

Communication from Public

Name:

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Council File No: 23-0576

Comments for Public Posting: Attached, please find a letter from the Applicant in response to the appeals to the approved project.



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File No. 103395

September 8, 2023

VIA EMAIL

Planning and Land Use Management Committee
City Council
200 N. Spring Street
Los Angeles, CA 90012
clerk.plumcommittee@lacity.org

Re: Applicant's Responses to Appeals: Case Nos. ZA-2021-4710-CU-ZV-SPR, ENV-2021-4711-MND; Council File No. 23-0576

Dear Chairman Harris-Dawson and Honorable Councilmembers of the Planning and Land Use Management Committee:

This firm represents Raising Cane's (the "Applicant") regarding the proposed project (the "Project") approved by both the Zoning Administrator and the Central Area Planning Commission (the "Central APC") located at 6726-6740 West Sunset Boulevard and 1434-1456 North McCadden Place (the "Property"). The Project proposes to demolish an existing one-story, commercial structure and construct a one-story Raising Cane's drive-through restaurant at the Property.

Following a public hearing, on September 30, 2022, the Zoning Administrator approved the Project's requested entitlements. The Project as approved was appealed by Madeline Brozen to the Central APC. The Applicant's letter in response to the appeal filed by Madeline Brozen is attached hereto as **Exhibit A**.

At a public hearing held on March 14, 2023, the Central APC (1) adopted the Project's Mitigated Negative Declaration; (2) denied the sole appeal filed to the Zoning Administrator's approval of the Project; (3) approved a Conditional Use Permit to allow the construction, use, and maintenance of a drive-through fast-food establishment; (4) approved Zone Variances to permit a drive-through fast-food use partially in the RD1.5-1XL zone, permit an outdoor eating area in excess of 50% of the interior dining area, and permit access and accessory parking from a more restrictive zone to a less restrictive zone; and (5) adopted Modified Conditions of Approval and Amended Findings pertaining to the Project.

Following the Central APC's approval of the Project, two appeals were filed: the first was filed by Madeline Brozen (the "Brozen Appeal") and the second was filed by Casey Maddren on behalf of the Citizens for a Better Los Angeles (the "Maddren Appeal"). Both the

Brozen Appeal and the Maddren Appeal are limited to issues pertaining to the granted Zone Variances, which are the only Project entitlements that are appealable to the City Council. Of note, the Project's approved Conditional Use Permit permitting a drive-through fast food establishment is not before the City Council, and the Central APC's decision to approve such entitlement is not appealable. Nor is there any appeal of the Project's Mitigated Negative Declaration ("MND") and the adopted MND is not before the City Council.

Since the Project has been approved by both the Zoning Administrator and the Central APC, the burden of proof is on the appellants to establish that the City's actions constituted either "error or abuse of discretion." (LAMC Section 12.27-O.) Further, in order to reverse the decision of the Central APC, the City Council must make written findings setting forth specifically the manner in which the Central APC's decision was in error or constituted an abuse of discretion. (LAMC Section 12.27-P.) Any findings supporting the conclusion that the Central APC's decision was in error or constituted an abuse of discretion must be supported by "substantial evidence in the light of the whole record." (California Code of Civil Procedure Section 1094.5, subd. (b); *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514-515.) Substantial evidence is not synonymous with *any evidence*; rather, it is defined as evidence of "ponderable legal significance ... reasonable in nature, credible, and of solid value...[and] relevant evidence that a reasonable mind might accept as adequate to support a conclusion." (*Young v. Gannon* (2002) 97 Cal.App.4th 209, 225.)

These legal requirements pose a high burden on the appellants and the City Council to establish and substantiate with adequate evidence that the denial of the City's approved Variances is warranted—especially here, where the Central APC and Zoning Administrator both found otherwise and adequately supported their findings in support of the approval of the Variances at issue with substantial evidence.

As discussed in greater detail below, the appellants have failed to meet this high burden and have failed to provide the City Council with any evidence and certainly no substantial evidence to support the denial of the Project. Each of the key, relevant points raised in the Brozen Appeal and the Maddren Appeal are summarized and analyzed further below. Consistent with this analysis, we respectfully request that the Planning and Land Use Management Committee recommend the denial of the appeals, which both lack merit and are largely duplicative of the very same claims previously before the Zoning Administrator and the Central APC.¹

Brozen Appeal Point #1:

¹ As referenced previously, the Applicant hereby incorporates its response letter (attached as **Exhibit A**) to the prior appeal filed by Madeline Brozen. This appeal response letter was before the Central APC and analyzed in detail the claims that the appellants have again raised in the current appeals.

The Brozen Appeal first claims that “[t]he [Zoning Administrator] erred because it improperly granted the zone variance without affirmatively making findings in all five legally mandated criteria.”

Applicant’s Response to Brozen Appeal Point #1:

Following a public hearing held on March 14, 2023, the Central APC (and not the Zoning Administrator as incorrectly identified by the Brozen Appeal) issued a Letter of Determination on April 25, 2023. The Central APC’s Letter of Determination affirmatively makes all five required findings in support of the granting of the Project’s requested Variances. Those written affirmative findings are detailed in the Letter of Determination at pp. F-5 through F-10 and are consistent with the findings required for the granting of a Variance per LAMC Section 12.27-D. The appellant is therefore incorrect in its claim that the Central APC failed to make the required findings.

In addition, each of the written findings made in favor of the granted Variances are supported by substantial evidence contained in the record of proceedings. The findings in support of the Variances indicate that the Central APC reasonably reviewed the pertinent facts of ponderable legal significance (namely, the special circumstances regarding the dual-zoned Property) and adequately determined that such substantial evidence would support the granting of the Variances. The findings correctly identify both the substantial evidence in support of the findings, as well as the Central APC’s reasoning in reaching the conclusion that the Variances are supported.

Brozen Appeal Point #2:

The Brozen Appeal claims that it was improper for the City to make an affirmative finding that “[t]he 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” because a drive-thru may not be required as integral to the operations of the proposed restaurant. In support of this claim, the Brozen Appeal cites various other fast-food restaurants in the vicinity that operate without a drive-through.

