APPLICATIONS:

APPEAL APPLICATION

Instructions and Checklist

Related Code Section: Refer to the City Planning case determination to identify the Zone Code section for the entitlement and the appeal procedure.

Purpose: This application is for the appeal of Department of City Planning determinations authorized by the Los Angeles Municipal Code (LAMC).

A. APPELLATE BODY/CASE INFORMATION

1. APPELLATE BODY

☐ Area Planning Commission ☐ City Planning Commission ☑ City Council ☐ Director of Planning
☐ Zoning Administrator

Regarding Case Number: APCC-2019-4338-SPE-CU-CUB-SPP

Project Address: 1524-1530 N. Western Ave.; 5446 W. Harold Way

Final Date to Appeal: 12/27/2021

2. APPELLANT

Appellant Identity: (check all that apply)
❒ Representative ❒ Property Owner
❒ Applicant ❒ Operator of the Use/Site

☑ Person, other than the Applicant, Owner or Operator claiming to be aggrieved

☐ Person affected by the determination made by the **Department of Building and Safety**

❒ Representative ❒ Owner ❒ Aggrieved Party
❒ Applicant ❒ Operator

3. APPELLANT INFORMATION

Appellant's Name: Doug Haines

Company/Organization:

Mailing Address: P.O. Box 93596

City: Los Angeles State: CA Zip: 90093

Telephone: (310) 281-7625 E-mail:

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

☐ Self ☑ Other: La Mirada Ave. Neighborhood Assn.

b. Is the appeal being filed to support the original applicant's position? ☐ Yes ☑ No

4. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): _____

Company: _____

Mailing Address: _____

City: _____ State: _____. Zip: _____

Telephone: _____ E-mail: _____

5. JUSTIFICATION/REASON FOR APPEAL

a. Is the entire decision, or only parts of it being appealed? ☑ Entire ☐ Part

b. Are specific conditions of approval being appealed? ☐ Yes ☑ No

If Yes, list the condition number(s) here: _____

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- ☐ The reason for the appeal
- ☐ How you are aggrieved by the decision
- ☐ Specifically the points at issue
- ☐ Why you believe the decision-maker erred or abused their discretion

6. APPLICANT'S AFFIDAVIT

I certify that the statements contained in this application are complete and true:

Appellant Signature: _____ Date: 12-26-2021

GENERAL APPEAL FILING REQUIREMENTS

B. ***ALL CASES REQUIRE THE FOLLOWING ITEMS - SEE THE ADDITIONAL INSTRUCTIONS FOR SPECIFIC CASE TYPES***

1. Appeal Documents

a. Three (3) sets - The following documents are required for each appeal filed (1 original and 2 duplicates) Each case being appealed is required to provide three (3) sets of the listed documents.

- ☑ Appeal Application (form CP-7769)
- ☑ Justification/Reason for Appeal
- ☑ Copies of Original Determination Letter

b. Electronic Copy

- ☑ Provide an electronic copy of your appeal documents on a flash drive (planning staff will upload materials during filing and return the flash drive to you) or a CD (which will remain in the file). The following items must be saved as individual PDFs and labeled accordingly (e.g. "Appeal Form.pdf", "Justification/Reason Statement.pdf", or "Original Determination Letter.pdf" etc.). No file should exceed 9.8 MB in size.

c. Appeal Fee

- ☐ Original Applicant - A fee equal to 85% of the original application fee, provide a copy of the original application receipt(s) to calculate the fee per LAMC Section 19.01B 1.
- ☑ Aggrieved Party - The fee charged shall be in accordance with the LAMC Section 19.01B 1.

d. Notice Requirement

- ☐ Mailing List - All appeals require noticing per the applicable LAMC section(s). Original Applicants must provide noticing per the LAMC
- ☐ Mailing Fee - The appeal notice mailing fee is paid by the project applicant, payment is made to the City Planning's mailing contractor (BTC), a copy of the receipt must be submitted as proof of payment.

SPECIFIC CASE TYPES - APPEAL FILING INFORMATION

C. DENSITY BONUS / TRANSIT ORIENTED COMMUNITES (TOC)

1. **Density Bonus/TOC**
   Appeal procedures for Density Bonus/TOC per LAMC Section 12.22.A 25 (g) f.

NOTE:
- Density Bonus/TOC cases, only the *on menu or additional incentives* items can be appealed.

- Appeals of Density Bonus/TOC cases can only be filed by adjacent owners or tenants (must have documentation), and always only appealable to the Citywide Planning Commission.

  ☐ Provide documentation to confirm adjacent owner or tenant status, i.e., a lease agreement, rent receipt, utility bill, property tax bill, ZIMAS, drivers license, bill statement etc.

D. WAIVER OF DEDICATION AND OR IMPROVEMENT

Appeal procedure for Waiver of Dedication or Improvement per LAMC Section 12.37 I.

NOTE:
- Waivers for By-Right Projects, can only be appealed by the owner.

- When a Waiver is on appeal and is part of a master land use application request or subdivider's statement for a project, the applicant may appeal pursuant to the procedures that governs the entitlement.

E. TENTATIVE TRACT/VESTING

1. **Tentative Tract/Vesting** - Appeal procedure for Tentative Tract / Vesting application per LAMC Section 17.54 A.

   NOTE: Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.

