



# WEST LOS ANGELES AREA PLANNING COMMISSION

200 North Spring Street, Room 272, Los Angeles, California, 90012-4801, (213) 978-1300  
[www.planning.lacity.org](http://www.planning.lacity.org)

## LETTER OF DETERMINATION

Mailing Date: NOV 09 2021

CASE NO. DIR-2020-4144-BSA-1A  
CEQA: N/A  
Plan Area: Bel Air-Beverly Crest  
Related Case: DIR-2020-4145-BSA-1A

Council District: 5 - Koretz

**Project Site:** 627 North Carcassonne Road  
**Applicant:** The Bel Air Association  
Representative: Daniel J. Love  
**Appellant:** The Bel Air Association  
Representative: Daniel J. Love

At its meeting of **October 20, 2021**, the West Los Angeles Area Planning Commission took the actions below in conjunction with the following project:

Proposed construction of a new single-family dwelling with attached garage, pool/spa, site retaining wall and associated site grading.

1. **Denied** the appeal and **sustained** the Planning Director's Determination dated April 23, 2021;
2. **Granted in part, denied in part and dismissed in part**, pursuant to Section 12.26 K of the Los Angeles Municipal Code, an appeal that the Department of Building and Safety erred or abused its discretion in issuing Building Permit Nos. 14010-30000-03040, 14010-10001-03040, 17030-20000-00378, 17030-20000-00190, 17020-20000-00101 and 17047-20000-00090, all for a new single-family dwelling with attached garage, pool/spa, site retaining wall and associated site grading; and
3. **Adopted** the attached Findings.

This action was taken by the following vote:

Moved: Newhouse  
Second: Yellin  
Ayes: Laing, Margulies, Waltz Morocco

**Vote: 5 – 0**

James K. Williams, Commission Executive Assistant II

Fiscal Impact Statement: There is no General Fund impact as administrative costs are recovered through fees.

**Effective Date/Appeals:** The action by the West Los Angeles Area Planning Commission on this matter is final and effective upon the mailing date of this determination and is the final appeal procedure within the appeal structure in the City of Los Angeles.

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.

Attachments: Planning Director's Determination dated April 23, 2021

c: Charles Rausch, Associate Zoning Administrator  
Juliet Oh, Senior City Planner  
Esther Serrato, City Planning Associate

OFFICE OF ZONING ADMINISTRATION  
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April 23, 2021

The Bel Air Association (A)  
100 Bel Air Road  
Los Angeles, CA 90077  
Attn: Shawn Bayless

10701 Bellagio Road LLC (O)  
8981 W Sunset Blvd, Unit 303  
West Hollywood CA 90069

Daniel J. Love (R)  
The Bel Air Association  
100 Bel Air Road  
Los Angeles, CA 90077

CASE NO. DIR 2020-4144(BSA)  
BUILDING AND SAFETY APPEAL

627 North Carcassonne Road  
Bel Air – Beverly Crest Planning Area  
Zone : RE40-1-H-HCR

D. M. : 141B149 149

C. D. : 5 - Koretz

Legal Description: ARB 2, LOT 7, BLK 6,  
TR 7656 and LOT 9, BLK 6, TR 7656

Pursuant to the provisions of Section 12.26-K of the Municipal Code, I hereby GRANT IN PART, DENY IN PART and DISMISS IN PART:

an appeal that the Department of Building and Safety erred or abused its discretion in issuing Building Permit Nos. 14010-30000-03040, 14010-10001-03040, 17030-20000-00378, 17030-20000-00190, 17020-20000-00101 and 17047-20000-00090, all for a new single family dwelling with attached garage, pool/spa, site retaining wall and associated site grading.

**FINDINGS OF FACT**

After thorough consideration of the statements contained in the appeal, the information provided by the Department of Building and Safety, the statements made at the public hearing conducted on the matter on October 8, 2020 and October 29, 2020, and the

applicable provisions of the Municipal Code, I find that the Department of Building and Safety ERRED IN PART AND DID NOT ERROR IN PART or abuse its discretion in its actions on Building Permit No's. 14010-3000-03040 and 14010-1001-03040 in this case based on the following findings of fact. In addition, I am DISMISSING the appeals of the Department of Building and Safety's actions on Building Permit No's. 17030-2000-00378; 17030-2000-00190; 17020-2000-00101; and 17047-2000-00090 as they are solely based on Chapter IX of the Los Angeles Municipal Code (LAMC) (the Building and Safety Code) and not Chapter I of the LAMC (the Zoning Code), and thus, they are not in the jurisdiction of the Director of Planning.

## BACKGROUND

The subject property, located at 627 North Carcassonne Road, is an irregular-shaped hillside lot with approximately 54,590 square feet of lot area, and it is accessed by Carcassonne Road to the east of the site. The property is zoned RE40-1-H-HCR and designated for Minimum Residential land uses by the Bel Air – Beverly Crest Community Plan Area. Per the Zoning Information and Map Access site "ZIMAS," the subject property is subject to ZI-2467 for the HCR Hillside Construction Regulation Supplemental Use District, ZI-2462 for Modifications to Single-Family Zones and Single-Family Zone Hillside Area Regulations, and ZI-2438 Equine Keeping in the City of Los Angeles. The property is located within a Special Grading Area (BOE Basic Grid Map A-13372), a Hillside Area, Landslide Area, a Very High Fire Hazard Severity Zone, and 0.1 kilometers from the Hollywood Fault Zone.

The surrounding properties are zoned RE40-1-H-HCR and RE20-1-H-HCR and are largely developed with single-family dwellings except for the property of the Bel Air Country Club located across Bellagio Road. The surrounding properties are consistent with the patterns of development in the Bel Air – Beverly Crest Community Plan area.

**Carcassonne Road**, adjoining the subject property to the east is a Standard Local Street dedicated to a width of approximately 40 feet and is improved with asphalt, curb, and gutter.

There are no previous zoning related actions on this site.

The subject property is being developed with a single family dwelling with attached garage, pool/spa, and site retaining wall.

## STATUTORY PROVISIONS OF AUTHORITY

The provisions of the Los Angeles Municipal Code establishing authority in regard to this appeal include the following:

Section 12.26-A of the Los Angeles Municipal Code addresses the functions of the Department of Building and Safety and provides in part: "The Department is granted the power to enforce the zoning ordinances of the City."

Section 12.26-K of the Municipal Code provides in part, "The Director of Planning shall have the power and duty to investigate and make a decision upon appeals from determinations of the Department of Building and Safety where it is alleged there is error or abuse of discretion in any order, interpretation, requirement, determination or action made by the Department of Building and Safety in enforcement of Chapter I of this Code and other land use ordinances in site-specific cases."

## ZONING CODE PROVISIONS

The applicable Los Angeles Municipal Code (LAMC) sections relative to this matter are as follows:

### **SEC. 12.03 Definitions**

*DWELLING, ONE-FAMILY. A detached dwelling containing only one dwelling unit. (Amended by Ord. No. 107,884, Eff. 9/23/56.)*

*DWELLING UNIT. A group of two or more rooms, one of which is a kitchen, designed for occupancy by one family for living and sleeping purposes. (Amended by Ord. No. 107,884, Eff. 9/23/56.)*

*GRADE, HILLSIDE AREA. For the purpose of measuring height on an R1, RS, RE, or RA zoned Lot in the Hillside Area, pursuant to Section [12.21](#) C.10. of this Code, Hillside Area Grade shall be defined as the Elevation, at the perimeter of a Building or Structure, of the finished or natural surface of the ground, whichever is lower, or the finished surface of the ground established in conformance with a grading plan approved pursuant to a recorded tract or parcel map action. Retaining walls shall not raise the effective Elevation of Grade for purposes of measuring Height of a Building or Structure. (Amended by Ord. No. 184,802, Eff. 3/17/17.)*

### **SEC. 12.07.01-A "RE" Residential Estate Zone**

*No building, structure or land shall be used and no building or structure shall be erected, structurally altered, enlarged, or maintained except for the following uses, and when a "Supplemental Use District" is created by the provisions of [Article 3](#) of this chapter, for such uses as may be permitted therein:*

1. *One-family dwellings.*

**SEC. 12.21-A,1(b) Flexible Units**

*Whenever a layout within any dwelling unit or guest room is designed with multiple hallway entrances, multiple toilet and bath facilities or bar sink installations, so that it can be easily divided into or used for separate apartments or guest rooms, the lot area requirements and the automobile parking requirements shall be based upon the highest possible number of dwelling units or guest rooms obtainable from any such arrangement. (Amended by Ord. No. 149,118, Eff. 2/5/77.)*

**SEC. 12.21-C,8 Retaining Walls in Hillside Areas**

*This subdivision applies to retaining walls that meet all of the following criteria: located in the A or R Zones (including the RA Zone), located on land designated as a Hillside Area on the Bureau of Engineering Basic Grid Map No. A-13372, and located on a lot developed or to be developed with dwelling units. For purposes of this subdivision, a "retaining wall" shall be defined as a freestanding continuous structure, as viewed from the top, intended to support earth, which is not attached to a building. Retaining walls are subject to the following restrictions:*