Applicant’s Response to Brozen Appeal Point #2:

The Brozen Appeal’s objections focus primarily on whether it is appropriate for the City to approve a drive-through as a component of the Project. Both the Zoning Administrator and the Central APC approved a Conditional Use Permit to permit the drive-through component of the Project. As discussed previously above, the granted Conditional Use Permit is not appealable to the City Council, and the City Council may not act to reverse the City’s prior decisions on the Conditional Use Permit. Even so, it should be noted that findings needed to support the Conditional Use Permit for the drive-through restaurant are amply supported. (See pp. F-1 through F-5.)

Further, in its Letter of Determination granting the requested Variances, the Central APC made a finding that “[t]he 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.” (See pp. F-5 through F-7.) The Central APC’s finding correctly focuses on the irregular nature of the Property—the majority of the Property is zoned C4-2D-SN, while the southernmost lot is zoned RD1.5-1XL. The strict application of the Zoning Code to the irregular, dual-zoning of the Property would result in practical difficulties or unnecessary hardships, since the portion of the Property zoned RD1.5-1XL would effectively be rendered undevelopable absent the granting of a Variance. This would further be inconsistent with the existing development of the site, on which the lot zoned RD1.5-1XL was dedicated to parking lot uses in support of the Property’s commercial uses. Critically, the Central APC’s decision correctly noted that “[i]t would be an unnecessary hardship to sever the applicant’s property and prevent a portion of the property from being used to support the continued use of the property for a commercial development as it has been for decades.”

Therefore, the Brozen Appeal incorrectly asserts that the City cannot find that the granting of the Variances would result in practical difficulties or unnecessary hardships inconsistent with the general purposes and intent of the zoning regulations.

Brozen Appeal Point #3:

The Brozen Appeal claims that the City incorrectly found that “[t]here 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.” In support of this claim, the Brozen Appeal cites various other restaurants in the vicinity, which the Brozen Appeal claims have smaller lot areas.

Applicant’s Response to Brozen Appeal Point #3:

As noted previously, the Central APC adequately found that “[t]here are special circumstances applicable to the property which do not generally apply to other properties in the area.” (See p. F-7.) The Central APC’s findings correctly focuses on the irregular, dual-zoning of the Property, which effectively renders a portion of the site zoned RD1.5-1XL undevelopable absent a Variance.

The Brozen Appeal’s claim that various other restaurants in the vicinity are smaller is irrelevant for purposes of this finding, which is focused on whether there are “special circumstances” applicable to the Property. The dual-zoning of the Property is a special circumstance that does not apply generally to any of the other properties cited by the Brozen Appeal, and is therefore an adequate basis for supporting the required affirmative finding.

Brozen Appeal Point #4:

The Brozen Appeal claims that the Variance is not “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.”

Applicant’s Response to Brozen Appeal Point #4:

With respect to this challenged finding, the Brozen Appeal merely reiterates its claim that there are various other restaurants in the vicinity, which the Brozen Appeal claims have smaller lot areas.

As noted previously, the Central APC adequately found that “[t]here are special circumstances applicable to the property which do not generally apply to other properties in the area.” (See p. F-7.) The Central APC’s finding correctly focuses on the irregular, dual-zoning of the Property, which effectively renders a portion of the site zoned RD1.5-1XL undevelopable absent the granting of a Variance. The dual-zoning of the Property is a “special circumstance” that does not apply generally to any of the other properties cited by the Brozen Appeal, and is therefore an adequate basis for supporting the required affirmative finding.

Brozen Appeal Point #5:

The Brozen Appeal claims that the City incorrectly found that “[t]he 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.” In support of this claim, the Brozen Appeal argues that the Project’s proposed drive-through component would result in pedestrian safety issues.

Applicant’s Response to Brozen Appeal Point #5:

This objection focuses primarily on whether it is appropriate for the City to approve a drive-through as a component of the Project. Both the Zoning Administrator and the Central APC approved a Conditional Use Permit to permit the drive-through component of the Project. As discussed previously above, the granted Conditional Use Permit is not appealable to the City Council, and the City Council may not act to reverse the City’s prior decisions on the Conditional Use Permit.

The Brozen Appeal has further failed to provide any “substantial evidence” required to support a finding that the Project would materially detriment the public welfare. The Brozen Appeal’s mere assertions, which are unsupported by any evidence, do not constitute substantial evidence.

Furthermore, the Project has been designed and conditioned to ensure both pedestrian and vehicular safety. Among other Project design features intended to ensure adequate and safe ingress/egress to the Property, the Central APC imposed the following notable Conditions of Approval with which the Project is required to comply:

- Condition of Approval 13: “Prior to issuance of a building permit, a parking area and driveway plan shall be submitted to the Department of Transportation for review and approval.”
- Condition of Approval 17: “The Project shall install improvements at the juncture of the pedestrian crossing and the drive-through exit lane to heighten awareness and improve safety, such as signage, reflectors, pavement texture, etc., to the satisfaction of the Department of Building and Safety and/or the Department of Transportation.”
- Condition of Approval 28: “The applicant shall designate that the vehicle entrance to the site located along Sunset Boulevard will be limited to the restaurant’s dine-in patrons, while the drive-through vehicle entrance shall be located along McCadden Place.”

These Conditions of Approval are designed in part to address any potential issues with pedestrian safety and to further ensure that the City’s qualified experts in the Department of Transportation and the Department of Building and Safety are satisfied with the safety features of the Project. Of note, the Department of Transportation has previously provided an initial clearance of the initial Site Plan proposed for the Project, and the proposed Conditions of Approval would ensure adequate subsequent review as well.

Brozen Appeal Point #6:

The Brozen Appeal claims that the City improperly relied on the conditions from the Property’s prior commercial use (a Rite-Aid pharmacy) for purposes of calculating the Vehicle Miles Traveled that would result from the Project.

Applicant’s Response to Brozen Appeal Point #6:

The Brozen Appeal fails to articulate any error on the part of the City or the City’s Vehicle Miles Traveled calculation. Further, the Brozen Appeal has failed to either connect this unsupported assertion to the required findings, and has further failed to provide any substantial evidence to support any claimed Variance denial findings.