   ☐ Provide a copy of the written determination letter from Commission.

F. BUILDING AND SAFETY DETERMINATION

☐ **1.** Appeal of the *Department of Building and Safety* determination, per LAMC 12.26 K 1, an appellant is considered the **Original Applicant** and must provide noticing and pay mailing fees.

a. Appeal Fee
- ☐ Original Applicant - The fee charged shall be in accordance with LAMC Section 19.01B 2, as stated in the Building and Safety determination letter, plus all surcharges. (the fee specified in Table 4-A, Section 98.0403.2 of the City of Los Angeles Building Code)

b. Notice Requirement
- ☐ Mailing Fee - The applicant must pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of receipt as proof of payment.

☐ **2.** Appeal of the *Director of City Planning* determination per LAMC Section 12.26 K 6, an applicant or any other aggrieved person may file an appeal, and is appealable to the Area Planning Commission or Citywide Planning Commission as noted in the determination.

a. Appeal Fee
- ☐ Original Applicant - The fee charged shall be in accordance with the LAMC Section 19.01 B 1 a.

b. Notice Requirement
- ☐ Mailing List - The appeal notification requirements per LAMC Section 12.26 K 7 apply.
- ☐ Mailing Fees - The appeal notice mailing fee is made to City Planning's mailing contractor (BTC), a copy of receipt must be submitted as proof of payment.

G. NUISANCE ABATEMENT

1. **Nuisance Abatement -** Appeal procedure for Nuisance Abatement per LAMC Section 12.27.1 C 4

NOTE:
- Nuisance Abatement is only appealable to the City Council.

a. Appeal Fee

☐ Aggrieved Party the fee charged shall be in accordance with the LAMC Section 19.01 B 1.

2. **Plan Approval/Compliance Review**
Appeal procedure for Nuisance Abatement Plan Approval/Compliance Review per LAMC Section 12.27.1 C 4.

a. Appeal Fee

☐ Compliance Review - The fee charged shall be in accordance with the LAMC Section 19.01 B.
☐ Modification - The fee shall be in accordance with the LAMC Section 19.01 B.

NOTES

A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.

***Please note** that the appellate body must act on your appeal within a time period specified in the Section(s) of the Los Angeles Municipal Code (LAMC) pertaining to the type of appeal being filed. The Department of City Planning will make its best efforts to have appeals scheduled prior to the appellate body's last day to act in order to provide due process to the appellant. If the appellate body is unable to come to a consensus or is unable to hear and consider the appeal prior to the last day to act, the appeal is automatically deemed denied, and the original decision will stand. The last day to act as defined in the LAMC may only be extended if formally agreed upon by the applicant.*

This Section for City Planning Staff Use Only		
Base Fee: $158.00	Reviewed & Accepted by (DSC Planner): Dang Nguyen	Date: 12-17-2021
Receipt No: 2021361004-27	Deemed Complete by (Project Planner):	Date:
☐ Determination authority notified	☐ Original receipt and BTC receipt (if original applicant)	

Los Angeles Dept of Building and Safety
6262 Van Nuys Blvd., 2nd Floor
Van Nuys, CA 91401

Reference Number: 2021361002-27
Date/Time: 12/27/2021 12:06:08 PM PST

User ID: nbaydaline

DEPT OF CITY PLANNING - PCTS
2021361002-27-1
DEPT OF CITY PLANNING - PCTS DOC INFO
Document Number: 6800177504

Operating Surcharge	$11.06
General Plan Maintenance Sur	$11.06
City Planning Systems Develop	$9.48
Appeal by Person Other Than	$158.00
Development Services Center S	$4.74
Amount:	$194.34
Total:	$194.34
1 ITEM TOTAL:	$194.34
TOTAL:	$194.34
ICL Check	$194.34
Method:	
Check Number: 9516713699	
Total Received:	$194.34

CE2021361002-27

City of Los Angeles
Department of City Planning

Scan this QR Code® with a barcode reading app on your Smartphone. Bookmark page for future reference.

City Planning Request

ent will analyze your request and accord the same full and impartial consideration to of whether or not you obtain the services of anyone to represent you.

g fee is required by Chapter 1, Article 9, L.A.M.C.

se contact the planner assigned to this case. To identify the assigned planner, please ning.lacity.org/pdiscaseinfo/ and enter the Case Number.

t be received by 02/25/2022. For appeal case, your appeal is not valid unless the ved prior to 4:30PM on the last day of the appeal period.

VE.; 5446 W HAROLD WAY

	Fee	%	Charged Fee
*	$158.00	100%	$158.00
		Case Total	$158.00

	Charged Fee
	$158.00
	$0.00
	$158.00
	$0.00
3%)	$4.74
harge (6%)	$9.48
	$11.06
	$11.06
	$194.34
Total Invoice	$194.34
Total Overpayment Amount	$0.00
Total Paid (this amount must equal the sum of all checks)	$194.34

Los Angeles Department of Building and Safety
Van Nuys 12/27/2021 12:06:08 PM
User ID: nbaydaline
Receipt Ref Nbr: 2021361002-27
Transaction ID: 2021361002-27-1
Operating Surcharge $11.06
General Plan Maintenance Surcharge $11.06
City Planning Systems Development Surcharge $9.48
Appeal by Person Other Than The Applicant $158.00
Development Services Center Surcharge $4.74
Amount Paid: $194.34