- (a) A maximum of one free standing vertical or approximately vertical retaining wall may be built on any lot with a maximum height of 12 feet as measured from the top of the wall to the lower side of the adjacent ground elevation. However, as shown in the diagram below, a maximum of two vertical or approximately vertical walls or portions of a wall can be built if they comply with the following:*
  - (i) The minimum horizontal distance between the two walls is three feet,*
  - (ii) Neither of the two walls exceed a height of 10 feet measured from the top of each wall to the lower side of the adjacent ground elevation at each wall, and*
  - (iii) In no case shall the height of a wall located in a required yard exceed the height allowed by Section [12.22 C.20.\(f\)](#) of this Code.*

**SEC. 12.21-C,10(b) Maximum Residential Floor Area**

*The maximum Residential Floor Area contained in all Buildings and Accessory Buildings shall not exceed the sum of the square footage of each Slope Band multiplied by the corresponding Residential Floor Area Ratio (RFAR) for the zone of the Lot, as outlined in [Table 12.21 C.10-2a](#) and [Table 12.21 C.10-2b](#). This formula can be found in [Table 12.21 C.10-2c](#), where "A" is the area of the Lot within each Slope Band, "RFAR" is the RFAR of the corresponding Slope Band, and "RFA" is the sum of the Residential Floor Area of each Slope Band.*

Table 12.21 C.10-2a Single-Family Zone Hillside Area Residential Floor Area Ratios (RFAR)								
Slope Bands (%)	R1	RS	RE9	RE11	RE15	RE20	RE40	RA
0 - 14.99	0.45	0.45	0.40	0.40	0.35	0.35	0.35	0.25
15 - 29.99	0.45	0.40	0.35	0.35	0.30	0.30	0.30	0.20
30 - 44.99	0.40	0.35	0.30	0.30	0.25	0.25	0.25	0.15
45 - 59.99	0.35	0.30	0.25	0.25	0.20	0.20	0.20	0.10
60 - 99.99	0.30	0.25	0.20	0.20	0.15	0.15	0.15	0.05
100 +	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Table 12.21 C.10-2b Single-Family Zone Hillside Area Residential Floor Area Ratios (RFAR)				
Slope Bands (%)	R1H1	R1H2	R1H3	R1H4
0 - 14.99	0.65	0.55	0.45	0.40
15 - 29.99	0.60	0.50	0.45	0.35
30 - 44.99	0.55	0.45	0.40	0.30
45 - 59.99	0.50	0.40	0.35	0.25
60 - 99.99	0.45	0.35	0.30	0.20
100 +	0.00	0.00	0.00	0.00

Table 12.21 C.10-2c Hillside Area Maximum Residential Floor Area Formula					
Slope Bands (%)	Area (sq ft)		RFAR		Residential Floor Area
0 - 14.99	A <sup>1</sup>	X	RFAR <sup>1</sup>	=	RFA <sup>1</sup>
15 - 29.99	A <sup>2</sup>	X	RFAR <sup>2</sup>	=	RFA <sup>2</sup>
30 - 44.99	A <sup>3</sup>	X	RFAR <sup>3</sup>	=	RFA <sup>3</sup>
45 - 59.99	A <sup>4</sup>	X	RFAR <sup>4</sup>	=	RFA <sup>4</sup>
60 - 99.99	A <sup>5</sup>	X	RFAR <sup>5</sup>	=	RFA <sup>5</sup>
100 +	A <sup>6</sup>	X	RFAR <sup>6</sup>	=	RFA <sup>6</sup>
Maximum Residential Floor Area				=	Sum of RFA <sup>1</sup> through RFA <sup>6</sup>

**SEC. 12.21-C,10(b)(1) Slope Analysis Map**

As part of an application for a permit to the Department of Building and Safety, or for a Discretionary Approval as defined in Section 16.05 B. of this Code to the Department of City Planning, the applicant shall submit a Slope Analysis Map based on a survey of the natural/existing topography, prepared, stamped and signed by a registered civil engineer or licensed land surveyor, to verify the total area (in square feet) of the portions of a property within each Slope Band identified in [Table 12.21 C.10-2a](#). The Director of Planning, or his/her designee, shall verify that the Slope Analysis Map has been prepared by a registered civil engineer or licensed land surveyor. In addition, the Director of Planning, or his/her designee shall approve the

*calculated Maximum Residential Floor Area for the Lot by the registered civil engineer or licensed land surveyor using the Slope Analysis Map prior to applying for a permit from the Department of Building and Safety.*

*The map shall have a scale of not less than 1 inch to 100 feet and a contour interval of not more than 10 feet with 2-foot intermediates. The map shall also indicate the datum, source, and scale of topographic data used in the Slope analysis, and shall attest to the fact that the Slope analysis has been accurately calculated.*

*The Slope Analysis Map shall clearly delineate/identify the Slope Bands (i.e., with contrasting colors or hatching), and shall include a tabulation of the total area in square feet within each Slope Band, as well as the RFAR and Residential Floor Area value of each corresponding Slope Band as shown on [Table 12.21 C.10-2b](#).*

*The Slope Analysis Map shall be prepared using CAD-based, GIS-based, or other type of software specifically designed for such purpose.*

**SEC. 12.21-C,10(d) Height Limits**

*No portion of a Building or Structure shall be erected or enlarged which exceeds the envelope height limits as outlined in [Table 12.21 C.10-4](#), or as otherwise stated in the paragraphs below. For the provisions below, whenever Grade is mentioned, it shall mean Hillside Area Grade as defined in Section [12.03](#) of this Code.*

Table 12.21 C.10-4 Maximum Height of Structures (in feet)								
Height Districts	R1	RS	RE9	RE11	RE15	RE20	RE40	RA
When the roof of the uppermost Story of a Building or Structure or portion thereof has a Slope of 25% or greater, the maximum height for said portion of Building or Structure thereof shall be as follows:								
1, 1L, & 1VL	33	33	33	36	36	36	36	36
1XL	30	30	30	30	30	30	30	30
1SS	22	22	22	22	22	22	22	22
When the roof of the uppermost Story of a Building or Structure or portion thereof has a Slope of less than 25%, the maximum height for said portion of Building or Structure thereof shall be as follows:								
1, 1L, & 1VL	28	28	28	30	30	30	30	30
1XL	28	28	28	30	30	30	30	30
1SS	18	18	18	18	18	18	18	18

**SEC. 12.21-C,10(d)(1)(i) Maximum Envelope Height**

*Envelope height (otherwise known as vertical height or "plumb line" height) shall be the vertical distance from the Hillside Area Grade to a projected plane at the roof Structure or parapet wall located directly above and parallel to the Grade. Measurement of the envelope height shall originate at the adjacent Hillside Area Grade at the exterior walls of a Building or Structure. At no point shall any given*

section of any part of the proposed Building or Structure exceed the maximum envelope height.

**SEC. 12.21-C,10(f) Grading**

Notwithstanding any other provisions of this Code, total Grading (Cut and Fill) on a Lot shall be limited as outlined below. No Grading permits shall be issued until a Building permit is approved.

(1) *Maximum Grading Quantities.* The cumulative quantity of Grading, or the total combined value of both Cut and Fill or incremental Cut and Fill, for any one property shall be limited to a base maximum of 1,000 cubic yards plus the numeric value equal to 10% of the total Lot size in cubic yards. Example: a 5,000 square-foot Lot would have a maximum Grading amount of 1,500 cubic yards (1,000 cubic yards for the base amount + 500 cubic yards for the 10% calculation).

However, the cumulative quantity of Grading shall not exceed the maximum "by-right" Grading quantities outlined by Zone in [Table 12.21 C.10-6](#) below.

Table 12.21 C.10-6 Maximum "By-Right" Grading Quantities	
Zone	Maximum Grading (cubic yards)
R1	1,000
RS	2,200
RE9	2,400
RE11	2,800
RE15	3,200
RE20	4,000
RE40	6,600
RA	3,600

(2) *Import/Export Limits.* Earth import and export activities may take place only between the hours of 9:00 a.m. and 3:00 p.m., Monday through Friday. The maximum quantity of earth import or export shall be limited to the following quantities:

(i) *Lots Fronting on Standard Hillside Limited Streets or Larger.* For a property which fronts onto a Standard Hillside Limited Street or larger, as defined in Section [12.03](#) of this Code, the maximum quantity of earth import and export combined shall be no more than the maximum "by-right" grading quantities as listed in [Table 12.21 C.10-6](#) above.

(ii) *Lots Fronting on Substandard Hillside Limited Streets.* For a property which fronts onto a Substandard Hillside Limited Street, as defined in Section [12.03](#) of this Code, the maximum quantity of earth import and export combined shall be no

more than 75 percent of the maximum "by-right" grading quantities as listed in [Table 12.21 C.10-6](#) above.

(iii) *Exempted On-Site Grading Activity.* Earth quantities which originate from, or will be utilized for any exempted Grading activity listed in Subparagraph (3) of this Paragraph (f) shall be exempted from the maximum import and export quantities set forth in this Paragraph (f). A plan indicating the destination and/or source (i.e., exempted Grading activity or non-exempted Grading activity) of any import and/or export shall be submitted as part of a Grading permit application.

