs' requests were not a fundamental or unreasonable change to the ordinance. Id. at 839.*

*Montano v. Bonnie Brae Convalescent Hosp., Inc* 79 F.Supp.3d 1120, 1126, (C.D. Cal. 2015) relied on *Dadian* when it observed that an accommodation is reasonable if the "desired accommodation will affirmatively enhance a disabled plaintiff's quality of life." "To prove that an accommodation is necessary, '[p]laintiffs must show that, but for the accommodation, they likely will be denied an equal opportunity to enjoy the housing of their choice.' *Smith & Lee*, 102 F.3d at 795. Put another way, '[w]ithout a causal link between defendants' policy and the plaintiff's injury, there can be no obligation on the part of defendants to make a reasonable accommodation.'" *Giebeler v. M & B Assocs., supra*, 343 F.3d 1143, 1155. "The FHAA requires public entities 'to reasonably accommodate a disabled person by making changes in rules, policies, practices or services as is necessary to provide that person with access to housing that is equal to that of those who are not disabled.' *Good Shepherd Manor Found., Inc. v. City of Mombence*, 323 F.3d 557, 561 (7th Cir. 2003); see also 42 U.S.C. § 3604(f)(3)(B). 'Although the plain language of the FHAA provides little guidance concerning the reach of its accommodation requirement, the contours of the obligation have been given substantial elaboration by this court and other courts of appeals.' *Wis. Cmty. Servs.*, 465 F.3d at 749. 'The basic elements of an FHAA accommodation claim are well-settled.' *Id.* 'The FHAA requires accommodation if such accommodation (1) is reasonable, and (2) necessary, (3) to afford a handicapped person the equal opportunity to use and enjoy a dwelling.' *Oconomowoc*, 300 F.3d at 783.9." *Valencia v. City of Springfield, Illinois*, 883 F.3d 959, 967 (7th Cir. 2018)

California's Fair Employment and Housing Act ("FEHA") is more specific as it expressly defines discrimination as an act by a public entity that denies an accommodation "through public or private land use practices, decisions, and authorizations because of ... disability." Cal. Gov't Code § 12955(f). It specifically "includes, but is not limited to, restrictive covenants, zoning laws, denials of use permits, and other actions authorized under the Planning and Zoning Law (Title 7 (commencing with Section 65000)), that make housing opportunities unavailable." *Id.*

Here the appellant's representative summarizes case law regarding the Americans with Disabilities Act, the Fair Housing Amendments Act of 1988, Title 24 of Code of Federal Regulations, and California's Fair Employment and Housing Act. The appellant has sought deviations from the regulations of the Zone Code pursuant to the City's Reasonable Accommodation Ordinance, which is in conformity with these laws. Those portions of the project which met the required Finding of the RAO have been approved.

#### 4. The City Has Discriminated Against Mr. Hilman by Denying Portions of the Request for Accommodation

##### a. The Denial of the Covered Two-Car Garage is Discriminatory

Here, the Hilmans have shown that Mr. Hilman is currently disabled with mobility impairments, and those impairments will progress to the point that he will be immobile without the use of a wheelchair. Exhibits 1-3. It is undisputed that Mr. Hilman is a person with disabilities and mobility impairments. Second, the causation prong under *Giebeler* has also been met. While the City has granted portions of the Request, it has arbitrarily denied others, which renders the City's conduct discriminatory. The discussion and evidence herein shows that surrounding neighbors have been allowed to demolish, rebuild, and greatly expand the square footage of their homes, all of which has been approved by the City. The evidence also shows that each of the houses are allowed street-level two-car garages, which has specifically been denied to Mr. and Mrs. Hilman. Exhibit 12. In particular, the City has determined that the approval of a "smaller" one-car garage



*so that the driveway width and vehicle access to the rear of the property can be preserved, is discriminatory. The Determination, p. 10. The documentation provided with the Request specifically states that there is a "a strong medical need for" the two-car garage, "as this will allow Mr. Hilman to either transition first to the use of a mobility vehicle and then a wheelchair, as his disability progresses." Exhibit 1, p. 2. A modern mobility vehicle often has a ramp that requires space to deploy on the passenger side of the vehicle. This is precisely the reason the 2010 American with Disabilities Act Standard for Accessible Design and Chapter 11 B of the California Building Code mandate that places of public accommodation have "van accessible" parking spaces included within each parking lot. See 2010 ADA Chapter 5, and 2022 Chapter 11 B, Section 502.3. It is not reasonable to deny Mr. Hilman the right to a two-car garage that can accommodate a van accessible vehicle, but yet mandate that businesses have van accessible parking spaces. The positions are incongruent.*