Council District: 13
Plan Area: Hollywood
Processed by NGUYEN, DANG on 12/27/2021

Signature: _____

December 24, 2021

Doug Haines
La Mirada Ave. Neighborhood Assn.
P.O. Box 93596
Los Angeles, CA 90093

Los Angeles City Council
200 N. Spring St.
Los Angeles, CA 90012

Appeal of: **Case No.: APCC-2019-4338-SPE-CU-CUB-SPP**
Project Addresses: 1524-1530 N. Western Ave., 5446 Harold Way

This appeal seeks the reversal of the Central Area Planning Commission's October 26, 2021 approval of a 60-foot-tall hotel on a 14,478 sq. ft. lot at the southeast intersection of Western Avenue and Harold Way in East Hollywood. The site is located in Subarea C of the Vermont/Western Transit Oriented District Specific Plan, also known the Station Neighborhood Area Plan (or "SNAP").

The proposed project received multiple entitlements from the Commission, including two exceptions from the restrictions of the SNAP to: 1) allow commercial uses above the first floor (including a roof top lounge); and 2) a building height of 60 feet in lieu of the transitional height restriction of 25 feet. The applicant also received approval of a Conditional Use Beverage permit for the on-site sale and dispensing of a full line of alcohol; a Conditional Use Permit to allow a hotel use next to a residential zone; a Project Permit Compliance Review; and approval of the Mitigated Negative Declaration.

There are numerous problems with the commission's approvals. First, the commission approved a building design that the determination letter acknowledges violates the specific plan.

Second, the project claims to consist of 36 hotel rooms and 10 apartment units, yet this "mixed-use" arrangement is nothing more than a gimmick to evade the commercial height and Floor Area Ratio ("FAR") limitations of the SNAP.

Third, the project's application materials give a total floor area figure of 30,841 sq. ft., which is 4,761 sq. ft. greater than what was approved (26,080 sq. ft.), with no known design change.

Fourth, the determination letter repeatedly references the project site as being in central Hollywood near Highland Ave. and the Hollywood Walk of Fame as justification for the alcohol and hotel CUP approvals, when the project site is in fact located almost two miles to the east.

Fifth, the applicant failed to conduct any ambient noise analysis at the site to determine construction and operational noise impacts, meaning that no realistic noise and vibration mitigation measures have been conditioned to the project.

And sixth, the exceptions granted to the applicant lack any legal justification and are a clear abuse of the commission's discretion.

1. THE COMMISSION APPROVED A PROJECT DESIGN THAT VIOLATES THE SNAP DEVELOPMENT STANDARDS

The commission approved "Exhibit A" as attached to the staff recommendation report, which is the building design plans. However, as noted on determination letter page F-17, the SNAP Development Standards require that no portion of any structure exceed 30 feet in height within 15 feet of the front property line, and that the second floor must be set back at least 10 feet from the first floor. As also noted on page F-18, the Development Standards require that all rooflines in excess of 40 feet be broken up. The project as designed violates both of these requirements.

The determination letter states that a condition of approval has been imposed to address both errors, yet condition #71, "Building Stepback," includes no reference to the violation. Even if there were such reference, as in condition #75, which deals with the rooflines, the commission's approval of Exhibit A would likely be deemed by the Department of Building and Safety (LADBS) as the final plans.

The commission's conditions are meaningless, however, as LADBS regularly fails to enforce such requirements. As an example, in 2018 Hollywood Presbyterian Hospital received approval under Case Number DIR-2017-5247-SPP to demolish two duplexes (circa 1910 and 1916) at 1269-1279 N. Lyman Place, in order to construct a 20-stall paved surface parking lot. The commission's approval was conditioned to require: 1) buried utility lines; 2) wrought iron perimeter fencing; 3) 22 shade trees within the parking lot and additional shrubs and shade trees on the public right of way; 4) a decorative buffer wall between adjacent residential buildings; and 5) no on-site structures.

The century-old duplexes were quickly demolished, but instead of abiding by its conditions of approval, Hollywood Presbyterian Hospital has for 3 years illegally used the dirt lot for modular office buildings, which are surrounded by a chain link fence topped by barbed wire.