(3) *Exemptions.* The Grading activities outlined in the sub-subparagraphs below shall be exempt from the Grading and/or earth transport limitations established in Subparagraphs (1) and (2) of this Paragraph (f). However, any excavation from an exempted activity being used as Fill, outside of a 5-foot perimeter from the exempted Grading activities, for any other on-site purpose shall be counted towards the limits established in Subparagraph (1) of this Paragraph (f).

(i) *Cut and/or Fill for deepened foundation systems (such as caissons and piles), water storage tanks, required stormwater retention improvements, and required animal keeping site development that do not involve the construction of any freestanding retaining walls.*

(ii) *Cut and/or Fill, up to 500 cubic yards, for driveways to the required parking or fire department turnaround closest to the accessible Street for which a Lot has ingress/egress rights.*

(iii) *Remedial Grading as defined in Section [12.03](#) of this Code as recommended in a Geotechnical Investigation Report, prepared in accordance with Sections [91.7006.2](#), [91.7006.3](#) and [91.7006.4](#) of this Code, and approved by the Department of Building and Safety - Grading Division.*

(iv) *Fill resulting from Cut underneath the footprint of the main Building, not to exceed 50 percent of said Cut.*

### **SEC. 12.22-C,20(f) Fences and Walls in the A and R Zones**

(1) *Fences and Walls.* For the purposes of [Article 2](#) through [6](#) of this chapter, the terms "fence" and "wall" shall include latticework, ornamental fences, screen walls, hedges or thick growths of shrubs or trees. Fence and wall height shall be measured from the natural ground level adjacent thereto.

(2) *Front Yards. (Amended by Ord. No. 173,754, Eff. 3/5/01.) In the R Zones, fences, walls, and landscape architectural features of guard railing around depressed ramps, not more than three and one-half feet in height above the natural ground level adjacent to the feature, railing or ramp, may be located and maintained in any required front yard. In the A Zones (including the RA Zone), a fence or wall not more than six feet in height may be located and maintained in the required front yard. In both the A and R Zones, a fence or wall not more than eight feet in height may be located and maintained in the required front yard when authorized by a Zoning Administrator pursuant to Section [12.24 X.7](#).*

*In both the A and R zones, an unobstructed chainlink fence not more than ten feet in height may be located and maintained in all yards when required by the Department of Building and Safety pursuant to the provisions of Sections [91.3303](#) and [91.6103](#) and [Division 89 of Article 1 of Chapter IX](#) of this Code.*

(3) *Side Yards, Rear Yards and Other Spaces. (Amended by Ord. No. 173,492, Eff. 10/10/00.) A fence or wall not more than eight feet in height may be located and maintained within the required side yard, rear yard or other open space of any lot in an RW Zone and within the required side yard, rear yard or other open space of a lot within any other A or R zone which is 40 feet or more in width, provided the lot is not located within the boundary of a "Hillside Area", as defined in Section [91.7003](#) of this Code.*

*A fence or wall not more than six feet in height may be located and maintained within the required side yard, rear yard or other open space of any lot in an A or R Zone, other than an RW Zone, which is less than 40 feet in width or which is located within the boundary of a "Hillside Area", as defined in Section [91.7003](#) of this Code, except that in either case a fence or wall not more than eight feet in height may be located in the yards or other open space when authorized by a Zoning Administrator pursuant to Section [12.21A2](#).*

*In the A Zones (including the RA Zone), a fence or wall not more than eight feet in height may be located on the side street lot line of any reversed corner lot; provided, however, that if the lot is located within the boundary of a "Hillside Area", as defined in Section [91.7003](#), the fence or wall shall not exceed six feet in height.*

*In the R Zones, other than the RW Zones, a fence or wall located within five feet of the side street lot line of a reversed corner lot may not exceed three and one-half feet in height. In the RW Zones, a fence or wall located within three feet of the side street lot line of either a corner lot or a reversed corner lot may not exceed three and one-half feet in height.*

**SEC. 17.50 Parcel Maps – General Provisions**

*A. Purpose. The following parcel map regulations are intended to assure compliance with the Subdivision Map Act, the Comprehensive Zoning Plan of the City of Los Angeles as set forth in [Article 2](#) of this chapter, and the various elements of the City's General Plan, to assure lots of acceptable design and of a size compatible with the size of existing lots in the immediate neighborhood; to preserve property values; to assure compliance with the Design Standards for Streets and Alleys as specified in Section [17.05](#) of this Code where street or alley dedication and/or improvement are required; and to prevent interference with the opening or extension of streets necessary for emergency vehicle access, proper traffic circulation and the future development of adjacent properties; and to provide that the dividing of land in the hillside areas be done in a manner which will assure that the separate parcels can be safely graded and developed as building sites. (Amended by Ord. No. 143,254, Eff. 5/14/72.)*

*B. Scope.*

*1. No land shall be separated in ownership or otherwise divided into two, three, or four parcels or condominiums, and no such divided parcel or condominium shall be separately maintained unless the division conforms to that shown on a parcel map which has been approved by the Advisory Agency and recorded in the office of the county recorder. (Amended by Ord. No. 147,224\*, Eff. 6/27/75.)*

*\* The provisions of this ordinance shall become operative 90 days after the publication date of such ordinance.*

*2. No building permit shall be issued, and no building or structure shall be constructed, altered or maintained on any land which has been separated in ownership or otherwise divided into two, three or four parcels in violation of the provisions of this article, and until and unless a Parcel Map has been recorded in the office of the county recorder All conditions of approval shall be completed prior to filing the Parcel Map.*

***Subsection C. hereof. (Amended by Ord. No. 161,716, Eff. 12/6/86.)*** *3. These regulations shall not apply to the leasing of apartments, offices, stores or similar space within an apartment building, industrial building, commercial building or mobilehome park, nor to mineral, oil or gas leases, nor shall they apply to the following divisions of land, except as may be required by*

*(a) Those made in compliance with the Subdivision Map Act and the subdivision regulations contained in this article.*

*(b) Those divisions of land made solely because of the sale, acquisition, lease or combining of lands by governmental agencies, including City of Los Angeles and any department thereof, or any further division of such lands by a lessee of such governmental agency.*

*(c) (Amended by Ord. No. 176,321, Eff. 1/15/05.) Those where the Advisory Agency or the Appeal Board determines that all the following conditions exist:*

*(1) A lot line adjustment is made between four or fewer existing adjoining lots or parcels and the land taken from one lot or parcel is added to an adjoining lot or parcel;*

*(2) The resulting number of lots or parcels remains the same or is decreased;*

*(3) The parcels or lots resulting from the lot line adjustment will conform to the local general plan, any applicable coastal plan, and zoning and building ordinances.*

*(d) Those involving land dedicated for cemetery purposes under the applicable provisions contained in the Health and Safety Code of the State of California.*

## APPEAL TO THE DEPARTMENT OF BUILDING AND SAFETY

### HISTORY

On August 5, 2005, LADBS issued the following:

- Permit No. 04030-30001-02147 for site grading, including 850 cubic yards of cut and 1,840 cubic yards of fill.
- Permit No. 04010-30001-03073 for a new single family dwelling and garage.
- Permit No. 05010-30000-02886 for a carport.

On May 18, 2007, LADBS issued the following:

- Permit No. 04030-30000-03272 for site grading for a new single family dwelling, detached garages, and accessory living quarters.
- Permit No. 04010-50000-04669 for a two-story single family dwelling with basement.
- Permit No. 04010-50000-04670 for a two-story garage with accessory living quarters.

- Permit No. 06010-10000-05372 for a three-car garage.

On June 3, 2009, LADBS issued Permit No. 04030-30002-03272 as supplemental to Permit No. 04030-30000-03272 to revise the grading plans to backfill the originally excavated basement area due to cancellation of permits for a single family dwelling and accessory building.

On September 29, 2009, LADBS issued Permit No. 09030-10000-04612 for the temporary stockpile of 5,000 cubic yards of soil onsite.

On April 17, 2015, LADBS issued the following:

- Permit No. 14030-30000-06886 for grading for a single family dwelling, accessory living quarters, and site retaining walls, including a total cut of 3,789 cubic yards, fill of 2,789 cubic yards, and export of 991 cubic yards of earth.
- Permit No. 15020-30000-00336 for a site retaining wall measuring 10 feet in height. The plot plan attachment shows a retaining wall measuring 390 feet in length along the north of the subject site, and a retaining wall measuring 285 feet in length along the west of the subject site.
- Permit No. 14010-30000-03038 for a new two story, single family dwelling with attached garage, measuring 21,314 square feet of RFA.
- Permit No. 14010-30000-03040 to construct new accessory living quarters with attached garage, measuring 18,330 square feet of RFA.<sup>1</sup>

On August 19, 2015, a Lot Line Adjustment (AA-2014-2980-PMEX) was issued which created two separate parcels known as 10701 W. Bellagio Road and 627 N. Carcassonne Road.

