

May 8, 2023

RE: Appeal Justification for Raising Cane's (6726-6740 West Sunset Boulevard, 1434-1456 North Mccadden Place, Los Angeles CA 90028); DCP Case Nos. **ZA-2021-4710-CU-ZV-SPR; Approval Made Effective by April 25, 2023 Letter of Determination**

To the Members of the City of Los Angeles City Council,

I am appealing ("Appeal") the zone variance 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-thru fast food restaurant ("Project") located at 6726-6740 West Sunset Boulevard, 1434-1456 North Mccadden Place ("Site") proposed by Raising Cane's ("Applicant"). In furtherance of the Project, the Applicant seeks approval of i) multiple land use entitlements ("Entitlements") under DCP Case No. ZA-2021-4710-CU-ZV-SPR under DCP Case No. ENV-2021-4711-MND (collectively "Project Approvals"). The Associate Zoning Administrator ("ZA") re-approved the Project's Entitlements, relying on findings in a Letter of Determination mailed on April 25, 2023 ("LOD"), which identifies the applicable appeal deadline as May 10, 2023.

REASON FOR THE APPEAL

Based on the review of the Letter of Determination (LOD) and other relevant documents, granting of the Entitlements violates the Los Angeles Municipal Code ("LAMC" or "Code") and the zone variance request fails to make affirmative findings for all five of the legally mandated findings delineated in City Charter Section 562. We respectfully request that the City grant this Appeal and deny the Project Approvals.

HOW ARE YOU AGGRIEVED BY THE DECISION

I live within the immediate area, specifically within 500 ft. of the proposed project. The decision aggrieves me because the project as proposed – an additional drive-thru – will decrease pedestrian safety. Allowing for the drive-through zone variance increases my likelihood of being injured or killed by a driver while I walk around my neighborhood. Further, the existing drive-through fast food restaurant, located directly adjacent to the proposed project, currently generates a high number of daily trips that increase localized congestion around the intersection of Sunset Blvd. and Highland Ave., delaying public transit and private vehicles. Given that the previous use at this site has been non-operational for three years prior to this project seeking approval, I am questioning whether this project will have a reduced net impact on trips as projected by the city VMT calculator. Increased trips in the area degrade my air quality, bring additional noise and trash, and reduce my quality of life in the project's immediate vicinity.

HOW DID THE DECISION-MAKER ERRED OR ABUSED THEIR DISCRETION:

The ZA erred because it improperly granted the zone variance without affirmatively making findings in all five legally mandated criteria. Details for the errors are detailed on the following pages.

The specific zone variance in question is a Zone Variance to partially permit drive-through fast-food use in the RD1.5-1XL Zone.

SPECIFIC POINTS IN ISSUE

REBUTTAL OF THE ZONE VARIANCE FINDINGS

All five legally mandated findings delineated in City Charter Section 562 must be made in the affirmative for plan approval to be granted. The Zoning Administrator failed to provide such findings in the affirmative in all five areas of the re-issued Letter of Determination. This appeal is not directed at the existence of the Raising Cane's. Rather, we submit the following concerns about the existence of the drive-thru element to this project (the zone variance specifically in question) and demonstration that the Zoning Administrator erred in the following ways for each of the Findings (numbers correspond to Amended Findings in Letter of Determination, mailing date April 25, 2023):

7. 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.

In discussing this mandated finding, the Zoning Administrator failed to engage with the practical difficulty of whether a drive-thru allowance is required for the business to operate at this location, requiring the zone variance. The Zoning Administrator explained that "these requests are necessary to allow for the continued use of the subject property for viable commercial uses." This does not justify in the affirmative that the drive-thru element is required for the business to operate. In 2021, Raising Cane's opened a new location in Davis, California, that does not include a drive-thru. Since the business can operate without a drive-thru in another location, this calls into question that the variance for a drive-thru truly represents a practical difficulty.

Further, multiple other nearby fast-food restaurants operate successfully without a drive-thru element. This includes the following:

- Taco Bell, 6741 Hollywood Boulevard. (opened in 2023);
- McDonald's, 6776 Hollywood Boulevard;
- Fatburger, 6760 Hollywood Boulevard.

The applicant may argue that their Davis location and these other nearby establishments do not have a drive-thru element because they are sitting on smaller properties that do not have space for a drive-thru. However, Chick-Fil-A, a similar fast-food chicken restaurant, proposed on a larger lot in the City of Los Angeles, has recently agreed to operate without a drive-thru (Case No. ZA-2021-3341-CU-SPR). On page 10 of the Letter of Determination for that project, the Zoning Administrator for that case writes, "the applicant will no longer provide and construct the originally proposed dual drive-through lanes and components."

Given that Raising Cane's can operate without a drive-thru element, other similar restaurants in the Hollywood neighborhood operate with a drive-thru element, and other similar businesses operate without drive-thrus on larger lots in the City of Los Angeles, this calls into question whether the zone variance to allow a drive-thru presents a practical difficulty or unnecessary hardship.

8. 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

While it is true that the southernmost lot, the lot zoned RD1.5XL, has been used in support of commercial uses since 1945, it is not definite that the proposed Raising Cane's needs the use of this lot for operations. In practical terms, the project would have to be smaller in size. But there are examples of smaller-sized drive-thru fast food restaurants nearby.

The Chick-fil-A property directly across McCadden Place from the proposed site is 150 feet from

Sunset Boulevard to the south. Without the southernmost lot, the remaining C4-2D-SN portion would be approximately 200 feet deep from Sunset Boulevard to the south. The Chick-fil-A located at 6750 Sunset Boulevard, across the street from the project site, operates on approximately 17,450 sq ft; the C4-2D-SN portion of the proposed sit is approximately 29,850 sq ft.