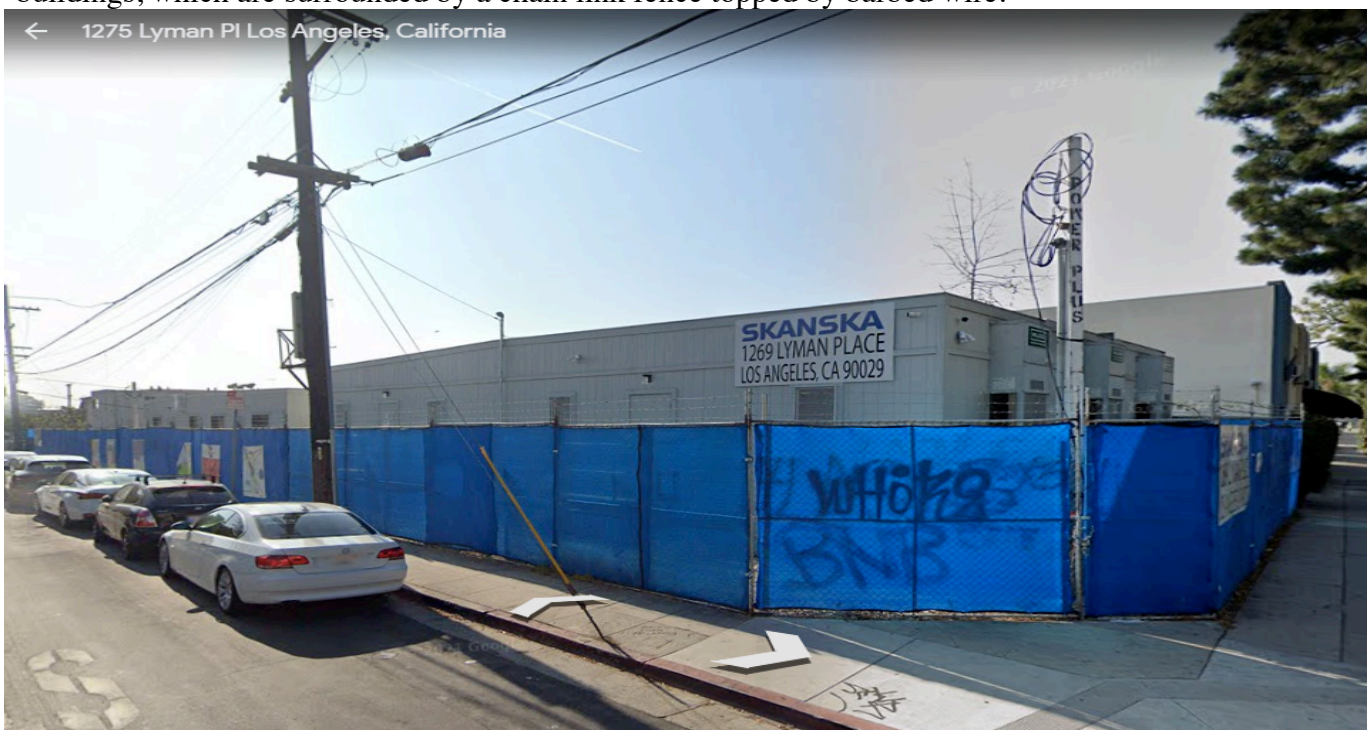
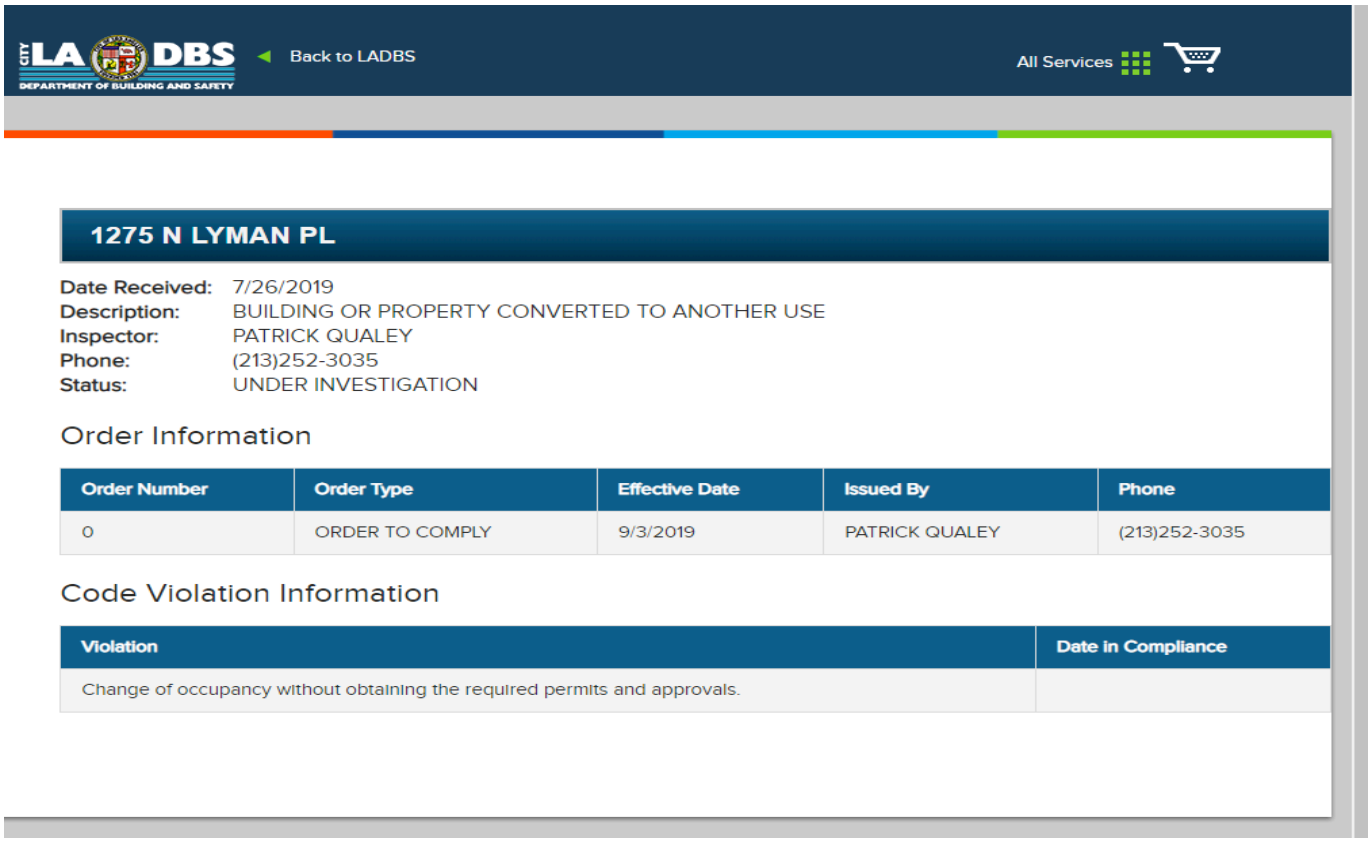