*Several houses on the same street just a few houses down from Hilmans and within the 500-foot radius, all have above-ground, two car garages. See Exhibit 12. Further Exhibit 8 shows that 10476 Lindbrook Drive was allowed to have a two-car garage with a very short driveway, likely encroaching upon the front yard setback. The approval of the permit for the addition at 10476 Lindbrook, shows that the City is inconsistently applying the applicable zoning ordinances and has denied the Hilman's their request, in a discriminatory manner.*

The Findings of the Determination lay out the rationale for the approval of some portions of the project and the denial of other portions of the project. The portions of the project that were denied were not arbitrary, as documented under Finding No. 2 of the Determination letter. The appellant's representative's citation of other development in the area ignores the dissimilarities of the involved properties, which results in differing development rights. In addition, because the applicant sought consideration under the authority of the RAO, the project is considered under its own merit, without regard for the land use actions in the surrounding area.

There is no Zone Code regulation which prohibits the construction and use of a two-car garage on the subject property at the proposed location - the deviation that is required for the proposal concerns the additional floor area that it represents. The Determination granted Zone Code deviations necessary for the floor area needed to construct and utilize a one-car garage at the front of the property for the benefit of an individual with a Disability. The floor area of a typical two-car garage is approximately 400 square feet. As documented in Finding No. 2 of the Determination, approximately 384 square feet is allocated to the approved one-car garage, which is sufficiently large enough to accommodate the mobility needs of the individual with a Disability and exceeds the minimum dimensions for an ADA-compliant van parking space. The Determination denied the additional floor area proposed for a second vehicle within the new garage because that floor area would not be utilized by the individual with a Disability, and consideration of a deviation for that additional floor area exceeds the authority of the RAO.

**b. The Medical Documentation Supports Approval of the Media Room.**

*In response to the Zoning Administrator's comments that insufficient medical documentation was provided to explain how Mr. Hilman copes with pain, Mr. and Mrs. Hilman are submitting medical documentation from two additional, different treating medical providers that explain the reason the media room is important for Mr. Hilman to cope with pain. The denial of this portion of the Request should be reversed and the City should approve the construction of the media room. Disassociating from the chronic pain by watching movies, away from the family in a quiet basement, affirmatively enhances Mr.*

*Hilman 's quality of life. As the medical documentation shows, Mr. Hilman has been using movies to disassociate from chronic pain for over thirty years. As the neuro-stimulator Mr. Hilman previously used to assist in pain management had to be removed due to infection and it is no longer an option for him, this request has become even more important. Therefore, while not conventional, Mr. Hilman has had to adapt to different pain management methods, which include ways to disassociate from the pain. The media room is necessary to accommodate Mr. Hilman' s disabilities.*

The Determination does not dispute the appellant's need for an isolated space for pain management. On review of the submitted plans, the decision-maker found that 1) the floor area of the proposed Media Room was unsupported by the submitted documentation; 2) the Media Room is designed to accommodate more persons than the individual with a Disability; and 3) the existing ground-level guest room or proposed second-level Sitting Room can meet the expressed technical needs for the individual with a Disability without the need for deviation from the Zone Code.

*c. The Upper-Level Additions are Necessary to Accommodate Mr. Hilman's Disabilities*

*It is puzzling that the City has unilaterally made the determination that, "The proposed new bedroom suite is not necessary to accommodate the needs of an individual with a disability." The Determination at p. 11. The City approved the installation of an elevator. The existing upper-level bedroom will then have an elevator inside the bedroom which directly accommodates Mr. Hilman's disabilities and mobility impairments. Elevators are often noisy, and Mr. and Mrs. Hilman have a school-aged son that resides in the home. Converting the upperlevel bedroom into a sitting room, which will contain the elevator is reasonable so that the Hilman's son can have a bedroom that does not contain an elevator inside of it, likely to be used by Mr. Hilman all hours of the night when he is unable to sleep. Furthermore, the addition of the spare bedroom for a caregiver is directly related to the anticipated future needs of Mr. Hilman as his disabilities and mobility limitations progress. Lastly, having a quiet spare bedroom for Mr. Hilman to sleep in, or his wife to sleep in, during Mr. Hilman's restless nights due to "electrocution" like pain, is necessary and directly related to Mr. Hilman 's disabilities. See Exhibit 1, p. 2.*

The Determination found that the proposed bedroom suite for the appellant's family member required a deviation from Zone Code regulations; approval of this additional floor area exceeds the authority of RAO because the beneficiary of the action would not be an individual with a Disability. The proposed elevator is located adjacent to the proposed Sitting Room and opens onto a common hallway. The Determination approved the bedroom suite designated for a full-time live-in care-taker because this service is necessary to ensure the appellant's continued occupation of his home. The spare bedroom cited by the appellant's representative is designated as a ground-level guest room on the submitted plans. The decision-maker concluded that this space could serve the appellant's need for pain management through its use as a media room. No rationale was put forth as to why this room could not also serve as the spare bedroom requested by the appellant. If the existing guest room cannot meet the technical medical needs of the individual with a Disability, then the larger proposed Sitting Room can. If the Sitting Room is utilized as the individual with a Disability's media room, then the existing guest room can be utilized as the displaced family member's bedroom.