The Applicant and the City correctly applied the City’s adopted Vehicle Miles Traveled screening criteria, and the City’s transportation initial assessment determined that the Project would result in a net decrease of 454 daily trips, which would also result in a net decrease in daily Vehicle Miles Traveled. Although not at issue in this appeal, the Project’s CEQA analysis

found that project impacts related to Vehicle Miles Traveled were less than significant, and that finding is supported in the transportation initial assessment for the Project. (See Appendix H to the MND.)

Brozen Appeal Point #7:

The Brozen Appeal claims that the Project would “adversely affect an[] element of the General Plan” because the City “does not advance any affirmative arguments regarding how the project meets the goals of Mobility Plan 2035, the Circulation Element of the General Plan, and only discusses conformity with the Hollywood Community Plan.”

Applicant’s Response to Brozen Appeal Point #7:

As a threshold matter, the Brozen Appeal’s claim, at best, merely attempts to articulate potential inconsistencies between the Project and the General Plan. The Brozen Appeal’s claims do not indicate how such potential inconsistencies would “adversely affect” the General Plan or the implementation thereof. The Brozen Appeal’s claims that the findings are required to “engage” any purported inconsistencies is further unsupported.

Here, the General Plan consistency determination was made and is adequately supported. The Central APC’s approval findings state that “[t]he requested variances will not adversely affect any element of the General Plan because the project is substantially consistent with the General Plan.” The Central APC’s principal focus in the written findings regarding the Project’s substantial consistency with the Hollywood Community Plan (i.e., the Land Use Element of the General Plan), does not result in a deficiency in the findings as implied by the appellant. The Central APC reviewed and weighed the record of the proceedings, which included substantial evidence to support the Central APC’s finding of substantial consistency, including the Zoning Administrator’s findings regarding the Project, the statements of Department of City Planning staff, the MND, and the Applicant’s Appeal Response Letter. In particular, the Applicant’s Appeal Response Letter analyzes in detail the Project’s consistency with various elements of the General Plan, including the Land Use Element and Mobility Plan 2035.

Finally, it is well settled law that a project need not be in perfect conformity with each and every General Plan policy. (See, e.g., *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1509.) The appellant’s attempt to point out various purported inconsistencies with handpicked policies in the General Plan is therefore intended to mislead the City Council to believe that the Project would “adversely affect” the General Plan.

Maddren Appeal Point #1

The Maddren Appeal claims “that the strict application of the provisions of the zoning ordinance would [not] result in practical difficulties or unnecessary hardships inconsistent with the general purposes and intent of the zoning regulations.” In support of this claim, the Maddren

Appeal only states the following: “Existing zoning does not prohibit the construction and operation of a fast-food restaurant. Constructing a fast-food restaurant with no drive-thru component imposes no unnecessary hardship on the applicant.”

Applicant’s Response to Maddren Appeal Point #1

These objections focus primarily on whether it is appropriate for the City to approve a drive-through as a component of the Project. Both the Zoning Administrator and the Central APC approved a Conditional Use Permit to permit the drive-through component of the Project. As discussed previously above, the granted Conditional Use Permit is not appealable to the City Council, and the City Council may not act to reverse the City’s prior decisions on the Conditional Use Permit.

In its Letter of Determination granting the requested Variances, the Central APC made a finding that “[t]he 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.” (See pp. F-5 through F-7.) The Central APC’s finding correctly focuses on the irregular nature of the Property—the majority of the Property is zoned C4-2D-SN, while the southernmost lot is zoned RD1.5-1XL. The strict application of the Zoning Code to the irregular, dual-zoning of the Property would result in practical difficulties or unnecessary hardships, since the portion of the Property zoned RD1.5-1XL would effectively be rendered undevelopable absent the granting of a Variance. This would further be inconsistent with the existing development of the site, on which the lot zoned RD1.5-1XL was dedicated to parking lot uses in support of the Property’s commercial uses. Critically, the Central APC’s decision correctly noted that “[i]t would be an unnecessary hardship to sever the applicant’s property and prevent a portion of the property from being used to support the continued use of the property for a commercial development as it has been for decades.”

Maddren Appeal Point #2

The Maddren Appeal claims “that there are [not] 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.” In support of this claim, the Maddren Appeal only states the following: “There are no special circumstances applicable to the subject property. It is a commercially zoned parcel immediately adjacent to residential parcels. This is true of numerous other parcels along this stretch of Sunset Blvd.”

Applicant’s Response to Maddren Appeal Point #2

The appellant is incorrect in its characterization of the Property as “a commercially zoned parcel.” As stated previously, a portion of the Property is zoned C4-2D-SN, while a portion of the Property is zoned RD1.5-1XL.

Further, as noted previously, the Central APC adequately found that “[t]here are special circumstances applicable to the property which do not generally apply to other properties in the area.” (See p. F-7.) The Central APC’s finding correctly focuses on the irregular, dual-zoning of the Property, which effectively renders a portion of the site zoned RD1.5-1XL undevelopable absent the granting of a Variance. The dual-zoning of the Property is a “special circumstance” that does not apply generally to other similarly zoned properties, and is therefore an adequate basis for supporting the required affirmative finding.

Maddren Appeal Point #3

The Maddren appeal claims “that the granting of the variance will [] 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” because “it’s clear that the granting of the variance will likely cause significant impacts to nearby residential uses with regard to traffic, noise and air quality.” In support of this claim, the Maddren Appeal cites various claimed issues with respect to a Raising Cane’s restaurant located in the City of Burbank.

Applicant’s Response to Maddren Appeal Point #3

The appellant’s claims focus on purported issues pertaining to a Raising Cane’s restaurant located in the City of Burbank. These purported issues do not identify any material detriment that the proposed Project would have on the public welfare in the vicinity of the Property.

Although not at issue in this appeal, the Project’s adopted MND, which is a part of the Administrative Record, found that project impacts related to transportation, noise, and air quality, would be less than significant. (See, e.g., pp. 20, 24, 25, 34-43, 77-88, 94-99 of the adopted MND.)

