

Communication from Public

Name: Eduardo Olivo, Esq.

Date Submitted: 05/31/2023 09:42 AM

Council File No: 22-0599

Comments for Public Posting: Attn: City of Los Angeles City Clerk Please find the attached correspondence regarding the above referenced matter. Please call our office if you have any questions. Hard copy has been mailed. Thank you, Elizabeth Rodriguez, Assistant to Eduardo Olivo, Esq.

OLIVO & ASSOCIATES

13181 CROSSROADS PARKWAY NORTH, SUITE 340

CITY OF INDUSTRY, CALIFORNIA 91746

TEL: (562) 697-2440

FAX: (562) 697-2443

May 30, 2023

VIA EMAIL, FAX AND U.S. MAIL

clerk.lacity.org

Fax: 213-978-1040

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

Attention: PLUM Committee

**Re: JUNE 6, 2023 PUBLIC HEARING REGARDING APPEAL OF CASE NUMBER
APCSV-2019-1481-SPE-SPP-CU-ZV FOR PROPERTY LOCATED AT 4801 – 4815
N. LAUREL CANYON BOULEVARD; 12107 – 12111 W. RIVERSIDE DRIVE; CF
22-0599**

Dear Honorable Committee Members:

My office represents the appellant in the above-referenced matter. I have previously submitted letters and an Appeal Justification analysis. I write this letter to supplement points made regarding the approval of the variance in this matter.

The scope of review for a variance was discussed in *Orinda Association v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1161 as follows:

...despite the applicability of the substantial evidence rule and the deference due to the administrative findings and decision, judicial review of zoning variances must not be perfunctory or mechanically superficial. 'Vigorous and meaningful judicial review facilitates, among other factors, the intended division of decision-making labor [in land-use control]. Whereas the adoption of zoning regulations is a legislative function (Gov. Code, § 65850), the granting of variances is a quasi-judicial, administrative one. [Citations.] If the judiciary were to review grants of variances superficially, administrative boards could subvert this intended decision-making structure. [Citation.] They could '[amend] ... the zoning code in the guise of a variance' [citation], and render meaningless, applicable state and local legislation prescribing variance requirements.

As analyzed in or Justification for Appeal, a variance cannot be granted to allow a *use* unauthorized by the zoning ordinance. (Gov. Code § 65906.) The approval of the proposed variance in this case effectively amends the City's zoning ordinance. As such it is improper.

A zoning variance (and by analogy a specific plan exception) must be grounded in conditions peculiar to the particular lot as distinguished from other property in the specific plan area. Unnecessary hardship therefore occurs where the natural condition or topography of the land places the landowner at a disadvantage vis-à-vis other landowners in the area, such as peculiarities of the size, shape or grade of the parcel. (*Committee to Save the Hollywood Specific Plan v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1183, citations omitted.) The Planning Commission made the following findings in support of the variance: “The Zone Variance is justified as the current use as a gas station and convenience store were established prior to the [Q] conditions being imposed in 1989.” The Planning Commission further found that: “The unique location...and existing development of the site are special circumstances applicable to the subject property that do not generally apply to other property in the same zone and vicinity.” These are not the type of findings that establish and unnecessary hardship for the subject property.

Section 12.27 (D) (1) of the Los Angeles Municipal Code (LAMC) authorizes the granting of a variance if each of the following findings is made: “1. that the strict application of the provisions of the zoning ordinance would result in practical difficulties or unnecessary hardships inconsistent with the general purposes and intent of the zoning regulations; [¶] 2. that there are special circumstances applicable to the subject property such as size, shape, topography, location or surroundings that do not apply generally to other property in the same zone and vicinity; [¶] 3. that the variance is necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other property in the same zone and vicinity but which, because of the special circumstances and practical difficulties or unnecessary hardships, is denied to the property in question; [¶] 4. that the granting of the variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in the same zone or vicinity in which the property is located; and [¶] 5. that the granting of the variance will not adversely affect any element of the General Plan.”

The first required finding by the Planning Commission, that strict application of the zoning ordinance provisions would result in “practical difficulties” or “unnecessary hardships” is not supported by the evidence in the record. Various courts have considered hardship in terms of economics. (*Stolman v. City of Los Angeles* (114 Cal.App.4th 916, 925.) The evidence presented concerning the applicant’s financial hardship is insufficient.

The only reference to any purported financial hardship is in Attachment A to the applicant’s Planning Application, which states that: “In addition there is a 24 hour carwash, across Riverside Dr., existing Chevron gas station. Since the carwash opened, the traffic flow for our business dropped by 33 %. With better fuel prices offered with a carwash by our competing neighbors for business, we believe that they may have an unfair advantage.” There is no evidentiary support for either of these statements. There are no studies regarding the alleged 33% drop in business, the better fuel prices or unfair advantage. Further, there is no evidence that the applicant cannot make a reasonable profit without the approval of the proposed car wash. The key question is whether the car wash operation enhances the continued viability of the applicant’s gas station to the extent that the applicant would face dire financial hardship without the variance, or whether the applicant merely wants the variance in order to increase its existing profits from the sale of gas. The evidence in the record is insufficient to support a finding of

financial hardship. There was insufficient evidence produced from which the Planning Commission could determine whether the applicant's profit is so low as to amount to "unnecessary hardship."

"If the property can be put to effective use, consistent with its existing zoning [and nonconforming use grant] 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...." (*Stolman, supra*, at 926, citations omitted.) There is no evidence demonstrating that the subject property cannot be put to effective use as a gas station without the car wash operation. Accordingly, there is no unnecessary hardship if the applicant is seeking the variance in order to increase its already existing profits from the sale of gas.

For all of the above reasons provided previously and herein, the Committee should grant the appeal.

Sincerely,

Eduardo Olivo

Eduardo Olivo
Attorney at Law