*d. The Lower-Level Spaces within the Request Directly Relate to Mr. Hilman's Disabilities and the Denial, was Unreasonable*

*Mr. Hilman has submitted medical documentation that support that he will required a lifetime of physical therapy, and has undergone physical therapy for years. Exhibits I , and 3. Converting the back of the garage to a rehabilitation gym will assist Mr. Hilman maintain as much physical strength as possible, throughout his lifetime. As his condition progresses, it will be harder for him to leave his home to undergo therapy sessions. Therefore, having an in-home space to undergo physical therapy, directly benefits his overall health and longevity.*

The Determination approved the appellant's request to convert the existing two-car garage into a therapy room.

*While is it not known the precise use for each room in the complete demolition of 10433 Lindbrook Drive, and its complete reconstruction, it can be presumed that there are rooms in the home that are in addition to the primary rooms (bedroom, living room, kitchen, etc.), such as an office, gym, and/or media room. Exhibits 6 and 7. Not only was 10433 Lindbrook Drive completely rebuilt, but it was also built much larger than the original structure that was completely demolished. Denying the Hilmans request to include a gym and interior hallway, so that he does not have to go through the garage to get to the elevator, while approving the complete reconstruction of the Hilman's neighbor, is discriminatory.*

The submitted plans identify with sufficient precision the use of each room within the proposed dwelling. The Determination approved the appellant's request to convert the existing two-car garage into a therapy room. The project located at 10433 Lindbrook Drive did not require any deviations from the Zone Code to accommodate the size of the dwelling because that lot is larger than the subject lot and therefore is allowed to develop a proportionally greater amount of floor area. The Determination did not take any action that denied any hallway between the interior of the dwelling, the therapy room, the elevator, or the garage.

*e. The Main Level Additions Are Necessary to Accommodate Mr. Hilman's Disabilities and Mobility Impairments*

*Mr. Hilman works from home and as his mobility function decreases, he will need immediate access to a restroom next to his office. Having a restroom located immediately adjacent to the home office is critical for Mr. Hilman. Based upon the needs of Mr. Hilman, having two main level restrooms are appropriate. The blanket denial of several aspects of the "residential floor area" without any analysis by the City, and in complete disregard to the medical documentation provided is unreasonable. The Determination, p. 12.*

The Determination did not deny the request to relocate and expand the restroom attached to the individual with a Disability's office, nor did the Determination take any action regarding the existing bathroom located on the Main Floor, between the kitchen and the guest room. For those portions of the project that were denied, the rationale and basis for those conclusions are documented under Finding No. 2 of the Determination letter.

*5. Conclusion*

*The denial of several portions of the Request is unreasonable, does not create a fundamental alteration of the policy as surrounding neighbors have two-car garages, and have greatly expanded their homes. Therefore, the City has engaged in discriminatory conduct against Mr. Hilman directly, and against Mrs. Hilman and their son, by association to Mr. Hilman, in violation of the ADA, FHAA and FEHA. The City's decision to deny*

*portions of the Request must be reversed and the Request, in its totality, must be approved. Without a comprehensive approval, Mr. Hilman's quality of life is and will continue to be greatly affected and he will be unable to enjoy his home as his disabilities and greatly affected and he will be unable to enjoy his home as his disabilities and mobility impairments progress.*

The Determination was issued in compliance with the RAO. Finding No. 2 requires that “[t]he requested accommodation is necessary to make housing available to an Individual with a Disability protected under the Acts.” The appellant’s spouse and son have not been identified as individuals with a Disability. Those portions of the project which required a deviation from the Zone Code and could not meet this Finding were appropriately denied.