The Maddren Appeal has further failed to provide any “substantial evidence” required to support a finding that the Project would materially detriment the public welfare. The Maddren Appeal’s mere assertions, which are unsupported by any evidence, do not constitute substantial evidence.

Maddren Appeal Point #4

The Maddren Appeal claims that the granting of the Variance will adversely affect an element of the General Plan. In support of this claim, the Maddren Appeal states the following:

“The granting of the variance is in conflict with the goals of the following GP Elements: Air Quality – Conflicts with objectives of reducing non-work trips and to efficiently manage transportation facilities and system infrastructure; Plan for a Healthy LA – Conflicts with objectives of decreasing respiratory disease mortality rates and reducing the disparity in communities that are impacted by a high Pollution Exposure

Score; Mobility Plan – Conflicts with many objectives, including reducing reliance on cars and encouraging alternative modes of transportation.”

Applicant’s Response to Maddren Appeal Point #4

As a threshold matter, the Maddren Appeal merely articulates potential inconsistencies between the Project and various elements of the General Plan. The Maddren Appeal’s claims do not indicate how such potential inconsistencies would “adversely affect” the General Plan or the implementation thereof.

The Central APC’s approval findings state that “[t]he requested variances will not adversely affect any element of the General Plan because the project is substantially consistent with the General Plan.” The appellant’s claims regarding the Project’s consistency with the General Plan were raised before the Central APC and the Zoning Administrator, who both found that the Project would not “adversely affect” the General Plan or the implementation thereof.

Here, the General Plan consistency determination was made and is adequately supported. The Central APC’s approval findings state that “[t]he requested variances will not adversely affect any element of the General Plan because the project is substantially consistent with the General Plan.” The Central APC’s principal focus in the written findings regarding the Project’s substantial consistency with the Hollywood Community Plan (i.e., the Land Use Element of the General Plan), does not result in a deficiency in the findings as implied by the appellant. The Central APC reviewed and weighed the record of the proceedings, which included substantial evidence to support the Central APC’s finding of substantial consistency, including the Zoning Administrator’s findings regarding the Project, the statements of Department of City Planning staff, the MND, and the Applicant’s Appeal Response Letter. In particular, the Applicant’s Appeal Response Letter analyzes in detail the Project’s consistency with various elements of the General Plan, including the Land Use Element and Mobility Plan 2035.

Finally, it is well settled law that a project need not be in perfect conformity with each and every General Plan policy. (See, e.g., *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1509.) The appellant’s attempt to point out various purported inconsistencies with handpicked policies in the General Plan is therefore intended to mislead the City Council to believe that the Project would “adversely affect” the General Plan.

* * *

Based on the foregoing, we respectfully request that the Planning and Land Use Management Committee uphold the comprehensive findings and determinations of the Central APC and vote to recommend denial of the appeals, both of which demonstrably lack merit.

We appreciate and look forward to your future consideration of the Project.

Planning and Land Use Management Committee
September 8, 2023
Page 11

Very truly yours,

Cox, Castle & Nicholson LLP

A handwritten signature in blue ink, appearing to read "D. P. Waite", is written over the printed name.

David P. Waite

DPW

Exhibit A

Applicant's Central APC Appeal Response Letter

RE: Appeal Response for Raising Cane's

6726-6740 West Sunset Boulevard, 1434-1456 North McCadden Place, Los Angeles CA 90028

Department of City Planning Case Nos. ZA-2021-4710-CU-ZV-SPR, ENV-2021-4711-MND

Zoning Administrator's Letter of Determination dated September 30, 2022

Members of the Central Area Planning Commission:

On behalf of Raising Cane's, the applicant for the above-referenced development involving the proposed demolition of a one-story, commercial structure and the construction of a one-story, Raising Cane's drive-through fast food restaurant (the "Project") located at 6726-6740 West Sunset Boulevard, 1434-1456 North McCadden Place (the "Site") in the City of Los Angeles (the "City"), we write this Appeal Response in order to address the issues raised in the Appeal Application and Justification dated October 14, 2022 (the "Appeal Letter").

We are pleased to take this opportunity to inform the Central Area Planning Commission (the "APC") about the Project and our intent in writing this comprehensive response is to address the issues raised in the Appeal Letter.

On September 21, 2022, Christina Toy Lee, Associate Zoning Administrator presided over a public hearing regarding the Project. Following such hearing, on September 30, 2022, the Zoning Administrator issued its Letter of Determination approving the Project's entitlements upon additional terms and conditions specifically designed to ensure a well-designed Project that would be compatible with the surrounding vicinity and would provide a valuable commercial service at the Site, which is underutilized and presently vacant.

In part, the Zoning Administrator's Letter of Determination noted the Project's extensive community outreach, which involved meeting with the Central Hollywood Neighborhood Council and such body's Planning and Land Use Management Committee, both of whom expressed their support for the Project. Pursuant to its review of the Project, the Zoning Administrator approved the Conditional Use Permit and Zone Variances and adopted the Mitigated Negative Declaration in furtherance of the Project.

Thereafter, on October 14, 2022, Madeline Brozen, on behalf of five other "Hollywood renters and homeowners," (collectively, the "Appellant") submitted the Appeal Letter. The Appeal Letter seeks to overturn the Zoning Administrator's approval of the Project's entitlements and the Zoning Administrator's adoption of the Project's Mitigated Negative Declaration. The Appeal Letter raises four topics of concern: (I) Transportation and Circulation; (II) Site Design; (III) Safety and Public Welfare; and (IV) Consistency with Local Policy Plans. The concerns raised regarding each of these topics are analyzed and rebutted in greater detail below.

For the appeal of the Project's entitlements, the applicable standard of review for the APC is whether the Zoning Administrator erred or abused his or her discretion. (LAMC Section 12.24-I; LAMC Section 12.27-L.) If the APC does not find that the Zoning Administrator erred or abused his or her discretion, the APC shall reject the appeal.