Photo above: Illegal modular office buildings operated by Hollywood Presbyterian.

Following community complaints, this eyesore was issued an Order to Comply in 2019 by LADBS. Hollywood Presbyterian has ignored this order, and LADBS has done nothing to enforce it. Note the Order to Comply below:


LA DBS DEPARTMENT OF BUILDING AND SAFETY ◄ Back to LADBS All Services

1275 N LYMAN PL

Date Received: 7/26/2019
Description: BUILDING OR PROPERTY CONVERTED TO ANOTHER USE
Inspector: PATRICK QUALEY
Phone: (213)252-3035
Status: UNDER INVESTIGATION

Order Information

Order Number	Order Type	Effective Date	Issued By	Phone
0	ORDER TO COMPLY	9/3/2019	PATRICK QUALEY	(213)252-3035

Code Violation Information

Violation	Date in Compliance
Change of occupancy without obtaining the required permits and approvals.	

Hollywood Presbyterian agreed to record a covenant to comply with the terms of the 2018 approval. They are in clear violation of that covenant, yet the commission on October 26 granted further approval to Hollywood Presbyterian of entitlements to develop medical offices near the site.

Conditions of approval are not enforced. The applicant for 1530 N. Western needs to re-submit final plans with revised design elements to be in conformance with the SNAP.

1I. THE COMMISSION ABUSED ITS DISCRETION BY GRANTING EXCEPTIONS TO THE SPECIFIC PLAN

The purpose of an exception is to serve as a relief mechanism when the land itself would otherwise be unusable, not the improvements on that land. The hardship must be upon the property and not a financial hardship upon the property owner. The purpose of an exception is not to grant special privileges or to permit a use that is inconsistent with the underlying zoning. That's why Los Angeles Municipal Code (LAMC) Section 11.5.7.F notes: "An exception from a specific plan shall not be used to grant a special privilege, or to grant relief from self-imposed hardships."

As the California Supreme Court held in Topanga Association for a Scenic Community v. County of Los Angeles (1974) 11 Cal. 3d 506, 509:

> "In the absence of an affirmative showing that a particular parcel in a certain zone differed substantially and in relevant aspects from other parcels therein, a variance granted with respect to that parcel amounted to the kind of 'special privilege' explicitly prohibited by Government Code § 65906, establishing criteria for granting variances."

These principles led the Supreme Court to hold that "self-imposed burdens cannot legally justify the granting of a variance." Broadway, Laguna, Vallejo Assn. v. Board of Permit Appeals of City and County of San Francisco (1967) 66 Cal.2d at 774, 778.

As further explained in Topanga (*ibid*):

> "A zoning scheme is a contract in which each party foregoes rights to use its land as it wishes in return for the assurance that the use of neighboring property will be similarly restricted, the rationale being that such mutual restriction can enhance total community welfare."

At its October 26 hearing, the commission gave much weight to the applicant's offer to designate two units in the project as "affordable," yet this should have had no bearing on the grant of the exceptions. As stated by the Court of Appeal in Orinda Association v. Board of Supervisors of Contra Costa (1986) 182 Cal.App.3d at 1147.

> "In the absence of a specific 'bonus' or 'merit' system of zoning enacted by the municipal or county legislature, a variance applicant may not earn immunity from one code provision merely by over compliance with others. Otherwise, the board charged with reviewing development proposals would be empowered to decide which code provisions to enforce in any given case. That power does not properly repose in any administrative tribunal."

There are five findings required for an exception and in order to grant the entitlement, all five findings must be made. If even a single finding cannot be made, the exception must be denied.

City Charter Section 562 and LAMC Section 11.5.7.F require that an exception approval must be supported by evidence of all of the following:

(a) That the strict application of the regulations of the specific plan to the subject property would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the specific plan;

(b) That there are exceptional circumstances or conditions applicable to the subject property involved or to the intended use or development of the subject property that do not apply generally to other property in the specific plan area;

(c) That an exception from the specific plan is necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other property within the specific plan area in the same zone and vicinity but which, because of special circumstances and practical difficulties or unnecessary hardships is denied to the property in question;

(d) That the granting of an exception will not be detrimental to the public welfare or injurious to the property or improvements adjacent to or in the vicinity of the subject property; and

(e) That the granting of an exception will be consistent with the principles, intent and goals of the specific plan and any applicable element of the general plan.

In reviewing the commission's findings, it's important to keep in mind the special circumstances necessary to justify an exception -- that because of the subject property's size, shape and topography the land is otherwise unusable unless it is granted.