Robert Glushon, Luna & Glushon, representing the Appellant, September 30, 2024:

*Our law firm represents Laurence and Robin Hilman (the “Hilmans”), the Appellants to the Zoning Administrator’s determination to deny Mr. Hilman, who is disabled, reasonable accommodations to remain in his residence and community, in violation of the Americans with Disabilities Act (“ADA”), the Fair Housing Amendments Act of 1988 (“FHAA”), Fair Employment and Housing Act (“FEHA”) and the Rehabilitation Act (“RA”), as set forth in more detail in the letter submitted concurrently by Golden Law, a law firm specializing in disability law.*

*In addition to the points raised by Ms. Golden with respect to the City’s discrimination against Ms. Hilman, in violation of the ADA, FHAA, RA and FEHA, this letter further sets forth the reasons that the Zoning Administrator’s denial is arbitrary and capricious, and unsupported by substantial evidence.*

*Most notably, it cannot be over-emphasized that there is no dispute that Mr. Hilman is disabled and requires zoning accommodations to remain in his current home. Nevertheless, and while granting some accommodations, the Zoning Administrator has unilaterally denied others declaring that “there are alternatives to the proposed project that would accommodate the needs of the applicant.” (Determination Letter, p. 10).*

*The Zoning Administrator’s determination is nothing if not capricious. The Zoning Administrator has absolutely no authority to unilaterally modify the project proposed by the Hilmans. Yet, he has issued a determination requiring changes to the Project that he and he alone has deemed to be appropriate, including that the proposed caretaker’s room be rotated and that the two-car garage be converted to a single car garage. The City has absolutely no authority, for any applicant, disabled or not, to impose changes on a project – changes which were not discussed, reviewed, agreed to, or analyzed by architects/engineers for feasibility. The City has no discretion to change a project, on whim.*

The rationale for approval and denial of portions of the proposed project are set forth under Finding No. 2 of the Determination. The orientation of the proposed and approved care-taker’s suite has no impact on the individual with a Disability’s ability to access or utilize his dwelling. Re-orientation of this addition avoids an additional Zone Code deviation to exceed the Encroachment Plane along the south side of the dwelling, which limits the height of the building. The Determination does not dictate how the care-taker’s suite is to be redesigned to meet this Zone Code requirement. Denial of the floor area associated with one of two vehicle parking spaces within the proposed semi-subterranean parking garage is justified because the second space was

not for the benefit of the individual with a Disability, did not meet the standard required by Finding No. 2, and that request exceeded the authority of the RAO.

*Notably, the Hilmans' request is not opposed by anyone in the community. The Zoning Administrator's actions are not in response to any concerns, but are, as described herein, unilaterally and arbitrarily imposed.*

Determinations issued pursuant to the RAO are made without consideration of local community input. Approval and denial of the various parts of the proposed project are based upon the Findings set forth in the Determination.

*As more fully explained by Golden Law, the Zoning Administrator is also not a medically trained professional that has treated Mr. Hilman and is not, in any way, shape, form or position to determine whether there are "alternatives" that "would accommodate" Mr. Hilman's disability. Such statement is entirely lacking in supporting evidence.*

The alternatives that are present include the following:

- Maintaining the existing western driveway to maintain vehicle access to the rear portions of the property facilitates additional opportunities for on-site parking.
- Maintaining additional opportunities for on-site parking renders the need to provide a deviation to allow parking within the front yard setback unnecessary.
- Maintaining additional opportunities for on-site parking allows the property to maintain a minimum of two on-site parking spaces without the need for an additional deviation.
- Granting a deviation to allow one covered parking space in lieu of the two required is less impactful than allowing the additional square-footage for a second parking space within the approved semi-subterranean parking garage.
- Maintaining vehicle access to the rear portion of the property maintains access to the converted garage, which preserves an option for its future reversion back into a garage use.
- The ground-floor guest room meets the appellant's stated needs for a media room. There is no stated rationale as to why the existing guest room cannot meet this need.
- The ground-floor guest room, while meeting the appellant's media room needs, can also facilitate the alternate sleeping location the appellant requires.
- The second-floor Sitting Room is larger than the existing guest room, and could also provide both the space for an isolate media room and a sleeping location.
- Utilizing the existing ground-level guest room as a media room avoids the additional floor area proposed by the subterranean media room and preserves the existing driveway that provides access to the rear portions of the property.
- Utilizing the proposed existing second-level sitting room as a media room avoids the additional floor area proposed by the subterranean media room and preserves the existing driveway that provides access to the rear portions of the property.
- Re-orientation of the care-taker's suite avoids conflicts with the Encroachment Plan height limitation along the western side of the dwelling.
- The proposed second-floor sitting room, previously the bedroom of the appellant's family member, could be maintained as a bedroom, making replacement of the bedroom with additional floor area unnecessary.
- The ground-floor guest room can accommodate the displaced bedroom (converted into a Sitting Room) of the applicant's family member.

*A City may not act in a manner that is "arbitrary, capricious, in excess of its jurisdiction, entirely lacking in evidentiary support, or without reasonable or rational basis as a matter*

*of law.” San Franciscans Upholding the Downtown Plan v. City and County of San Francisco (2002) 102 Cal.App.4th 656, 673-674. Abuse of discretion is established if the agency has not proceeded in the manner prescribed by law; the order or decision is not supported by the findings; or the findings are not supported by the evidence. West Chandler Boulevard Neighborhood Association v. City of Los Angeles (2011) 198 Cal.App.4th 1506, 1517.*

The Determination approved those portions of the proposed project that met the required Findings of the RAO. The rationale for approval and denial of the various parts of the project are contained within the findings of the issued Determination letter.