As substantiated in the below analysis, the Appeal Letter has failed to show that the Zoning Administrator erred or abused its discretion in approving the Project. Further, for purposes of the CEQA appeal, the Appeal Letter and the record neither constitute nor contain substantial evidence supporting a fair argument that the Project would have a significant effect on the environment. (*Wollmer v. City of Berkeley* (2009) 179 Cal.App.4th 933, 939.). Here, the Project approvals, findings, recommendations and the Project conditions of Approval are fully supported and well documented. There is no evidence that the Zoning Administrator committed error or otherwise abused its discretion in approving the Project's Conditional Uses Permit and Variances. Further, there is no substantial evidence supporting a fair argument that the Project would have a significant effect on the environment.

1. The project will enhance the built environment in the surrounding neighborhood or will perform a function or provide a service that is essential or beneficial to the community, city or region.

The Appellant states that the Project would not provide a unique service to the community, is not a desirable use, and would risk pedestrian safety. The following response is provided to the Appellant's concerns.

The property is generally bordered by Sunset Boulevard to the north, Hollywood Center Motel to the east, a single-family residence (1428 McCadden Place) and Artiste Apartments (6731 Leland Way) to the south, and McCadden Place to the west. West of McCadden Place, there is a Chick-Fil-A fast food restaurant with drive-through, 3-story commercial office building, gated surface parking lot, Highland Avenue. The Project is a new and unique restaurant operator and would provide additional dining options to the surrounding neighborhood and larger Hollywood community. Raising Cane's offers a unique menu consisting of chicken fingers, coleslaw, and Texas toast. The Project would improve the existing site conditions with a new restaurant with a contemporary and modern architectural theme, new landscaping, and outdoor dining opportunities for patrons.

Raising Cane's is an active community member through their ACI initiative (Active Community Involvement). Raising Cane's ACI has six focus areas including education, feeding the hungry, active lifestyles, pet welfare, entrepreneurship, and everything else. These focus areas encapsulate the various ways Raising Cane's gives back to the community, including donation drives for a local organization, fundraisers, sponsorships, and food drives. Community involvement is part of the Raising Cane's identity, and is unique compared to other restaurant competitors.

Raising Cane's operates multiple locations throughout Southern California, and continues to differentiate itself from other fast-food competitors, including Chick-Fil-A. During the COVID-19 pandemic, Raising Cane's continued its drive-through operations, thereby meeting customers' needs while facilitating safe business practices. New practices and site design measures were developed to enhance drive-through efficiency and onsite queuing. Although indoor dining has returned, Raising Cane's still maintains and applies the lessons learned from the pandemic to new projects to enhance restaurant operations, including drive-through efficiency.

Raising Cane's has collaborated diligently with City staff over the course of two years to design a site layout that meets all applicable code requirements and safety measures. The Project site plan is depicted in **Attachment 1: Preliminary Site Plan**. Vehicular access to the Site would be provided from three driveways: two driveways (Driveway 1 and Driveway 2) on Sunset Boulevard and one on McCadden Place (Driveway 3). The two driveways on Sunset Boulevard would be 15 feet wide and only permit one-way access. Specifically, Driveway 1 would be a *right-in* access only, while Driveway 2 would be a *right-out* access for customers exiting the drive-through. Driveway 3 would be 24 feet wide and facilitate both ingress and egress to the Site.

The proposed drive-through lane would begin at the southern portion of the project site and wrap around the restaurant building in a counter-clockwise direction. Vehicles entering Driveway 3 would either park in the surface parking lot for walk-in dining or mobile pick-up orders, or enter the drive-through queue. A dual drive-through lane is proposed to allow for 23 vehicles to queue on site. Two order boards, adjacent to the drive-through lane, would be located approximately 40 feet south of the restaurant building. Vehicles would proceed toward the pick-up windows.

Customers in the drive-through lane closest to the restaurant would pick up orders at the second pick-up window. Restaurant employees would use a striped pedestrian walkway at the second pick-up window to walk across the drive-through lanes to serve customers (complete orders) in the second drive-through lane. During non-peak hours (9:00 AM-11:00 AM and 3:00 PM-5:00 PM), the secondary drive-through lane would be closed, and the dual drive-through lanes would merge into one lane as vehicles approach the restaurant pick-up window.

The proposed dual drive-through lane configuration is expected to accommodate approximately double the number of vehicles when compared to the neighboring Chick-Fil-A restaurant. During peak drive-through hours (11:00 AM-1:00 PM, 4:00 PM-6:00 PM), temporary traffic cones would be placed near the drive-through entrance to prevent patrons blocking the drive aisles and Driveway 3. Driveway 3 would be temporarily restricted to exit only during peak-hours. Temporary traffic signage would direct patrons to use Driveway 1 to enter the Site and for drive-through access. If the drive-through lanes reach capacity, patrons would queue along the drive aisle. To prevent conflicts with dine-in patrons leaving the parking lot and the queue, employees would be instructed to park in designated stalls likely to be impacted (temporarily blocked) by the queue. This would reduce vehicular movement conflicts with the queue.

The queue capacity in the parking lot is eight vehicles. In total, the Site can accommodate up to 31 vehicles in the queue. Employees wearing reflective vests would also help direct traffic on the Site to prevent spill over onto public streets, as conditioned in the Letter of Determination. Other employees would take orders from patrons in the queue using handheld tablets to further increase operation efficiencies and reduce wait-times at pick-up windows. The Project's traffic management is shown in **Attachment 2: Traffic Management Exhibit**.

As described above, the Project's site design, and proposed traffic management plan, would allow more vehicles to queue onsite and minimize impacts to surrounding roadways. Furthermore, it is important to recognize that Raising Cane's smaller and limited menu would further enhance operational efficiency at the drive-throughs. Due to the limited variation in the menu, kitchen crew and restaurant staff can prepare and anticipate patron's orders. This enhances Raising Cane's kitchen efficiency and enable's employee's ability to serve patrons in a timelier manner, both in the drive-through and dine-in operations.