On November 21, 2016, LADBS issued the following:

- Permit No. 16030-20000-05687 for cut and export of 215 cubic yards of earth for a new pool and spa.
- Permit No. 16047-20000-01381 for a new pool and spa.

On February 1, 2017, LADBS issued the following:

- Permit No. 14010-10001-03040 as supplemental to Permit No. 14010-30000-03040 for a change of use from Accessory Living Quarters to a new Single-Family Dwelling with attached garage due to lot line adjustment, revisions and additions to structure, and revision of structural inventory. Permit includes the addition of 20,594 square feet of RFA to the site and a maximum RFA of 20,930 square feet

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<sup>1</sup> Permit was appealed pursuant to LAMC 12.26-K.

of floor area.<sup>1</sup>

- Permit No. 17030-20000-00190 for site grading for a new single-family dwelling, site retaining walls, and including cut of 3,434 cubic yards, fill of 2,454 cubic yards, and export of 980 cubic yards of earth.<sup>1</sup>
- Permit No. 17020-20000-00101 for a retaining wall measuring 10 feet in height.<sup>1</sup>

On February 6, 2017, LADBS issued the following:

- Permit No. 17030-20000-00378 for cut and export of 249 cubic yards of earth for a new pool and spa.<sup>1</sup>
- Permit No. 17047-20000-00090 for a new pool and spa.<sup>1</sup>

On October 2, 2019, a request was submitted to LADBS to appeal Permit Nos. 14010-30000-03040, 14010-10001-03040, 17030-20000-00378, 17030-20000-00190, 17020-20000-00101, and 17047-20000-00090.

On November 12, 2019, LADBS issued Notice to Stop Work and Notice of Intent to Revoke Building Permit Nos. 04030-30001-02147, 04010-30001-03073, 05010-30000-02886, 04010-50000-04669, 04010-50000-04670, 04030-30000-03272, 06010-10000-05372, 04030-30002-03272, 09030-10000-04612, 14010-30000-03040, 14010-30000-03038, 15020-30000-00336, 16047-20000-01381, 14010-30001-03038, 15020-30001-00336, 14010-20003-03038, 14030-30001-06886, 14030-30000-06886, 16030-20000-05687, 14010-10001-03040, 17030-20000-00190, 17020-20000-00101, 17030-20000-00378 and 17047-20000-00090 for new single family dwellings with garage, retaining walls, new pools, stockpile and site grading for two adjoining properties located at 627 N. Carcassonne Road and 10701 W. Bellagio Road after determining that the subject permits have been issued in error.

On March 4, 2020, LADBS issued Permit No. 17030-30001-00378 as supplemental to Permit No. 17030-20000-00378 to correct permit record as grading quantity for swimming pool and spa was already captured under Permit No. 17030-20000-00190. There is no new net grading quantity under this permit.

On June 23, 2020, LADBS issued decision letter DBS-200037-DCP in response to an appeal of Permit Nos. 14010-30000-03040, 14010-10001-03040, 17030-20000-00378, 17030-20000-00190, 17020-20000-00101, and 17047-20000-00090.

#### ACTION OF THE DEPARTMENT OF BUILDING AND SAFETY

On June 23, 2020, the Department of Building and Safety (LADBS) issued Report No. DBS-200037-DCP, in response to an appeal filed by the Bel-Air Association. The report concluded that the Department of Building and Safety did not err or abuse in its discretion

in issuing Building Permit Nos. 14010-30000-03040, 14010-10001-03040, 17030-20000-00378, 17030-20000-00190, 17020-20000-00101 and 17047-20000-00090, for a new single family dwelling with attached garage, pool/spa, site retaining wall and associated site grading.

A complete copy of the LADBS appeal report is located in the subject City Planning case file. The relevant text of the appeal report is quoted below. References in this section to exhibits are to those attached to the LADBS appeal report and are not attached to the subject determination letter.

### **Issue No. 1**

The appellant claims the home is over-height due to a raised building pad.

### **LADBS Response to Issue No.1**

Pursuant to LAMC §12.03 Grade, Hillside Area is defined as:

*“For the purpose of measuring height in an R1, RS, RE, or RA zoned Lot in the Hillside Area, pursuant to Section 12.21 C.10 of this Code, Hillside Area Grade shall be defined as the Elevation of the finished or natural surface of the ground, whichever is lower, or the finished surface of the ground established in conformance with a grading plan approved pursuant to a recorded tract or parcel map action. Retaining walls shall not raise the effective Elevation of Grade for purposes of measuring Height of a Building or Structure.”*

The project properly relied on the associated survey dated September 5, 2014, as contained in the approved plans for permits EXHIBITS A through F, for the purposes of measuring height. To the extent that previous topographical surveys differ from the survey dated September 5, 2014 and unpermitted grading may have occurred on the site in the past, prior to the approval of parcel map exemption no. AA-2014-2980-PMEX (EXHIBIT G), the finished surface of the ground was established per a parcel map action per LAMC § 12.03 definition of the Hillside Area Grade therefore this does not affect the status of the existing project as being properly permitted and approved.

### **Issue No. 2**

Project exceeds allowable floor area ratio (FAR) due to their reliance on inaccurate topographic surveys.

### **LADBS Response to Issue No. 2**

To clarify the appellant's request, the project is subject to the Baseline Hillside Ordinance (EXHIBIT I) which limits the total residential floor area (RFA) of the site. The site is not subject to the floor area ratio (FAR) limitations.

Pursuant to LAMC § 12.21 C.10(b)(1) as part of an application for a building permit the applicant shall submit a Slope Analysis Map based on a survey of the natural/existing topography, prepared, stamped and signed by a registered civil engineer or licensed land surveyor, to verify the total area of the portions of a property within each slope band identified in LAMC Table 12.21C.10. LAMC §12.21 C.10(b)(1) indicates the Director of Planning, or his/her designee shall approve the calculated maximum allowable RFA for the lot using the Slope Analysis Map prior to application for a building permit from LADBS. LADBS relies on DCP's approval and confirms that the proposed RFA is less than the maximum allowable RFA approved by DCP prior to issuing the building permit.

LADBS reviewed the maximum allowable RFA, as approved by DCP, and confirmed that the proposed RFA is less than the maximum allowable RFA prior to issuing the permits for the project.

Therefore, since LAMC §12.21 C.10(b)(1) (EXHIBIT K) requires DCP to approve the allowable RFA and LADBS confirmed the proposed RFA is less than the allowable RFA, as approved by DCP, LADBS did not err or abuse its discretion in its determination to issue the permits shown on Exhibits B.

### **Issue No. 3**

The appellant claims the home exceeds the allowable height limit based on raised grade due to the project's reliance on inaccurate topographic surveys and the project exceeds the allowable height of a building based on the roof pitch.

### **LADBS Response to Issue No. 3**

Pursuant to LAMC §12.21 C.10(d) no portion of a Building or Structure shall be erected or enlarged which exceeds the envelope height limits as outlined in Table 12.21 C.10-4. The table further states when the roof of the uppermost Story or Structure or portion thereof has a Slope of 25% or greater, the maximum height for said portion of Building or Structure thereof shall be 36 feet in the RE40 zone. Furthermore, when the roof of the uppermost Story or Structure or portion thereof has a Slope of less than 25%, the maximum height for said portion of Building or Structure thereof shall be 30 feet in the RE40 zone.

Pursuant to LAMC §12.21 C.10(d)(1)(i) the envelope height (otherwise known as vertical height or "plumb line" height) shall be the vertical distance from the Grade of the site to a

projected plane at the roof Structure or parapet wall located directly above and parallel to the Grade.

Per response to issue no. 1 the Hillside Area Grade was properly established pursuant to parcel map exemption no. AA-2014-2980-PMEX (EXHIBIT I) therefore the height measurement was properly referenced in the approved permits (EXHIBIT B) and in compliance with LAMC §12.21 C.10(d)(1)(i). In addition, the proposed maximum height for the building, which has a roof a slope of less than 25%, does not exceed 30 feet.

#### **Issue No. 4**

The appellant claims the department erred in issuing permits for a single family dwelling which contains three kitchens which requires a Planning action.

#### **LADBS Response to Issue No. 4**

Pursuant to LAMC §12.03 a dwelling unit is defined as a group of two or more rooms, one of which is a kitchen, designed for occupancy by one family for living and sleeping purposes.

Pursuant to LAMC §12.03 a one-family dwelling is defined as a detached dwelling containing only one dwelling unit.

Pursuant to LAMC §12.07.01 the RE40 zone allows for a one-family dwelling.

Pursuant to LAMC 12.21 A.1(b) a flexible unit exists whenever a layout within any dwelling unit or guest room is designed with multiple hallway entrances, multiple toilet and bath facilities or bar sink installations, so that it can be easily divided into or used for separate apartments or guest rooms.

The approved plans under building permit no. 14010-30001-03040 (EXHIBIT B) indicate a kitchen and catering kitchen located on the main floor and across from each other. LADBS has historically considered two adjacent kitchens as being in conformance with the spirit and intent of the Planning and Zoning Code. An example of this occurs in cases where a family requires a regular kitchen and an adjacent kosher kitchen. The approved plans also indicate a room located on the upper floor plan, adjacent to the master bedroom, labeled as a kitchenette. According to the plans the room contains a two-foot-wide counter space and cabinetry however not cooking facilities were approved or indicated on the approved plans.