*I. The Zoning Administrator’s Denial of a Two Car Garage is Arbitrary and Capricious*

*The Zoning Administrator’s “determination” that the Hilmans need not have parking in a two-car garage, as other homes on the street, in the Westwood community and the City do, not only constitutes zoning discrimination as more fully explained by Golden Law but is entirely arbitrary and capricious.*

*By converting the existing two car garage at the Hilmans’ property to a necessary medical therapy gym for Mr. Hilman, the Hilmans lose their Code-required covered parking. Yet, the Zoning Administrator has determined that rather than allow the replacement of such garage underground, he will only allow an underground garage for one car, Mr. Hilman’s car; Ms. Hilman can park “at the rear of the property” (uncovered).*

The Determination approved those portions of the proposed project that met the required Findings of the RAO. The deviations required for the proposed semi-subterranean garage are related to the floor area it represents, not the garage use or its location. According to the applicant’s written statements, the second parking space within the garage is for his spouse. The appellant’s spouse is not identified as an individual with a Disability. As such, approval of the floor area necessary to accommodate this second parking space is beyond the authority of the RAO and cannot be approved. The subterranean parking space that was approved allocates 384 square feet for the needs of the individual with a Disability. For comparison, a typical two-car garage occupies approximately 400 square feet.

*Such determination not only requires the Zoning Administrator to unilaterally impose an additional entitlement for relief (from the two covered parking space requirements in Los Angeles Municipal Code §12.21. A.4(a)), it creates an absurd physical condition on the front yard of a single family home property that will now be improved by two driveways, sloping in opposite directions.*

Granting a deviation to allow the maintenance of one covered parking space in lieu of the two otherwise required is less impactful than granting a deviation to allow additional square-footage to be developed on the property. Further it is appropriate in that the deviation is necessitated by the relief sought by the individual with a Disability’s medical need to utilize the existing garage as a therapy gym.

There is sufficient space between the existing driveway and a new driveway from the approved semi-subterranean parking garage that there will be no conflict in the geometry of the respective driveways.

*Today, there is a very narrow driveway along the right side of the property which slopes upward:*

[photograph omitted]

*By requiring the existing driveway to remain, the Zoning Administrator has “determined” to create a second driveway, sloping downwards, towards the house, to access the underground garage:*

[photograph omitted]

*Beyond the absurdity of this condition aesthetically, it is impractical as it will create a grade differential requiring a NEW RETAINING WALL in the front yard.*

There is sufficient space between the existing driveway and a new driveway from the approved semi-subterranean one-car parking garage that there will be no conflict in the geometry of the separate driveways. There is no requirement that the driveways must be joined or share the same curb cut onto Lindbrook Drive.

There is no requirement that any approved RAO deviations be made for “aesthetic” consideration. There is no technical impediment to the installation of a retaining wall supporting a driveway within the front yard.

*As previously attested to by Schneider Architects, the Hilman’s architect who will be at the hearing to answer any questions, such condition would be outside of good planning and construction practices and prohibitively expensive. It would also essentially negate the van accessible parking in front of the garage for loading and unloading.*

In light of the reduced grading and shoring necessary for the reduced-size semi-subterranean parking garage and the smaller approved floor area for other additions to the dwelling, the construction of a retaining wall to stabilize the existing driveway will not render the project prohibitively expensive.

No request has been made to consider any additional deviations associated with providing an accessible loading space within the front yard setback. The approved garage contains sufficient room to accommodate accessible loading and unloading activities within it. There is no prohibition on the use of a driveway to facilitate loading and unloading of a vehicle.

*It makes absolutely no sense to allow a one car garage but not a two-car garage underground. A two car garage is not only the legal requirement under Los Angeles Municipal Code §12.21.A.4(a), it is a standard living condition for single family homes.*

*West Lindbrook Drive is not a highway where exiting offramps going in different directions are standard. This is a single-family home which should have one single driveway, leading to one single parking area, in compliance with the Code requirement for two covered parking spots.*

*To deny Mr. Hilman the right to maintain the same type of living conditions as other homes in the City is arbitrary, capricious and discriminatory.*

The appellant’s request to convert the existing garage into a therapy room displaced the two existing covered parking spaces otherwise required to be provided on the property. The Determination approved the additional floor area to allow one new semi-subterranean parking space and a deviation to maintain only one covered parking space in lieu of two. The approved semi-subterranean garage facilitates the individual with a Disability’s vehicle parking needs to access his home. The second parking space proposed within the semi-subterranean parking

garage was to accommodate the parking needs of the appellant's spouse, who is not identified as an individual with a Disability. Therefore, the deviation to allow the development of additional square-footage for this purpose exceeds the authority of the RAO.