The Project also orients the restaurant building to face Sunset Boulevard, with the outdoor patio seating fronting the public right-of-way on Sunset Boulevard to create an inviting atmosphere. The location of the outdoor seating area is also strategically placed to create an easy path of travel from the public right-of-way to the Site, as well as provide a buffer between the drive-through queue so that patrons are not in conflict with vehicular movements.

Raising Cane's believes the proposed site design takes advantage of the unique location and implementation of the proposed traffic management plan would reduce conflicts with the surrounding neighborhood. Accordingly, the Zoning Administrator properly determined that the Project, as conditioned, would enhance the built environment in the surrounding neighborhood and will provide a beneficial service to the community and region.

2. The project's location, size, height, operations, and other significant features will be compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood, or the public health, welfare, and safety.

The Appellant have suggested that the transportation analysis in the City's Initial Study/Mitigated Negative Declaration (IS/MND) did not adequately address impacts related to vehicles miles traveled (VMT), and asserted that the Project will cause localized congestion and adversely affect pedestrian movement, use of transit and increase littering in the community. The IS/MND and related technical studies prepared for the Project, in addition to Conditions of Approvals outlined in the Letter of Determination, do not support these unsubstantiated statements.

In 2019, the California Environmental Quality Act (CEQA) Statutes and Guidelines were updated, changing how transportation and circulation impacts were analyzed under CEQA. Automobile delay, as measured by "level of service" and other similar metrics, no longer constitutes a significant environmental effect under CEQA. Instead, VMT is the primary metric for evaluating a project's impacts on the environment and transportation system.

The Governor's Office of Planning and Research (OPR) VMT Technical Advisory provides guidance and technical recommendations regarding assessment of VMT, thresholds of significance, and mitigation measures. As defined by OPR, "VMT measures how much actual auto travel (additional miles driven) a

proposed project would create on California roads. If the project adds excessive car travel onto roads, the project may cause a significant transportation impact.”

The Technical Advisory identifies several criteria in which certain development projects are presumed to have a less than significant impact to VMT. Projects of a certain size, location, transit availability, and provision of affordable housing are presumed to have a less than significant impact to VMT. The Technical Advisory states that “adding retail opportunities into the urban fabric and thereby improving retail destination proximity, local-serving retail development tends to shorten trips and reduce VMT”. Local-serving retail, defined as retail developments under 50,000 sf, are presumed to result in a less than significant impact to VMT.

The City adopted their own VMT screening criteria as part of the Transportation Assessment Guidelines in July 2020. The guidelines require the City’s Department of Transportation to prepare an initial assessment of a proposed project to determine if a transportation assessment is required. A transportation assessment would analyze impacts or deficiencies to the circulation system generated by a proposed project, as well as the identify feasible measures or corrective conditions to offset any impacts or deficiencies identified through a transportation assessment. If a proposed project meets the VMT screening criteria, a “no impact” determination can be made.

The City’s Department of Transportation prepared a transportation initial assessment for the proposed Project. The assessment calculates a project’s daily trips and vehicles miles traveled (VMT) using the City’s Calculator tool. With regards to trip generation, the assessment found that the Project would result in a net decrease of 454 daily vehicle trips compared to the then-existing Rite-Aid store located at the Site. Since the Project would result in a net decrease in trips, VMT impacts were found to be less than significant. As noted in the City’s IS/MND, the Project is consistent with CEQA Guidelines Section 15064.3(b) and impacts are considered less than significant.

As it applies to the air quality and greenhouse gas emissions analysis, Kimley-Horn looked at the traffic generation associated with the Project. Kimley-Horn used a more conservative traffic trip generation assumption (e.g., no trip credit for the Rite Aid store) which resulted in more traffic trips associated with the Project, and thereby more mobile emissions. This approach represents a conservative analysis to determine the Project’s impacts to air quality and greenhouse gas emissions. Based on the City’s adopted CEQA guidelines, and adopted thresholds by the South Coast Air Quality Management District, the Project would result in a less than significant impact to air quality and greenhouse gas emissions. The modeled Project emissions did not exceed adopted thresholds.

The IS/MND referenced a 2006 average daily trip data on Sunset Boulevard at Highland Avenue intersection from the City’s Department of Transportation. Raising Cane’s recognize that traffic volumes have increased since 2006, however regardless of the current average daily trip volumes on Sunset Boulevard, the Project would still result in a net decrease in daily traffic trips. Therefore, no increase in average daily traffic on Sunset Boulevard would occur.

It is important to note that trip generation is not the methodology to determine significant transportation impacts under CEQA. As discussed above, VMT is the primary metric for evaluating a project’s impacts on the environment and transportation system. Based on the City’s adopted VMT screening criteria and adopted CEQA threshold, the Project would result in a less than significant transportation impact. The City’s transportation initial assessment determined that the Project would reduce in a net decrease of 454 daily trips, and the Project is presumed to have a less than significant impact concerning VMT.

The Project is proximate to existing public transit in the Hollywood community area. Metro provides public transit bus service to the project site, with the nearest bus stop at Sunset Boulevard and Highland Avenue, approximately 200 feet west of the Site. The transit stops are within walking distance to the Project, but are not immediately adjacent where potential vehicular conflicts could occur. Proximity to transit opportunities, which provides access for various segments of the population, would allow convenient access for future patrons and employees of the Project. Pedestrian facilities (i.e., sidewalks) on Sunset Boulevard and McCadden Place would remain with implementation of the Project. Further, bicycle racks for restaurant

patrons and bicycle lockers for employees would be provided on the Site, thereby encouraging non-vehicular modes of transportation to and from the Project.

As discussed above, the site design, in compliance with all applicable codes, includes various safety features that would reduce conflicts with the surrounding area. For example, pedestrian warning signs with flashing beacons are proposed at Driveway 2 (drive-through exit) to alert drivers exiting the drive through of potential pedestrians in the right of way. An accessible path of travel is proposed throughout the Site with curb ramps and truncated domes to provide a clear, designated path for patrons. As discussed above, during peak drive-through hours (11:00 AM-1:00 PM, 4:00 PM-6:00 PM), temporary traffic cones would be placed near the drive-through entrance to prevent patrons blocking the drive aisles and Driveway 3. Driveway 3 would be temporarily restricted to exit only during peak-hours. Temporary traffic signage would direct patrons to use Driveway 1 to enter the Site and for drive-through access. This would reduce vehicular conflicts with the adjacent Chick-Fil-A restaurant on McCadden Place. Driveway 3 is also proposed at the southwest corner of the Site, which is offset from the adjacent Chick-Fil-A driveway, to reduce conflicts from vehicle trips exiting the restaurants. Further, the Project would include a dual drive-through lane configuration which can accommodate more onsite stacking for queues during peak hours, and reduce vehicles queue in the public streets.