In this case LADBS has reviewed the layout and determined that the kitchen, catering kitchen and the room labeled kitchenette are consistent with the permitted use of the zone, definition of a one family dwelling and that a flexible unit condition does not exist.

#### **Issue No. 5**

The appellant claims that the home is surrounded by walls, gates, and shrubs/hedges that exceed the allowable fence height limits in the required front and side yard setbacks.

#### **LADBS Response to Issue No. 5**

Pursuant to LAMC §12.22 C.20(f) a fences and walls in the R zones located in the required front yard shall not exceed three and one-half feet in height above the natural ground level adjacent to the feature. A fence or wall not more than six feet in height may be located and maintained within the required side yard, rear yard or other open space of any lot in the R zone which is located within the boundary of a "hillside area", as defined in Section 91.7003.

The property requires a front yard setback of five feet along the easterly portion of the property fronting on Carcassonne Road, a rear yard setback of 25 feet along the westerly property line, a 14'-0" northerly side yard and a 19'-0" southerly side yard. The approved plans do not indicate a fence wall or hedge in excess of the height limits specified in LAMC §12.22 C.20(f).

#### **Issue No. 6**

Retaining walls exceed the maximum height and number of walls permitted by LAMC.

#### **LADBS Response to Issue No. 6**

Pursuant to LAMC §12.21 C.8 retaining walls in a designated Hillside Area on the Bureau of Engineering Basic Grid Map No. A-13372 shall be limited to a maximum of one retaining wall with a maximum of height of 12 feet or two retaining walls where a) the minimum horizontal distance between the two walls is three feet, b) neither of the two walls exceed a height of 10 feet measured from the top of each wall to the lower side of the adjacent ground elevation at each wall, and c) in no case shall the height of a wall located in a required yard exceed the height allowed by Section 12.22 C20(f) of this code.

The project initially proposed one retaining wall under building permit no. 15020-30000-00336 (EXHIBIT G) but later the project was revised due to the parcel map action (EXHIBIT I). Supplemental building permit no. 15020-30001-00336 (EXHIBIT H) was issued to revise the retaining wall layout to one retaining wall on the subject site. The

retaining wall height does not exceed allowable height of 10 feet from adjacent ground level at each wall.

Pursuant to City Planning and LADBS joint memorandum December 14, 2005, retaining walls that do not require building permits per LAMC 91.101.5 do not have to comply to the requirements of ordinance number 176,445. The retaining walls are therefore in compliance with LAMC §12.21 C.8.

### **Conclusion**

LADBS did not err or abuse its discretion in issuing Building Permit Numbers 14010-30000-03040, 14010-10001-03040, 17030-20000-00378, 17030-20000-00190, 17020-20000-00101 and 17047-20000-00090.

### **APPEAL TO THE DIRECTOR OF PLANNING**

An appeal of the Department of Building and Safety's action was filed by Daniel J. Love, on behalf of the Bel - Air Association, to the Director of Planning on July 13, 2020. The appeal requested, pursuant to the provisions of Section 12.26-K, a Director of Planning's determination as to whether the Department of Building and Safety erred or abused its discretion in issuing Building Permit Nos. 14010-30000-03040, 14010-10001-03040, 17030-20000-00378, 17030-20000-00190, 17020-20000-00101, and 17047-20000-00090.

### **APPELLANTS' POINTS**

The appeal submittal indicates that the Department of Building and Safety's permits should be revoked due to erred issuance. The following points were included in the appeal of the Department of Building and Safety's action to the Director of Planning.

**Point No. 1:** LADBS claims the home is not over-height due to an approved Lot Line Adjustment, Case #: AA-2014-2980-PMEX. LADBS argues that any grading work previously performed, legal or illegal, does not matter because the Lot Line Adjustment that was approved after the developer received Grading and Building permits. DBS has said the justification for considering a Lot Line Adjustment a de facto Parcel Map rests within the location of the term "Lot Line Adjustment" which is found in Section 17.50 Parcel Map – General Provisions. The Lot Line Adjustment Application and Determination make zero mention of any grading, existing topography, requested changes to topography, or even mentions the words "grade" or "topography." This interpretation would allow anyone to record a minor Lot Line Adjustment without disclosing existing grade or proposed grade.

**Point No. 2:** Per LAMC 12.21 C.10 the projects have nearly maxed-out its allowable RFA per its altered grading. LADBS issued building permits based on the altered/incorrect topographical information, and incorrect interpretations of the California Subdivision Map Act and LAMC. Once corrected will cause the home to be over its allowable RFA limit.

**Point No. 3:** LADBS claims the home does not exceed the allowable height limit based on raised grade or the allowable height of a building based on the roof pitch. LADBS continues to incorrectly interpret the California Subdivision Map Act and LAMC., and therefore continue to allow the developer to maintain a substantially over-height structure. Additionally, LADBS continues to rely on the inaccurate and misleading plans that were approved and not the actual site conditions when evaluating height. Also, the home sits on a secondary elevated pad that is created from retaining walls, further increasing the height. LADBS erred in not correctly measuring the height to the grade of the secondary pad, further creating a home that is physically taller than the 30 and 36 foot allowances.

**Point No. 4:** LADBS continues to permit multiple kitchens in single family homes without the required Planning action. The Planning Department requires a variance for the allowance of multiple kitchens within a single-family home.

**Point No. 5:** LADBS claims the homes are not surrounded by walls, gates, and shrubs/hedges that exceed the allowable fence height limits in the required front and side yard setbacks. LADBS erred by not physically looking at the actual site, instead simply looking at plans. Additionally, there appear to be over-height concrete walls along Bellagio Road and Carcassonne Road.

**Point No. 6:** Retaining walls exceed the maximum height and number of walls permitted by LAMC.

**Point No. 7:** LADBS Errored in its decision to remain silent in its determination on the allegations of piecemealing of the project and exceeding the grading and haul-route thresholds (12.21.C10.f). The developer seems to play a “shell game” with the allocation of import/export numbers has the project claims export values on the original permits, but then alters them when the ALQ is repurposed into a SFD, including import of soil along with the previous export numbers. Additionally, the projects obtained supplemental permits for multiple pools, adding to the amount of export. LADBS has claimed the grading and export values were captured in the original permits, but we have seen no proof of such a claim.

## **PUBLIC HEARING**

A Notice of Public Hearing was sent to nearby property owners and/or occupants residing near the subject site for which an application, as described below, had been filed with the Department of City Planning. The purpose of the hearing was to obtain

testimony from affected and/or interested persons regarding the project. All interested persons were invited to attend the public hearing where they could listen, ask questions or present testimony.

The hearing for Case No. DIR-2020-4145(BSA) was held on Thursday, October 8, 2020, at approximately 10:00 a.m. by Charles J. Rausch Jr., Associate Zoning Administrator, telephonically in conformity with the Governor's Executive Order N-29-20 (March 17, 2020) due to concerns over COVID-19. The following testimony was provided at the hearing:

The Zoning Administrator, before the hearing started asked the property owners representative as to whether or not the lot line adjustment which formed the two lots in question had been properly granted as it appeared that a previous lot line adjustment between the Bellagio Road property and an adjoining lot on Perugia Drive had removed the lot line that was used on a subsequent lot line adjustment for the two lots on Bellagio and Carcassonne. He instructed the property owners attorney and representative to research the two lot line adjustments to make sure that the Bellagio and Carcassonne lots were two lots and not one. The information was subsequently given to the Zoning Administrator proving that the two lots in question were real lots. The hearing for the Building and Safety Appeal was subsequently scheduled and heard on October 29, 2020.

The second hearing was held at approximately 11:00 a.m. on October 29, 2020 by telephone and zoom. The hearing was attended by the appellant, the property owner's two representatives and attorneys, a representative of the Department of Building and Safety, two community stakeholders and a representative of Council District No. 5.