Maintaining a second driveway onto Lindbrook Drive should not be unacceptable to the appellant as the original project requested authorization to allow parking within the front yard setback, accessed by an entirely new driveway and independent curb cut accessing Lindbrook Drive.

*II. The Zoning Administrator's Denial of A Media Room for Mr. Hilman's Chronic Pain Management is Arbitrary and Capricious*

*It is understandably very difficult for non-disabled individuals to understand disability. But disability is not limited to physical challenges, disabilities include mental challenges. In this case, the Zoning Administrator has failed to understand the media room requirement for Mr. Hilman. As substantiated by three separate doctors [Exhibit 1], the media room is necessary for Mr. Hilman to [...], which he experiences 24-hours a day. As stated in his filed appeal, unlike you and me, due to his excruciating condition, Mr. Hilman regularly does not sleep at night. It is unreasonable for the Zoning Administrator to declare that Mr. Hilman can simply watch movies in other parts of his home, at all hours of the night, disturbing the ability of the remainder of his family to rest, sleep and otherwise comfortably enjoy their home. The need to allow Mr. Hilman to disassociate from his disabling pain, while allowing the remainder of his family to live in quiet comfort, is necessary and directly related to Mr. Hilman's disabilities.*

The existing ground-floor guest room can be utilized to meet the appellant's stated needs for "[a]n isolated location that I can shut the outside noise and one in which I won't wake anyone and will be able to elevate my legs and not be disturbed ... The basement theater was the perfect solution as a subterranean location could be easily soundproofed and allow me to put theater chairs that elevate to accommodate my medical conditions" (Appeal Justification, submitted by the Appellant, March 27, 2024, pg. 6). There are no other sleeping quarters on the ground-level, and the guest room is not located below or above any other sleeping quarters. There is no stated rationale as to why the existing guest room cannot meet this need or why the proposed 484 square-foot subterranean Media Room can only meet this need.

If the guest room does not meet the minimum space requirements for the medical needs of the individual with a Disability, then the proposed Sitting Room, located on the second level can be repurposed for this use, and the guest room can be utilized as the bedroom for the applicant's family member.

On review of the additional statements provided by the appellant's medical care-givers to support the appeal of the Determination, there is no stated minimum size requirement to justify the proposed 484 square-foot subterranean Media Room.

*Notably, the lack of understanding in this area is particularly highlighted by the Zoning Administrator's calls to Mr. Hilman's physician and statements of surprise at not getting responses. As the Councilmembers are undoubtedly aware, doctors are prohibited by the Health Insurance Portability and Accountability Act ("HIPAA") to discuss patients' medical conditions. With due respect, no self-respecting doctor would discuss such matters with staff personnel from the City.*

The Zoning Administrator reached out the applicant's physician to arrange a meeting between the applicant's physician and a representative of the Department on Disability. The purpose of



the meeting was to better understand the applicant's technical needs, not to obtain more information on the applicant's medical condition(s). The Zoning Administrator was not to be a party to that meeting. Information was volunteered that the physician was unqualified to respond to questions or to have made the initial statements in support of the applicant's RAO requests.

*It is understood that the remainder of the "underground" lower level (bathroom, hall) was denied due to the denial of the media room – which was again, a denial made in error. Assuming this Council agrees, the whole of the proposed lower plan should be approved as it is part of one proposed structural level. However, to further highlight the arbitrariness of the Zoning Administrator's approach, he has denied areas physically created by the introduction of the elevator (the "X's" show what the Zoning Administrator has denied) as highlighted:*

[photograph omitted]

*What is the purpose of denying the areas highlighted in blue? These are spaces physically created by the garage and elevator and are the location of much of the primary network, telephone, DirecTV, Fiber connections that travel throughout the home.*

*How is it that these spaces should be architectural voids? Importantly, the Hilmans cannot separate and close the downstairs media room/ bathroom from the garage due to the required elevator/ stairs needed for Mr. Hilman's disability access to this room. Manual access must be given to anyone else in case of power failure.*

Denial of the floor area associated with the proposed basement A/V equipment closet, two storage areas, and a bathroom are based upon those portions of the project that are unsupported by the individual with a Disability's claims of medical need and are unrelated to the denial of the media room. There is no rationale to support the need for additional floor area separately from the basement utility room to house access to the "primary network, telephone, DirecTV, Fiber connections" cited by the appellant's representative, that is responsive to the medical needs of the individual with a Disability. The Determination does not impede access between the stairway, the garage, the elevator, and the utility room.