The Appellant raises concerns about solid waste and littering from the existing restaurants on Leland Avenue. The Project would include trash bins within the outdoor dining area and near the restaurant building for solid waste collection. A screened trash enclosure is also proposed, with a dedicated pedestrian path from the restaurant to reduce conflicts with employees and parking lot vehicular movement. Patrons utilizing the drive-through would exit the Project onto Sunset Boulevard. The Project was designed to minimize vehicular movements with pedestrians and direct drive-through traffic back to Sunset Boulevard. Patrons would unlikely circle back to the Project area to eat their food. As part of the conditions of approval in the Letter of Determination, Raising Cane's is responsible for maintain a debris/litter-free area on the Site, including areas adjacent such as sidewalks fronting the Project.

As determined by the Zoning Administrator, the Project would not be materially detrimental to the public welfare. The Project would continue to operate a commercial retail use at the Site, provides employment to the local community, invests resources to a neglected and underutilized property, and implements strategic site design measures to promote pedestrian safety and reduce vehicular conflicts. The Conditions of Approval imposed on the Project would also ensure that Raising Cane's addresses nuisances and facilitate responsible management. For example, all exterior portions of the Site shall be adequately illuminated and directed onsite to prevent light spillage on adjacent properties. The Project is also conditioned so that speaker boxes shall not be audible beyond the Site's lines, and so that the Raising Cane's is responsible for monitoring patron and employee conduct to assure behaviors do not detract from the quality of life for adjoining community. Raising Cane's intends to invest in the community by providing a high-quality use that generates additional tax dollar revenue for the City, while operating as a local business that provides service and employment opportunities to the community. Accordingly, the Zoning Administrator was correct in its determination that the Project, as conditioned, would not be materially detrimental to the public welfare.

3. The project substantially conforms with the purpose, intent, and provisions of the General Plan, the applicable community plan, and any specific plan.

The Appellant have suggested that the Project does not conform with the purpose and intent of the General Plan. The following response addresses the Appellant concerns.

The Land Use Element of the City's General Plan is comprised of thirty-five (35) Community Plans, each pertaining to a different geographical area in the City. The Site is located in the Hollywood Community Plan area. At the direction of City staff, Raising Cane's has relied on the applicable land use policies currently in effect. The land use policies in effect at the time of writing the IS/MND are from the 1988 Hollywood Community Plan. A legal challenge to the 2012 Hollywood Community Plan update reverted the land use plan back to the 1988 version. A new 2021 update to the plan has been recommended for approval by Planning Commission. At the time of writing, City Council has not taken action on approving and adopting the 2021 update.

According to the Hollywood Community Plan 2021 Update, commercial land uses are concentrated near Metro stations and along commercial corridors generally served by transit and allow for typical commercial retail uses. The Los Angeles Mobility Plan 2035 serves as the Circulation Element of the City's General Plan. The Mobility Plan 2035 provides the policy foundation for achieving a transportation system that balances the needs of all road users. There are several objectives identified in the Mobility Plan, and policies that would achieve those objectives. The following is a policy consistency analysis to several policies raised by the Appellant.

Mobility 2035 Policy Consistency Analysis	
Policy 1.1: Design, plan, and operate streets to prioritize the safety of the most vulnerable roadway user.	Consistent. The Project would introduce a restaurant with drive-through use within the Hollywood Community Plan area. The Site's design is specifically oriented toward Sunset Boulevard to activate the pedestrian sidewalk. Furthermore, the Project's driveways have been designed to maintain adequate line of sight to reduce conflicts between pedestrians and vehicles. Clear path of travel within the Site would further enhance pedestrian safety.
Policy 2.3: Recognize walking as a component of every trip, and ensure high-quality pedestrian access in all site planning and public right-of-way modifications to provide a safe and comfortable walking environment.	Consistent. The Site's is located near mass transit including Metro Bus lines along Highland Avenue, which is approximately 200 feet west of the Site. In addition, the Hollywood/Highland Metro subway station is 0.3-mile northwest of the Site. The Site's design takes advantage of the highly walkable area by orienting the restaurant frontage toward Sunset Boulevard. The Site is accessible from existing public right-of-way on Sunset Boulevard and McCadden Place. The Project would also landscape the frontage along both public streets to create a more vibrant sense of place.
Policy 3.1: Recognize all modes of travel, including pedestrian, bicycle, transit, and vehicular modes – including goods movements – as integral components of the City's transportation system	Consistent. The proposed Project encourages multiple modes of transportation access. Pedestrians can walk up to the restaurant on Sunset Boulevard. The Project includes both short term bike racks for patrons and bicycle lockers for employees, thereby supporting alternative modes of transportation. Further, the close proximity to transit enables non-vehicular trips as well. The Project encourages for all modes of travel.
Policy 5.2: Support ways to reduce vehicles miles traveled per capita.	Consistent. As discussed above, the Project includes both short term bike racks for patrons and bicycle lockers for employees, thereby supporting alternative modes of transportation. The Project would introduce a new restaurant use within close proximity to existing residences and business, which would reduce VMT. Further, the Project is in a high-quality transit area, with the Hollywood/Highland Metro station 0.3-mile northwest of the Site and several bus stops along Sunset Boulevard and Highland Avenue (west of the Site), which provides additional opportunities for non-vehicular modes of travel. The Project would result in a net decrease in trip generation, and similarly result in a net decrease in daily VMT. Therefore, the Project is not anticipated to result in longer local trips and would reduce or maintain regional VMT.