**Points in Favor of the Appeal including a letter from appellant on July 10, 2020:**

- The subject property originally had a single family home and outbuildings. The property was cleared for development in 2004 and the former home was demolished. As can be seen from the pictures in the file the property sloped from back to front and the Bellagio frontage was six feet lower than the street;
- A project was started with grading on the site, but it was abandoned in 2008. The property owner was required to restore the land forms on the site and bury the dug out basement that was abandoned;
- Two more projects were begun and abandoned between 2008 and 2013;
- In 2014, the current property owners bought the site. The property was owned for two months when a new grading permit was applied for. Soil was deposited on the site and grading began. In April of 2015, the site was graded in such a manner that the grade went from six feet below Bellagio to six feet above the road;
- A retaining wall was added at the Bellagio frontage and the property was now nine feet above the adjacent road;
- We contend that there was illegal grading which occurred on the site, that the

homes that were built on the site were built on an improper grade and are over-in-height and over in residential floor area and that the retaining walls are too numerous and over-in-height without the benefit of any Department of City Planning actions except for a Parcel Map Exemption for a lot line adjustment which the developer insists was a Parcel Map Action which established the grade for the site. We believe that an exemption from the Parcel Map regulations is not a parcel map action and that the grades on which the homes are built are illegal. In allowing the grade to be set by the Parcel Map Exemption, we believe that the Department of Building and Safety erred and abused their discretion;

- The grading permits issued by LADBS have plot plans with lines showing what is to be graded. There was no grading for the current project until the applicant purchased the property. However, the previous grades, including the shallow dip of the property at the Bellagio Road frontage, were not shown on the plot plan. The applicant knew of the previous problems with grading on the site when the property was bought. The applicant justified the new grading that was undertaken based on the improper grade on the site which he and his representatives claimed was established by a Parcel Map Action as required by Code except that the subject Parcel Map Action was a Parcel Map Exemption which is exempt by definition from Parcel Map rules and regulations;
- Conservative estimates suggest that many thousands of cubic yards of unpermitted fill was imported without a grading permit or Haul Route for the purpose of raising the building pad to inflate the height, illegally. The developer then applied for building and grading permits after such unpermitted work was done, without acknowledging the unpermitted work to LADBS;
- In September of 2014, the developer filed for permits to build a home. Those permits make no mention of the previous grading contours that were altered, or the thousands of cubic yards of dirt that were likely imported to raise the large pad. In April of 2015, the permits were issued and work began. No department had been made aware of the previous contour lines of the property or the act of altering them. Nor was any grading plan approved that acknowledged the raised grade, let alone the compaction or type of fill that was being used. In late 2015, a simple lot line adjustment was approved which allowed the owner to reclassify a proposed Accessory Living Quarters as a second Single Family home. The approved lot line adjustment was a standard approval that made no mention of previous or proposed grading or contour lines. Nor did it reference or include a proposed Grading Plan, or any language in the project description that would alert anyone to the possibility of substantial grading and pad elevation;
- There was never any required notice for the site grading and there was no required haul route applied for or granted;
- I'm a resident of Bel Air. Why is LADBS not backing Code requirements. A lot line adjustment should not result in unlimited height and grading for projects in the area. The Department's actions have resulted in overly large projects that are contrary to the Code requirements for hillside areas;
- We want LADBS to obey both Chapter I and Chapter IX of the LAMC. We see major developments that are put into our area on a purely speculative level with no intent of the developer to live in them. We want LADBS to obey both Chapters of the Code;

The Benedict Canyon Association sent a letter in favor of the appeal and made the following points:

- A speculative developer has constructed two homes based on permits that inaccurately reflect the amount of grading and hauling that took place at the building site along with understating the heights of the homes by 10 to 16 feet. Many thousands of cubic yards of unpermitted fill was imported without a grading permit or a haul route for the purpose of raising the building pad to inflate the height of the structures illegally;
- The recent LADBS determination approving the grading declared that a ministerial Lot Line Adjustment the developer received five years ago was not actually a Lot Line Adjustment but instead a Parcel Map. Despite never applying for a parcel map, despite never requesting any grading change in the applications, despite never disclosing the illegal/unpermitted grading or hauling activities to LADBS or any other City department and despite only making this argument once caught, LADBS decided to relieve the developer of any culpability;
- Lot Line Adjustments are simple to receive, minimally expensive, exempt from the California Map Act and the California Environmental Quality Act, have limited notification and are considered ministerial;
- So if this is the new standard for unlimited grading, unlimited pad height, and unlimited dirt hauling, then the City has abandoned all pretense of caring for hillside communities and case aside six decades of meaningful hillside preservation.

The Bel-Air Association sent in a letter dated December 1, 2020 which addressed the lot line adjustment issues and its effect on the ultimate hillside finished grade. The Zoning Administrator has dismissed the appeals against the grading permits as the appeals belong with the Board of Building and Safety Commissioners as an appeal against an action belonging to Chapter IX of the LAMC and not Chapter I where the Director of Planning has jurisdiction over appeals. Thus, because the comments address a dismissed issue the letter is not being summarized here.

**Points in Opposition to the Appeal:**

- The LADBS does not permit illegal grading or grading without a permit. The subject site had grading permits issued in 2004 and 2005. There were several permits issued over the time period from 2004 to 2016;
- The appeal is based on grading activity (legal or illegal). This is not a part of Chapter I (the Zoning Code) of the LAMC. It is a portion of Chapter IX of the LAMC (the Building and Safety Code). Thus, the appeal of the permits should stay with the Board of Building and Safety Commissioners who have jurisdiction over Article IX not the Director of Planning who can only rule on Building and Safety actions which involve Chapter I. This case should be dismissed and remanded to the Board of Building and Safety Commissioners who properly have jurisdiction;
- The standard of review is with Building and Safety not the Department of City

Planning. It is not up to Planning to determine if LADBS erred in interpreting their own Code;

- To show error or abuse, one must show substantial evidence not hearsay and estimates from off-site views;
- Lot line adjustments are recorded documents. If you are not creating lots through a parcel map but only moving previously established lot lines then you go with the lot line adjustment process;
- The two subject residences are built and are waiting for their Certificates of Occupancy. Major banking institutions are wondering at what the hold up is in issuing the Certificates. There is a deficiency in the LAMC which allows Building and Safety Appeals at anytime in the process including after the buildings are built;
- Photographs and estimates by bystanders are not substantial evidence of error or abuse of authority. The burden is on the appellant to prove that there were errors by LADBS in approving the permits or signing off on them as finalized. Outside experts do not count in establishing whether LADBS erred. It is LADBS's responsibility to interpret their own Code;
- We question if it is relevant to appeal these permits. The only action here is over the grading. It is too late to appeal the lot line adjustment because the statutory time limit is over to appeal the action which is set by the LAMC. The appeals are about Article IX not Article I. These appeals should have gone to the Building and Safety Board not the Director of Planning;
- These appeals are premised primarily on allegations that unpermitted grading occurred on the properties more than six years ago, before our client ever applied for the building permits being appealed here. Significantly, these allegations are not supported with any records of City code-enforcement actions, nor even evidence that a single complaint was ever received by the City at the time the alleged grading occurred. They are also wholly disconnected from the actual LAMC standards the appeal purports to be enforcing. The fact is the bulk of this appeal is simply a late-filed code enforcement complaint recast as a building permit appeal;
- Significantly, nearly all of the issues raised by this appeal fail to allege that LADBS erred in relation to Chapter I of the LAMC and they do not raise claims that are site-specific. Instead the appeal claims simple code violations and interpretation issues that have nothing to do with Chapter I or any other LA City land use ordinances. It is therefore improper for the Director of Planning to render decisions on appeals that deal exclusively with issues concerning the application of Chapter IX of the LAMC and the interpretation or enforcement of the uniform building code. LADBS's discretion in responding to these variety of code enforcement allegations, therefore, is not reviewable by the Director pursuant to LAMC Section 12,26-K;
- Appellant contends that LADBS is in error because lot line adjustments do not require grading plans and that a lot line adjustment is not a "Parcel Map". However, grading plans are required to be reviewed as part of a lot line adjustment application when it relates to a project for a given site. This is stated in the application form instructions which provide that the maps must be reviewed and stamped by LADBS, Grading Division prior to filing with the City Planning. Moreover, all grading plans approved for a site that undergoes a lot line adjustment are required to be resubmitted to LADBS and rechecked in consideration of the lot

line adjustment which was done in this case;

### **Building and Safety Comments on Case:**

We believe that the Lot Line Adjustment is a parcel map action. The setting of the grade is either the finished grade, the natural surface or finished surface of the ground established in conformance with a grading plan approved pursuant to a recorded tract or parcel map action. The finished grade is what was used in approving the Residential Floor Area for the two residences. The slope band analysis was based on it. Thus, the RFA for the two buildings is correct. Our interpretation that the parcel map action (the lot line adjustment) could establish the finished grade was also used for determining the height.

### **DISCUSSION**

The appeal is restricted to considering whether LADBS acted within the scope of its authority as provided in the applicable sections of the Los Angeles Municipal Code cited herein and if LADBS committed an error or abuse of discretion in its issuance of Building Permit Nos. 14010-30000-03040, 14010-10001-03040, 17030-20000-00378, 17030-20000-00190, 17020-20000-00101, and 17047-20000-00090, all for the proposed construction of a new single family dwelling with an attached garage, pool/spa, site retaining wall and associated site grading. The appellant requested that all of the permits be set aside and deemed void by the Director of Planning.

The requirements for consideration of the application have been met in part. The public testimony, the written statements, photographs, and the information submitted by the Appellant, area stakeholders, and the representatives for the property owner have been considered. The report of the Department of Building and Safety, including historical permit records and related documentation has been reviewed. The following conclusions are based on the evidence provided in the administrative record.

Pursuant to LAMC Section 12.26-K, the Director of Planning has "the power and duty to investigate and make a decision ... where it is alleged there is error or abuse of discretion in any order, interpretation, requirement, determination or action made by the Department of Building and Safety in the enforcement or administration of Chapter I of this Code and other land use ordinances in site-specific cases." The Zoning Administrator, on behalf of the Director, is charged with reviewing the evidence contained in the administrative record, in addition to the justifications and findings provided by LADBS in their appeal report. In order to conclude that LADBS abused their discretion, and thereby grant the appeal, there must be evidence that LADBS' enforcement or administration of the Zoning Code, or other land use ordinance, was not performed in the proper manner.