In the case of variances to zoning restrictions, Topanga establishes a three-pronged analysis which goes beyond the mere 'substantial evidence' test applicable to the California Environmental Quality Act (CEQA). First, as in CEQA cases, there must be 'substantial evidence' to support the decision of the administrative agency and define the analytical relationship between the raw evidence and the administrative agency's findings.

Second, the administrative agency must set out a clear analytical construct where factual 'sub-conclusions' are clearly identified and logically support the ultimate decision, characterized by the Topanga Court as the "analytic route the administrative agency travels from evidence to action."

Third, implicit in the application and administration of this analytical construct is the requirement that when the zoning administrator hears and rules on both the facts of the exception as well as the scope of the proposed exception, he or she must have followed and respected the applicable statutory protocol attendant to its jurisdiction and scope of review.

Absent the rigorous application of these criteria, the danger is that the social contract between the people and their government would be subverted because the administrative agency's random leap from the raw evidence to unconnected and unsupportable ultimate conclusions would, *de facto*, result in the improper rezoning of property under the guise of granting a zoning variance. Orinda, supra, at 1161, 1162.

In this case, the applications are devoid of any factual support to satisfy the above-referenced showings. Instead of adhering to a rigorous standard of review, the commission treats this case as if the request is for a conditional use permit.

As explained by the Court in Orinda:

"[D]ata focusing on the qualities of the property and Project for which the variance is sought, the desirability of the proposed development, the attractiveness of its design, the benefits to the community, or the economic difficulties of developing the property

> in conformance with the zoning regulations, lack legal significance and are simply irrelevant to the controlling issue of whether strict application of zoning rules would prevent the would-be developer from utilizing his or her property to the same extent as other property owners in the same zoning district." Orinda *supra*, at 1166.

FINDINGS

Required Finding Number 1

The first finding requires that the strict application of the policies, standards and regulations of the specific plan to the subject property will result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the Plan.

The first finding relates to practical difficulties or unnecessary hardships if the exception is not granted. The fact that the owner may be able to make more money with an exception is not an unnecessary hardship. The question is whether, without the variance, he cannot make a reasonable return on the property. In considering – and overturning – another variance granted by the City in Stolman v. City of Los Angeles (2003) 114 Cal.App.4th 916, 926, the Court held that:

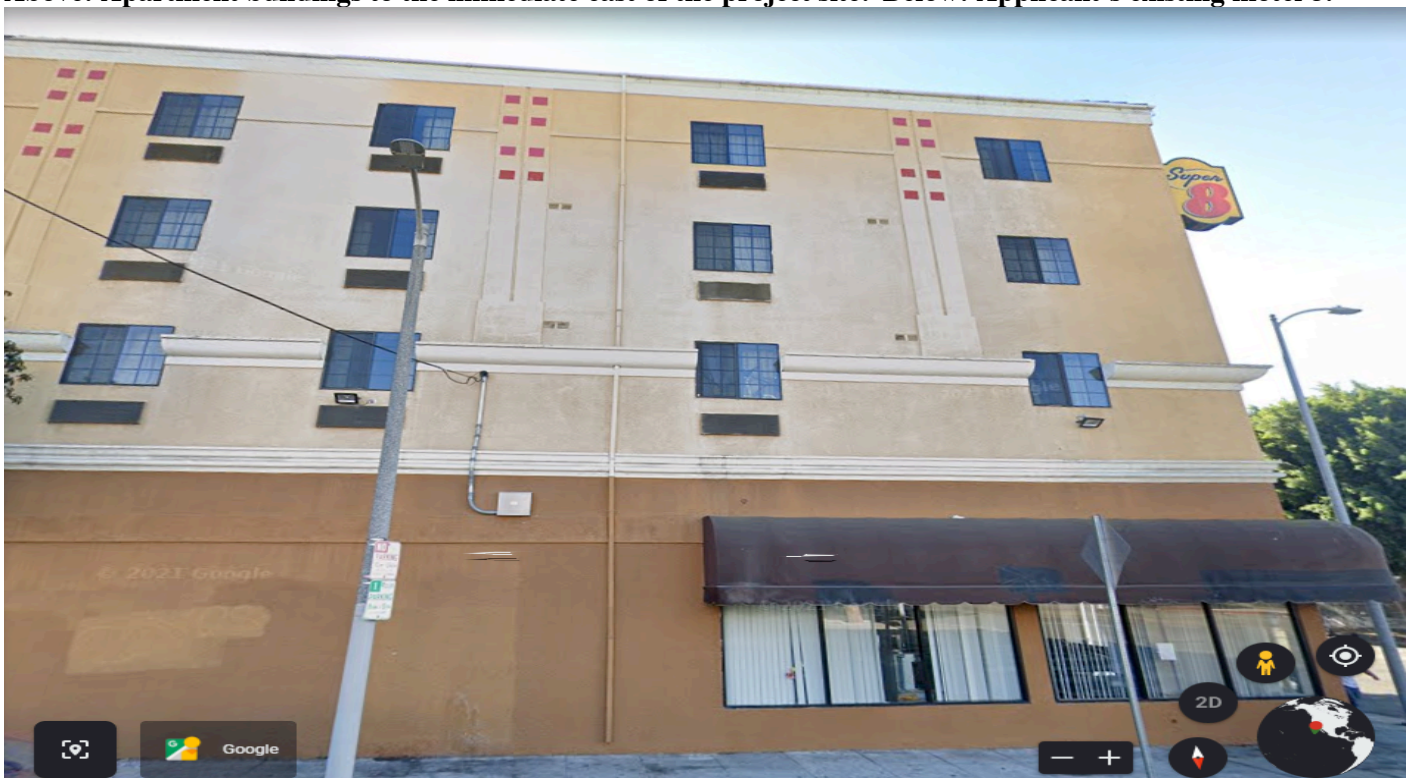
> "If the property can be put to effective use, consistent with its existing zoning without the deviation sought, it is not significant that the variance sought would make the applicant's property more valuable, or that it would enable him to recover a greater income…Abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record."