### *III. The Zoning Administrator's Denial of Ancillary Space on the Main Floor is Arbitrary and Capricious*

*The Zoning Administrator's denial of a minor bathroom and storage space expansion on the main floor is arbitrary and capricious. Due to the proposed lower-level media room and garage and proposed new second floor bedroom for the Hilmans' son, which are necessary as set forth herein, this minor addition is meant to keep the wall at this location of the house in line with the foundation. The insistence of "jutting in" the wall on the main floor ignores good planning and engineering practice. Although previously noted by Schneider Architects, the Hilmans' architect will be at the hearing to answer any further questions.*

The Determination denied a new bathroom accessible only through the applicant's spouse's office and an outdoor storage room because that additional floor area is unsupported by the individual with a Disability's stated medical needs. Approval of such would exceed the authority of the RAO.

### *IV. The Zoning Administrator's Denial of a Room for Mr. Hilman's Son to Accommodate an Elevator is Arbitrary and Capricious*

*The Zoning Administrator's statement that a new bedroom is not a necessary reasonable accommodation is simply incorrect.*

*The new elevator, which has been approved to accommodate Mr. Hilman's ability to access the different stories of the home, will physically exit at Mr. Hilman's son's current room. This Council must understand, residential elevators are not quiet. As Mr. Hilman most of the time does not sleep at night due to his chronic pain, use of the elevator and the noise and disturbance from the elevator, is not appropriate for a bedroom.*

*The Hilmans' home is not expansive. The particular location of the elevator was proposed as it would provide Mr. Hilman with maximum access to every very location of the home, with the exception of the medical therapy gym. The location of the elevator is a direct correlation to Mr. Hilman's disability.*

*In denying the room for the Hilmans' son, the Zoning Administrator's fixation on the size of the closets, proposed simply due to the space created by the sitting room is perplexing. The size of the closets has nothing to do with the need to accommodate the elevator for Mr. Hilman and the inappropriateness of such elevator exiting at Mr. Hilman's son's bedroom.*

*The proposed conversion of the current bedroom to a sitting room with an elevator is a wholly reasonable accommodation to allow Mr. Hilman to access all portions of the home while allowing the remainder of his family to live in quiet comfort, as necessary and directly related to Mr. Hilman's disabilities.*

The additional square-footage required to facilitate the construction of a new bedroom suite for the applicant's family member was denied because the request exceeds the authority of the RAO. The applicant's proposal for a new 353 square-foot bedroom suite for his family member, who is not identified as an individual with a Disability, due to the location of an elevator, does not meet the standard of being "necessary to make housing available to an Individual with a Disability". In Finding No. 2 of the Determination, an analysis of the Upper Level Bedroom Conversion showed that despite the loss of some square-footage due to the elevator, new square-footage was added through an addition to the front of the dwelling that more than offset the loss. The existing bedroom consists of an approximately 204 square-foot main room, and two walk-in closets totaling an additional 35 square feet, for a total of 339 square feet; the proposed Sitting Room consists of an approximately 178 square-foot main room and two walk-in closets totaling an additional 66 square feet, for a total of 244 square feet. The elevator does not open into the proposed Sitting Room, rather, it opens into a common hallway that is adjacent to the Sitting Room. If the proposed Sitting Room is utilized by the individual with a Disability to meet his medical needs for periodic isolation and an alternate sleeping location, then the existing guest room on the ground level can be repurposed as bedroom to accommodate the displaced family member.

*V. The Zoning Administrator's Denial of Additional Closet Space for Mr. Hilman is Arbitrary and Capricious*

*The Zoning Administrator's denial of additional closet space is beyond unreasonable. Again, while some disability may undoubtedly be difficult for non-disabled individuals to understand, this request should not be. Closet/storage space is necessary for disabled individuals and is absolutely necessary for Mr. Hilman to store his wheelchair, walker, three different types of crutches, specialty canes, regular canes, knee braces, leg braces, neck braces, back braces, bed wedges, foot baths, foot massagers, leg massagers, back massagers, modified shoes and various other equipment that is now necessary and will*

*continue to be necessary as Mr. Hilman's condition progresses. It is necessary and directly related to Mr. Hilman's disabilities.*

The Determination denied the request to allow additional square-footage for the construction of a new closet space accessible through the Master Bedroom because there was no presented rationale to justify it based upon the individual with a Disability's stated medical needs. Based on the statements made by the appellant and appellant's representative on appeal of the Determination, this rationale is fulfilled and a finding can be made to approve this 27 square-foot walk-in closet. Recommendations have been previously stated to amend the grant clause and a Condition of Approval to recognize this authorization.