In the instant case, the action is restricted to considering whether the Department of Building and Safety erred or abused its discretion in the issuance of permits to allow a new single family dwelling with an attached garage, pool/spa, site retaining wall and associated site grading.

In taking its action on the matter, the Department of Building and Safety identified certain applicable provisions of the Code and actions which are identified in the report issued on

June 23, 2020. The discussion and conclusion of that report have been quoted in this action.

**Point No. 1**

The appeal states that LADBS erred in establishing the subject site's grade and topography at the time a Lot Line Adjustment, Case #: AA-2014-2980-PMEX was approved, and therefore erred in determining that the structure does not exceed the height limit. The Lot Line Adjustment Application and Determination make zero mention of any grading, existing topography, requested changes to topography, or even mentions the words "grade" or "topography." This interpretation would allow anyone to record a minor Lot Line Adjustment without disclosing existing grade or proposed grade.

**Director of Planning Response:**

Pursuant to LAMC Section 12.03 Grade, Hillside Area is defined as:

*"For the purpose of measuring height in an R1, RS, RE, or RA zoned Lot in the Hillside Area, pursuant to Section 12.21 C.10 of this Code, Hillside Area Grade shall be defined as the Elevation of the finished or natural surface of the ground, whichever is lower, or the finished surface of the ground established in conformance with a grading plan approved pursuant to a recorded tract or parcel map action. Retaining walls shall not raise the effective Elevation of Grade for purposes of measuring Height of a Building or Structure."*

LADBS relies on the interpretation that a lot line adjustment is a parcel map action. However, Government Code Section 66412(d) states that the Subdivision Map Act shall be inapplicable to "a lot line adjustment between four or fewer existing adjoining parcels, where the land taken from one parcel is added to an adjoining parcel, and where a greater number of parcels than originally existed is not thereby created, if the lot line adjustment is approved by the local agency, or advisory agency." Therefore, a lot line adjustment is not a parcel map action.

While the Department of Building and Safety claimed that the Lot Line Adjustment constituted a parcel map action, the reality is that the LADBS considered the whole site, both the lots located at 627 Carcassonne Road and 10701 Bellagio Road, to be one grading site and issued permit No. 14010-30000-03040 and 14010-10001-03040 for the construction of a home plus an accessory living quarters for a single lot at 10701 Bellagio Road and then a supplemental permit after the lot line adjustment for a single family home instead of an accessory living quarters at 627 Carcassonne Road. The issue raised in Point No. 1 is the height of the structure at 627 Carcassonne Road which the appellant claims was raised in height due to the grading on a site which had both what is claimed to be illegal grading and 5,000 cubic yards of graded material placed on the lot under

Permit 09030-10000-04612. The appellant believes that this additional off-site graded material did not seem to be removed but was graded into the site by Permits 10410-30000-03040 and supplemental permit 14010-10001-03040.

The LADBS, in its explanation of why they did not error on Issue No. 1, notes that “To the extent that previous topographical surveys differ from the survey dated September 5, 2014 and unpermitted grading may have occurred on the site in the past, prior to the approval of parcel map exemption No. AA 2014-2980 PMEX ...” The statement goes on to mention that the PMEX was a parcel map action and therefore set the grade as defined in Section 12.03 of the Municipal Code (LAMC). There is controversy over whether or not a PMEX constitutes a parcel map action as the very description of a PMEX is a parcel map exemption and the State Map Act and the Zoning Code do not permit PMEX’s to be conditioned. The Zoning Administrator does not wish to opine on that interpretation as it is more properly in the realm of legislative interpretation and Code writing than an issue to be determined by an appeal to the Director of Planning and any subsequent appeal to a Planning Commission either Area or Citywide. The issue at hand is whether or not the LADBS issued its permits correctly. As was stated in the Bel Air Association’s appeal, “LADBS avoids addressing the issue of the grade elevation being substantially elevated without permits, or at all. Instead, the Department argues that any grading work previously performed, legal or illegal, does not matter because the PMEX that was approved after the developer received Grading and Building Permits somehow cures all deficiencies and unpermitted work.” Since the issuance of grading permits and the legality of the same are not contained in Chapter 1 of the LAMC but in Chapter IX of the LAMC (the Building Code), the appeal of the on-site grading properly belongs with the Board of Building and Safety Commissioners and not with the Director of Planning.

LAMC, Section 98.0403.1,(b)(2) states;

**Powers of the Board (Board of Building and Safety Commissioners)**

(Amended by Ord. No. 175,428, Eff. 9/28/03.) The Board shall have the power to hear and determine appeals from orders, interpretations, requirements, determinations, or actions of the Department (Building and Safety) pertaining to enforcement of specific ordinances, regulations, or laws in site-specific cases. These appeals shall state how the Department has erred or abused its discretion in the matter of the appeal. The Department shall provide the Board with a written report on the appeal. The Department, however, may reverse or modify the action appealed at any time prior to final action by the Commission. The Board shall hear and make its determination on the appeal no later than the 30th calendar day after the appeal is heard.

Notwithstanding the above, the Board shall have no authority to hear and determine appeals from orders, interpretations, requirements, determinations, or actions of the Department pertaining to enforcement of specific ordinances, regulations, or laws contained in [Chapter I](#) of this Code and in other land use ordinances. Any appeal concerning these requirements shall be made to the Director of Planning in accordance with the provisions set forth in Section [12.26 K](#).

Though the determination of the height of the structure is subject to Chapter I of the LAMC, the determination of the proper grading and the permits which are issued for grading are unique to Chapter IX of the LAMC. The appeal of the grading which was established by Permits No. 10410-30000-03040 and supplemental permit 14010-10001-03040 belong with the Board of Building and Safety Commissioners. The Appellant may file an appeal application to the LADBS Board of Building and Safety Commissioners with an applicable filing fee pursuant to LAMC Sections 98.0403.01 and 98.0403.2 on this issue.

#### **Point No. 2**

The appeal states that LADBS erred by basing the allowable RFA on subject site's grade and topography at the time a Lot Line Adjustment, Case #: AA-2014-2980-PMEX was approved. The structure will exceed the allowable RFA once the subject site's grade and topography is correctly established.

#### **Director of Planning Response:**

LADBS acknowledges that an error occurred relative to applying LAMC Section 12.21-C,10(b) to the proposed project and issuing the subject permits. In its November 12, 2019 "Notice to Stop Work and Notice of Intent to Revoke Building Permit" for the proposed project, LADBS stated that "the project has relied on altered grades which affect the projects compliance with the Los Angeles Building Code and the Los Angeles Planning and Zoning Code including but not limited to...allowable residential floor area..." However, similar to Point No. 1 above, the LADBS utilized grades established by Lot Line Adjustment Case No. AA 2014-2980 PMEX to establish the grade. The establishment of grades and grading on a site are subject to Chapter IX of the LAMC not Chapter I. Since the established grade and topography for the site were previously altered by Permits 10410-30000-03040 and supplemental permit 14010-10001-03040, the LADBS action is again appealable not to the Director of Planning but to the Building and Safety Commission who has authority over appeals to Chapter IX of the LAMC. Therefore, the Director of Planning DISMISSES the appeal of the subject permits as belonging to the jurisdiction of the Board of Building and Safety Commissioners.

In addition, the appellants appeal of the RFA on the site is dependent upon conjecture not on verifiable allowances of RFA. The appeal states that the "projects have nearly

maxed-out its allowable RFA based on the altered/incorrect topographical information .... Once corrected will cause the home to be over its allowable RFA limit. However, this is not a concrete number as to a violation of RFA. It is merely an estimate which cannot be confirmed or denied until an absolute number is established by a final action of the Building and Safety Commission. As such, the project's compliance with the Los Angeles Municipal code cannot be determined at this time.

**Point No. 3**

The appeal states that LADBS erred by relying upon inaccurate plans and not the actual site conditions when evaluating height. The home sits on a secondary elevated pad that is created from retaining walls, further increasing the height. LADBS erred by not measuring height to the grade of the secondary pad, further creating a home that is physically taller than the 30 and 36 foot allowances.

**Director of Planning Response:**

Similar to Points No's 1 and 2 the establishment of the grade is subject to Chapter IX of the Municipal Code and appealable to the Board of Building and Safety Commissioners and not to the Director of Planning. The argument was also made that the retaining walls for the project resulted in a raised pad from which the height of the building may not be measured from but only from the natural of finished grade. Both the retaining wall plans for the subject house on Carcassonne and the adjoining home on Bellagio Road, which was once a part of the property before the lot line adjustment, show that the retaining walls for the subject property on Carcassonne are to the rear and side of the property and are designed to hold back the adjacent hillside and not to create an elevated building pad for the project. Though the graded site cut into the hillside to create the pad, it did not require a wall between the two residences and none is shown on the retaining wall plans of permits 10410-30000-03040 and supplemental permit 14010-10001-03040. Thus, the height of the structure was not determined from a built up building pad created by retaining walls. Again the determination of the Department of Building and Safety in approving the grading for the site is subject to the Board of Building and Safety Commissioners and not to the Director of Planning.