No such substantial evidence has been provided by the applicant or is documented within the first finding. Nor is the City to guess about the missing evidence. The burden is on the applicant to submit sufficient materials to support his application – and to have submitted it prior to or at the public hearing.

Hotels are commercial projects within the SNAP. Subarea C restricts commercial projects to a 35-foot height limitation and a 1.5:1 FAR. Mixed-use projects in Subarea C are limited to 75 feet, but the commercial component is restricted to the ground floor. To evade these limitations, the applicant states that 10 of the project's 46 units will be residential apartments, making the project a "mixed-use" development. Yet there is a common entrance for both the "apartment" component and the hotel rooms, and the "apartments" share the second floor with the hotel lounge and dining areas. In simple terms, there is nothing to prevent the applicant from gaming the system by using the apartment units as hotel rooms.

The project site also directly abuts Subarea A, which limits the height of the project to 25 feet tall within 50 feet, and 33 feet in height within 100 feet. The commission's approval of an exception to this restriction, allowing a 60-foot height for the entire building, is an abuse of its discretion and is in direct conflict with the primary purpose of the Plan, which is to guide all development, including use, location, height and density, to assure compatibility of uses. A 60-foot-tall commercial hotel is incompatible with the residential uses and building heights on Harold Way, and would establish precedent for further intrusion of commercial development on a residential street. Note photos below of the residential buildings abutting the project site:

Above: Apartment buildings to the immediate east of the project site. Below: Applicant's existing motel 8.



The city's findings fail to address how denial of the exceptions would result in practical difficulties or unnecessary hardships related to the land. As explained in McQuillin: The Law of Municipal Corporations, a leading treatise cited for a related point by the Supreme Court in Broadway, Laguna, *supra*, 66 Cal.2d at 775:

> "**In order for a landowner to be entitled to a hardship variance, the hardship must originate from circumstances beyond the control of the landowner** and be of a type that does not generally affect other properties in the district. **If the landowner can control the circumstances causing the hardship, then the granting of a variance is improper**. No undue hardship is shown where the landowner could accomplish the same objective without a variance **by changing his or her plans so that they conform to the existing zoning requirements**.
>
> "The concept might be better understood, however, by examining what 'practical difficulty' or 'unnecessary hardship' is not. It is not mere hardship, inconvenience, interference with convenience or economic advantage, disappointment in learning that land is not available for business uses, financial or pecuniary hardship or disadvantage, loss of prospective profits, prevention of an increase of profits, or prohibition of the most profitable use of property." (8 McQuillin Mun.Corp. § 25:179.37, 3rd ed. 2010). (Emphasis added).

Any "hardship" upon the project is therefore self-imposed. The applicant can place all parking underground to lower the building height, or simply scale back the project. The fact that the applicant has obtained land on parcels that do not permit the project he seeks to build is not justification for exceptions to the most crucial elements of the SNAP.

It should be emphasized that it is the Applicant -- as the party seeking the grant of the variance -- who must shoulder the burden of demonstrating that the subject property satisfies the requirements supportive of both the core right to the exception, and, just as importantly, the proposed scope (or intensity) of the proposed exception. Topanga, *supra*, at p. 521.

These requirements have not been satisfied. There are no practical difficulties or unnecessary hardships related to the subject property that cannot be relieved by changing the scope of the project, and the first finding cannot be made. The therefore must be denied

Required Finding Number 2

The second finding requires that there are exceptional circumstances or conditions that are applicable to the subject property or to the intended use or development of the subject property that do not generally apply to other properties within the specific plan area.

The "special circumstances" finding required for an exception involves distinguishing the property from other properties in the same zone and vicinity. Per California case law, special circumstances are typically limited to unusual physical characteristics of the property, such as its size, shape, topography, location, or surroundings that restrict its development.

No distinction is made in this finding to differentiate between the subject property and surrounding properties. Nothing distinguishes the parcels' size, shape, topography, location or surroundings from other property in the same zone and vicinity. Instead, the findings claim that the special circumstance is the SNAP itself, and its limitations on the project that the applicant wishes to build. The findings repeatedly place great emphasis on the "L-shaped" lot and the apartment component, but these project characteristics are due to the applicant, who assembled those lots in anticipation of receiving variances from the SNAP.

> "One who purchases property in anticipation of procuring a variance to enable him to use it for a purpose forbidden at the time of sale **cannot complain of hardship ensuing from a denial of the desired variance**." City of San Marino v. Roman Catholic Archbishop of Los Angeles (1960) 180 Cal.App.2d at 673. (emphasis added).