*VI. The Requirement for the Reversion of the Converted Garage Constitutes Abuse of Discretion*

*The conversion of the existing garage into a medical therapy gym for Mr. Hilman has been approved. Nevertheless, the Zoning Administrator has required that such conversion be reversed "after it is no longer being utilized" by Mr. Hilman.*

*Los Angeles Municipal Code §13.B.5.5.F.2 provides that a modification granted as part of a reasonable modification "is granted to an individual and does not run with the land unless... [t]he modification is physically integrated into the residential structure and cannot easily be removed or altered to comply with this Code."*

*The conversion of the garage is a physical integration of the structure and cannot be "easily be removed or altered to comply with this Code." As previously attested to by Schneider Architects who will be available at the hearing, this is not a conversion to a "home gym", Mr. Hilman is not simply buying a couple pieces of exercise equipment. This is a medical gym which will require physical alterations to the structure including insulation and the introduction of a heating/ventilation system. Schneider Architects further understands that the Department of Building and Safety ("LADBS") will also require that this medical gym, as new living space, be raised above the existing ground elevation to provide for adequate drainage/reduce flooding potential into the space. To create this condition, concrete will be laid to the top of the existing curb. To say that this condition can be easily removed is erroneous.*

Finding No. 5 of the Determination letter states that "The conversion of the rear garage into an exercise room and the granting of the associated authorization to provide one covered parking space can be easily reverted to comply with the Zoning Code, once it is no longer used by another Individual with a Disability." This statement is in conformity with LAMC Sec. 13B.5.5.F.2.b of Chapter 1A and Condition Nos. 5.a. and b. have been tailored to ensure compliance with this requirement.

At the time of initial project consideration, it was not apparent that potentially significant structural alterations were necessary to accommodate the enclosed second floor patio area or conversion of the garage into a therapy gym. In light of the appellant's and appellant's representative's statements, Planning staff agrees that some discretion should be exercised. Staff recommends the adoption of an amended Condition No. 5.a, as previously stated. The amended Condition No. 5.a allows for future consideration of the construction utilized to convert the garage into a therapy gym and to accommodate the therapy pool on the second floor and determine whether it can be reverted back into a garage in whole or in part. Making a definitive decision on whether the converted garage can be reverted back without the benefit of more detailed plans and comment from the Department of Building and Safety would not be advisable at this time. Enforcement of

this condition would take place after the dwelling is no longer occupied by an individual with a Disability.

Planning staff has also previously recommend deletion of Condition No. 5 b. to remove a redundancy – if portions of the therapy gym can be reverted back into a garage to provide at least one parking space, then waiver to allow one covered parking space in lieu of the two otherwise required is no longer required. If not enough of the therapy gym can be reverted back into a garage to provide at least one parking space, then the waiver would still be necessary.

The proposed modified Condition No. 5.a meets the intent of LAMC Sec. 13B.5.5.F.2.a of Chapter 1A and clarifies its implementation regarding the converted garage and uncovered parking authorizations.

### VII. Conclusion

*Although an additional private parking space at the Hilmans' property for a caretaker for Mr. Hilman would be convenient, at this time the Hilmans have chosen not to appeal this denial as they believe they may be able to get a street parking pass for such caretaker.*

No comment from Planning staff is required in response to this statement by the appellant's representative.

## CONCLUSION

The appellant's appeal primarily revolves around Zone Code deviation requests that cannot be considered under the authority of the RAO because they are unrelated to meeting the medical needs of an individual with a Disability. Some of the denied requests are for the benefit of able-bodied individuals who also reside upon the property. Other denied requests are resolved with project alternatives that meet the medical needs of an individual with a Disability and do not require a deviation. The appellant has highlighted a couple of instances where the grant and conditions of approval should be modified, and Planning staff has recommended appropriate amendments to address this.

## RECOMMENDATION

In response to the submitted appeal, Planning staff recommends the following actions:

ADOPT the Categorical Exemption under Case No. ENV-2023-5301-CE;

APPROVE the appeal in part and DENY the appeal in part;

AMEND the Grant Clause by increasing the approved square-footage by 27 square feet;

AMEND Condition No. 5 of the Conditions of Approval by increasing the approved square-footage by 27 square feet;

AMEND Condition Nos. 5.a and 5.b of the Conditions of Approval as recommended in the Appeal Staff Report;

ADOPT Revised Exhibit A

ADOPT the Findings of Case No. DIR-2023-5300-RAO.

Sincerely,

VINCENT P. BERTONI, AICP  
Director of Planning



Jonathan A. Hershey, AICP  
Associate Zoning Administrator

VPB:JAH

Enclosures

Amended Grant Clauses  
Amended Conditions of Approval  
Revised Exhibit "A"