**Point No. 4**

The appeal states that LADBS erred by permitting multiple kitchens in a single-family home without the required Variance from City Planning.

**Director of Planning Response:**

The approved plans under Permit No. 14010-10001-03040<sup>2</sup> indicate a kitchen and catering kitchen located on the main floor and across from each other. The approved plans also indicate a room located on the upper floor plan, adjacent to the master bedroom, labeled as a kitchenette. According to the plans the room contains a two-foot-wide counter space and cabinetry however no cooking facilities were approved or indicated on the approved plans.

The RE40 zone allows for a one-family dwelling, which permits only one kitchen. As stated in LADBS Response to Issue No. 4, LADBS has historically considered two adjacent kitchens as being in conformance with the spirit and intent of the Planning and Zoning Code. An example of this occurs in cases where a family requires a regular kitchen and an adjacent kosher kitchen. The kitchenette shown on the plans includes a 2-foot wide counter and cabinetry. It does not include a wet bar or any other permanent cooking facilities. While a 2-foot wide counter could accommodate a microwave or a small convection oven, these are small individual units which can be moved from room to room if so desired and do not require a building permit to install.

Further, a flexible unit condition does not exist. LAMC 12.21 A.1(b) states that a flexible unit exists whenever a layout within any dwelling unit or guest room is designed with multiple hallway entrances, multiple toilet and bath facilities or bar sink installations, so that it can be easily divided into or used for separate apartments or guest rooms. The Code Section on flexible units has been rendered obsolete as well by the State Government Code's allowance for Accessory Dwelling Units within single family homes. Such a unit would have a separate kitchen, and entrances and are legal under State Law. Thus, the catering kitchen meets the Department of Building and Safety's pattern and practice as to what does or does not constitute a flexible unit with a second kitchen. As such, the Director of Planning finds that LADBS did not err or abuse its discretion in issuing permits for a kitchen, catering kitchen and the room labeled kitchenette in a single-family dwelling.

**Point No. 5**

The appeal states that LADBS erred claiming the structure is not surrounded by walls, gates, and shrubs/hedges that exceed the allowable fence height limits in the required front and side yard setbacks. LADBS erred by not physically looking at the actual site, instead simply looking at plans.

**Director of Planning Response:**

Irrespective of determining the proper grade for the site, LADBS has erred in issuing permits for the fences and hedges in the front yard of the residence as field checks of the site clearly show a chain link fence in-excess of three and a half feet in the front yard as

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<sup>2</sup> Building and Safety Report DBS-200037-DCP cites building permit no. 14010-30001-03040 (EXHIBIT B) in error. Exhibit B is Permit No. 14010-10001-03040.

well as a hedge wall in-excess of six feet in the northerly side yard. While the plans may not have shown fences or hedges in excess of the Code required six feet in the side and rear yards in hillside areas and 3.5 feet in the front yard, the subject fences are in excess of the proper height and should either come down to the legal height or the property owner should apply for a Zoning Administrator's Determination pursuant to Section 12.28 of the Zoning Code to legalize the height of said fences which do not conform to Section 12.22-C, 20(f) no matter what the grade on the site.

As such, the Director of Planning finds that LADBS has erred or abused its discretion in issuing permits or in not issuing permits because such fences were not shown on the approved plans for the project.

#### **Point No. 6**

The appeal states that the retaining walls exceed the maximum height and number of walls permitted by LAMC.

#### **Director of Planning Response:**

The approved plans pursuant to Building Permit 15020-30001-00336 show two retaining walls on the site in the rear yard and adjacent to the front yard on Carcassonne and the side yard on Bellagio. No retaining wall is shown on the permit adjacent to the northerly property line. Both retaining walls take a number of turns over their length which is permissible under Section 12.21-C,8 which requires only that the wall be a free standing continuous structure over its length. The retaining wall in the area of the front and side yards is a variable in height, maximum 10-foot high wall which is not built into either yard as they are built beyond the required five and twelve foot wide yards. Thus, there is no error in the issuance of the permit. The rear retaining wall on the permit site plan also shows a variable, maximum 10-foot high wall built at or near the required rear yard line. The site plan for the wall is somewhat indistinct in showing where the wall intersects or is built on the rear yard line internal to the property. The LADBS states in their denial of the appeal that "retaining walls that do not require building permits per LAMC 91.101.5 do not have to comply to the requirements of ordinance number 176,445" (the Zoning Code's Retaining Wall Ordinance). Two of the retaining walls in question are exempt from permits therefor they were not counted as retaining walls. Unfortunately, in their appeal document LADBS did not indicate which walls were exempt so there is no way either the appellant or the Director can determine if the subject wall were exempt or not. In any case the walls were for a maximum of 10 feet. The only question is whether or not they were built inside of the rear yard line. If they were then they may only be constructed to a maximum of six feet unless a Zoning Administrator's Determination of Fence Height was applied for. This can not be determined either from the permit's site plan or from the Appellant's appeal request as the appellant does not provide an absolute measurement of height of the subject retaining wall, but only provides an estimate of what the height is.

The appeal in this case, without a true measurement of the height of the wall, makes a determination of an error or abuse of discretion by Building and Safety impossible to make. As such the Director of Planning finds that LADBS did not error or abuse its discretion in issuing permits for the subject retaining walls.

### **Additional Comment Raised by Appellant but not Addressed by LADBS**

The appellants raised additional issues regarding piecemealing the project and exceeding grading and haul route limits. These, however, were not raised as a Point of error or abuse of discretion by the LADBS, and LADBS did not address them. That being the case, the Director has no issue on which to opine as to whether or not LADBS erred and thus, has no opinion on these particular comments.

### **Conclusion**

After reviewing the evidence in the record including information submitted by the Department of Building and Safety; the testimony at the public hearing conducted by the Zoning Administrator; correspondence and the Appellants' statements in the appeal, it is determined that the appeal of the Department of Building and Safety's issuance of Building Permits Nos. 17030-2000-00378, 17030-2000-00190 and 17020-2000-00101 shall be **DISMISSED** because the permits are within the jurisdiction of the Board of Building and Safety Commissioners as they are over issues contained in Chapter IX of the LAMC and not Chapter I which is in the jurisdiction of the Director of Planning. The Department of Building and Safety **DID NOT** err or abuse their discretion and proceeded in a manner prescribed by the Zoning Code in the issuance of an Building Permit Nos. 14010-3000-03040 and 14010-1001-0304020000-00190, 17020-20000-00101, and 17047-20000-00090 regarding a second kitchen in a single family home or height and number of retaining walls, and the Department of Building and Safety **DID** error in the issuance of the same permits for the fences and hedges in the front and side yards in excess of what is permitted by Chapter I of the LAMC.

### **CITYWIDE IMPACT**

Pursuant to the requirements of Section 12.26-K of the Los Angeles Municipal Code, the Director of Planning finds that there is no Citywide impact as the matter concerns only the use of the specific property. The circumstances connected with the zoning matter are unique to the affected site and would not generally apply to other sites in the City, therefore, the determination would not result in changes in the application of Chapter I of this Code or other land use ordinances to other sites.

### **APPEAL PERIOD - EFFECTIVE DATE**

The Zoning Administrator's determination in this matter will become effective after **May 10, 2021**, unless an appeal therefrom is filed with the Department of City Planning. The Dismissal of appeals is not an appealable action as the appeals do not pertain to Chapter I of the LAMC but are pertinent to Chapter IX of the LAMC and belong with the Board of Building and Safety Commissioners. The remaining items of the action are

appealable as they pertain to Chapter I of the LAMC. It is strongly advised that appeals be filed early during the appeal period and in person so that imperfections/incompleteness may be corrected before the appeal period expires. Any appeal must be filed on the prescribed forms, accompanied by the required fee, a copy of the Zoning Administrator's action, and received and receipted at a public office of the Department of City Planning on or before the above date or the appeal will not be accepted. Forms are available on-line at <http://planning.lacity.org>. Public offices are located at:

Figueroa Plaza  
201 North Figueroa  
Street,  
4th Floor  
Los Angeles, CA 90012  
(213) 482-7077

Marvin Braude San Fernando  
Valley  
Constituent Service Center  
6262 Van Nuys Boulevard, Room  
251  
Van Nuys, CA 91401  
(818) 374-5050

West Los Angeles  
1828 Sawtelle Boulevard,  
2nd Floor  
Los Angeles, CA 90025  
(310) 231-2912

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.

Inquiries regarding this matter shall be directed to Esther Serrato, Project Planner, at [esther.serrato@lacity.org](mailto:esther.serrato@lacity.org) or (213) 978-1211.

VINCENT P. BERTONI, AICP  
Director of Planning



CHARLES J. RAUSCH JR  
Associate Zoning Administrator

cc: Councilmember Paul Koretz  
Fifth District  
Adjoining Property Owners  
Interested Parties