Mobility 2035 Policy Consistency Analysis	

The Project is subject to the land use policies outlined in the City's 1988 Hollywood Community Plan area. At the time of writing, the City Council has not taken action on the pending update. Since the pending Hollywood Community Plan update has not been formally adopted by the City Council, the associated land use policies and programs, including overlays, are not in effect. Even so, Raising Cane's strongly believes that the Project would be compatible with the policies proposed in the pending draft of the 2021 Hollywood Community Plan because the Project is located in a high transit area in the City; provides alternative transportation infrastructure (i.e. bike parking and lockers); provides employment opportunities close to existing residences and businesses; and includes improvements to enhance the physical environment and pedestrian experience including new landscaping and new outdoor dining options on Sunset Boulevard. The proposed landscaping plan is provided at **Attachment 3: Landscape Plans**. The Project replaces an existing commercial use at an underutilized site. Accordingly, the Project would be consistent with the applicable land use policies in local planning documents.

7. 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.

The Appellant have suggested that the Project would induce more VMT, risk pedestrian safety, result in loitering and littering, which would impact public welfare. The following response addresses the concerns raised.

As discussed above, based on the City's adopted VMT screening criteria and adopted CEQA threshold, the Project would result in a less than significant transportation impact. The City's transportation initial assessment determined that the Project would reduce in a net decrease of 454 daily trips, which would also result in a net decrease in daily VMT. Project impacts related to VMT were determined to be less than significant. The proposed use of the Site is a permitted use under the commercial zoning, and would be complementary to other existing commercial retail uses along Sunset Boulevard. As noted under condition of approval 15 and 17, Raising Cane's is required to have employees be available to remotely take orders during peak hours, as part of the traffic management plan. Condition 17 requires Raising Cane's to install improvements at pedestrian crossing and drive-through exit lane junctures to heighten awareness and improve safety. Improvements include signage, reflectors, and pavement texture. VMT impacts are considered less than significant based on the City's adopted thresholds and CEQA guidelines, and several conditions of approval are in place to ensure that granting of the variance would not be materially detrimental to the public welfare.

Raising Cane's intends to establish Friday and Saturday operating hours from 9 AM – 3:30 AM. While existing surrounding restaurants close at midnight, Raising Cane's operates in the early morning hours to serve patrons with non-traditional work hours, including first responders and night-shift employees. Raising Cane's believes that its late-night operations can provide a service that is beneficial to the community, City or region. Further, beyond typical security measures including cameras and lighting, onsite security would be provided during late night hours to ensure public safety and welfare. The Project is also conditioned so that the Raising Cane's is responsible for monitoring patron and employee conduct to assure behaviors do not detract from the quality of life for adjoining community. As discussed previously, the Project would include trash bins within the outdoor dining area and near the restaurant building, which would minimize littering on the Site.

As described above, the Project's site design, and proposed traffic management plan, would allow more vehicles to queue onsite and minimize impacts to surrounding roadways. Furthermore, the Project includes an indoor and outdoor dining area, which would provide patrons with opportunities to dine onsite. Raising Cane's is required to comply with the conditions of approvals that are aimed to help maintain a safe and clean environment for the restaurant and minimize impacts to adjacent properties. Compliance with the conditions and implementation of Raising Cane's traffic management plan would not be detrimental to the

public welfare.

8. The granting of the variance will not adversely affect any element of the General Plan.

The Appellant states that the Project is inconsistent with the Circulation Element of the City's General Plan. The following response addresses the Appellant concerns:

The City's Transit Oriented Communities guidelines identify the Site as within a Transit Priority Zones and Tier 3 within Transit Oriented Community classification. The guidelines do not prohibit non-residential development in areas near public transportation. Further, as discussed above, the Project is consistent with several policies identified in the Mobility 2035 Circulation Element. The applicable 1988 Hollywood Community Plan does not prohibit restaurant uses with drive-through.

The Project takes advantage of the location in the Hollywood Community. The Site is located in a high-quality transit area, with the Hollywood/Highland Metro station 0.3-mile northwest of the Site at 6801 Hollywood Boulevard and several bus stops along Sunset Boulevard and Highland Avenue (west of the Site). The Project's unique location and site design would enable other forms of non-vehicular mobility for patrons and employees, which could reduce vehicle trips. Further, the Project does not solely operate as a drive-through restaurant. The Project provides 61 seats indoor and 80 seats for the outdoor patio, or a total of 141 seats. The Project includes bicycle racks for restaurant patrons and bicycle lockers for employees, again encouraging non-vehicular modes of transportation to and from the Project. The Project provides additional dining opportunities and choice to the surrounding area and includes site improvements that allows for pedestrian access from the public right-of-way. The Project is consistent with the 2035 Mobility Plan policies raised by the Appellant.

In response to the Appellant's attachment in the appeal letter, the article discusses the limitation of drive-throughs to members of society that own and operate vehicles. The article argues that common car ownership should not be a prerequisite for full participation in society. As it relates to the Project, the proposed land use is a restaurant with a drive-through option. The restaurant operations include both indoor and outdoor dining opportunities for patrons, with 61 seats indoor and 80 seats on the outdoor patio. Further, the Project is located in a highly dense and walkable area in the Hollywood Community along Sunset Boulevard. The Project's proximity to public transit and existing residences and business would further promote non-vehicular travel options for patrons. The Project provides convenient accessibility for all patrons, regardless of their mode of transportation.

Conclusion

The Project is a result of months of collaboration with City staff and engagement with the Central Hollywood Neighborhood Council. The Project has been designed to not only function and operate as efficiently as possible, but also represents an investment to the community. The Project would enhance the existing curb appeal of the Site, provide convenient community-serving retail uses in close proximity to nearby to residences and businesses, and provide jobs in close proximity to high-quality transit. Raising Cane's is excited for this opportunity to be a part of the Hollywood community. Thank you for your time and consideration of the Project.

Sincerely
The Raising Cane's Development Team

6800 Bishop Road
Plano, TX 75024-4274

Attachments:
Attachment 1: Preliminary Site Plan
Attachment 2: Traffic Management Exhibit

Attachment 3: Landscape Plan