There are no special circumstances that justify the second required finding, as nothing distinguishes the subject lot generally from other parcels in the same zone and vicinity. The second finding therefore cannot be made and the exceptions must be denied.

Required Finding Number 3

Required finding number 3 relates to whether the exception is necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other properties in the same zone and vicinity, but which, because of special circumstances and practical hardships, is denied the property in question.

This required finding ties findings numbered 1 and 2 together: Are the special circumstances found in finding number 2 the cause of the hardship found in finding number 1? Is the variance necessary to bring the property owner into parity with other properties in the same zone and vicinity?

Conversely, California Government Code §65906 specifies that the exception cannot grant a special privilege:

> "Any variance granted shall be subject to such conditions as will assume that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated."

The commission failed to properly address this finding. Instead of providing other examples of properties in Subarea C that abut Subarea A and have been granted exceptions to the transitional height limitations and commercial use restrictions above the ground floor, the findings state "*the SNAP did not take into consideration a non-traditional mixed-use building made up of a hotel use and residential units*," and "*other lots within the vicinity that are within Subarea C and abut a Subarea A lot, abut the Subarea A lot to the rear.*" There is no proof for either claim, and no explanation for how such factors would be relevant even if true.

There is no precedent for exceeding the SNAP transitional height limitation or allowing commercial uses above the ground floor. The finding cannot be made and the exceptions cannot be granted.

Required Finding Number 4

This finding requires a showing that granting the exceptions will not be materially detrimental to the public welfare and injurious to the property or improvements adjacent to or in the vicinity of the subject property.

Again, the commission fails to properly address the finding, instead reiterating the same commentary from findings 1 to 3.

The granting of the exceptions will be materially detrimental to the public welfare and injurious to the property or improvements in the same zone or vicinity in that it will set a precedent for similar deviations from the restrictions of the SNAP, undermining the intent and purpose of the specific plan and furthering commercial intrusion into a residential zone.

As previously noted, the city failed to require an adequate noise and vibration analysis, instead presenting a report that quoted ambient noise levels measured from other developments located between six blocks and 1.3 miles from the project site. No analysis was conducted of noise that would emanate from the proposed rooftop bar/lounge.

An agency may not avoid its responsibility to prepare proper environmental analysis by failing to gather relevant data. In Sundstrom v. County of Mendocino (1988) 202 Cal.App.3d 296, 311, the First District Court of Appeal warned against such a "mechanical application" of the "fair argument" rule in situations where agencies have failed to gather the data necessary for an informed decision. The court indicated that an Environmental Impact Report may be required even in the absence of concrete "substantial evidence" of potential significant impacts. The court explained that, because "CEQA places the burden of environmental investigation on government rather than the public," an agency "should not be allowed to hide behind its own failure to gather relevant data."

The notion that an agency "should not be allowed to hide behind its own failure to gather relevant data" (Sundstrom, *supra*, at 311) is consistent with the California Supreme Court's statement in No Oil, Inc. v. City of Los Angeles (1974) 13 Cal.3d 68, 75, that an EIR should be prepared in "doubtful case[s]," so that agencies do not make decisions "without the relevant data or a detailed study of it." "One of the purposes of the impact statement is to insure that the relevant environmental data are before the agency and considered by it prior to the decision to commit…resources to the project."

The city has failed to find that the exceptions will be materially detrimental to the public welfare only because the city has failed to gather the relevant data necessary to make that determination. The finding therefore cannot be made and the exceptions must be denied.

Required Finding Number 5

By its very nature, the granting of the exceptions is inconsistent with the principles, intent and goals of the specific plan, which seeks to preserve the quality of existing residential neighborhoods by establishing standards for new construction that conform to the existing neighborhood character. Deviating from those standards undermines the fundamental purpose of the plan.

III. EXHIBIT A DOES NOT COMPLY WITH THE DEVELOPMENT STANDARDS OF THE SPECIFIC PLAN.

As noted, the project fails to adhere to the stepback and roofline requirements of the Development Standards and Design Guidelines of the SNAP, and the commission improperly approved Exhibit A without waiting for a revised design to be submitted by the applicant.

IV. THE CONDITIONAL USE PERMIT FINDINGS REPEATEDLY REFERENCE THE WRONG LOCATION FOR THE PROJECT SITE

The determination letter consistently states that the project site is located "*along the central part of the Hollywood Walk of Fame*," that it is near the Hollywood and Highland subway stop, is in proximity to "*movie and live theatre venues*," and that the area "*is a major tourist and commercial hub*." The findings state that such factors justify the conditional use requests for alcohol and allowing a hotel within 500 feet of a residential zone. Yet none of these descriptions is correct, and the site is in fact a crime-ridden nightmare of drug addicts, mentally ill transients, and homeless encampments.

The determination letter acknowledges that the area is in a High Crime Reporting District and that the grant of a full line of alcohol will result in an over-concentration of liquor licenses in the census tract.

Adding more alcohol to this community is the last thing the neighborhood needs, especially with a rooftop bar and lounge. Expanding the Super 8 motel onto a residential block will adversely affect the welfare of this community and benefits no one but the applicant.

V. CONCLUSION

The Project as proposed would create a myriad of significant adverse impacts upon this neighborhood. It is respectfully submitted that the Project's approvals lack justification and must be overturned.

Thank you for your courtesy and attention to this matter.