Other nearby locations like the soon-to-open Hart House drive-thru fast food restaurant at 6800 Sunset Boulevard (~18,450 sq ft), the Jack in the Box at 1243 N Highland Ave (~11,380 sq ft) are also smaller than a commercially-zoned-only project site. The existing drive-thru fast food restaurant with the largest property is the In-N-Out Burger at 7009 Sunset Boulevard (~35,500 sq ft) and the proposed Raising Cane's Total Lot Area is larger than that at 38,625.

The proposed Raising Cane's would have the largest footprint for a drive-thru fast food restaurant in a neighborhood heavily saturated with them, and with successful examples of smaller footprints, it is not definite. Therefore, using the RD1.5-1XL lot is unnecessary for operations, and the variance does not meet the special circumstances finding in the affirmative.

9. 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

As stated in answer to the 8th finding, the use and enjoyment of the commercial use of the property is not dependent on the use of the southernmost RD1.5-1XL zone. Indeed, the vicinity boasts numerous examples of drive-thru fast food restaurants fully utilizing smaller properties for successful operations, such as the Chick-fil-A at 6750 Sunset Boulevard (~17,450 sq ft) and the Jack in the Box at 1243 N Highland Ave (~11,380 sq ft). The landowner could split the lot, and the Applicant could utilize a smaller property and be reasonably expected to be able to operate under similar conditions to other nearby drive-thru fast food restaurants.

10. 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.

During the Central Area Planning Commission appeal meeting, there was a lengthy discussion about how the drive-thru element of this project is likely to harm public welfare in the form of decreased pedestrian safety in the vicinity. This project proposes adding a drive-thru entrance and exit onto Sunset Boulevard. This portion of Sunset Boulevard is included on the City of Los Angeles High-Injury Network. The High-Injury network represents 6% of the 8,500 miles of City of Los Angeles streets, accounting for 70% of deaths and severe injuries for people walking. Adding another drive-thru business on the street in an unsafe pedestrian safety environment significantly questions how this project will not materially harm public welfare. Despite this lengthy discussion in the appeal meeting, the zoning administrator did not seek to rebut the claim that the project may decrease pedestrian safety when they made this finding. This again fails to demonstrate how the project meets this finding in the affirmative.

The proposed site plan also has an ingress and egress on McCadden Place, at the southern end of the property, contained in a consolidated 24' driveway. This will negatively affect pedestrian travel on McCadden Place, which is already an intensive use with the Chick-fil-A drive-thru fast food restaurant on the other side of McCadden Place. In the re-issued letter of determination, the Zoning Administrator did not engage with the concern about how someone on McCadden Place will have to

contend with two nationally-popular drive-thru fast food restaurant chains' driveways navigating the walk up to Sunset Boulevard – a necessary route of travel to get to the Metro Route 2 bus stops, the Metro Bike Share station at Hollywood High School, and north along Highland Avenue, the Metro B (Red) Line Station at Hollywood/Highland. Currently, the Chick-fil-A business spills out onto McCadden Place regularly, if the Raising Cane's does as well, one can expect extended periods of sidewalk obstruction on both sides of McCadden Place. The concern is significantly heightened given how students walk to school along Sunset Blvd. Traffic collisions are a leading cause of death for children in Los Angeles. Therefore, any decision that may decrease pedestrian safety for students who walk to Hollywood High is materially detrimental to their public welfare.

Drive-throughs negatively affect pedestrian safety because drivers are less likely to be alert in drive-thru environments. The increased number of driveway cuts decreases pedestrian safety because each driveway allows conflicts and the likelihood of injurious interactions between pedestrians and drivers. Existing research¹ demonstrates that pedestrian crashes are heightened in areas with a higher density of fast-food restaurants. This highlights how the existing density of drive-thru in the area likely contributes to the inclusion of this segment on the High-Injury network and that adding another drive-thru is likely to degrade pedestrian safety further, negatively contributing to public welfare in the area. Most disturbingly, children are at greater risk of being involved in a vehicle collision because of the proximity to drive-thru businesses². We submit that given that traffic collisions are a leading cause of death for children in Los Angeles and research demonstrates that children are at greater risk from drive-thru businesses specifically, this again demonstrates how the Zoning Administrator erred in their decision-making that this project will not be materially detrimental to public welfare.

Specifically, there are at least two specific dangerous conditions can be foreseen given the site plan:

- Queueing onto McCadden Place off of Sunset Boulevard blocks pedestrian travel on Sunset Boulevard or hinders visibility of pedestrians to turning vehicles;
- Without a physical barrier to prevent turns from westbound Sunset Boulevard directly into the Raising Cane's Sunset Boulevard driveway, cars turning into that driveway could be screened by cars in the southbound left turn lane at McCadden Place. This is worrisome for sidewalks where people bike and scooter due to the lack of facilities on Sunset Boulevard and therefore may be traveling faster than a walking speed and not have time to react to a screened turning vehicle.

Finally, during the Central Area Planning Commission meeting, new information came to light about how the city used the VMT calculator to estimate the total number of new trips from the project. The city relied on conditions from the previous use (Rite Aid) that had not been in operation for three years prior to the original Letter of Determination for the project. Relying on these old data call into question whether the City has appropriately determined the net new trips for this project. Demand for needs on this project site may have increased in the time since the previous operator ceased operations. If this is the case, then the project could add more vehicle trips to the area, bringing with more air pollution, traffic and delays for people using public transit or driving in the area.

¹ Pei Sung-Lin et al., *Development of Countermeasures to Effectively Improve Pedestrian Safety in Low-Income Areas*, 6 Journal of Traffic and Transportation Engineering 162-74 (Apr. 2019)

² Mark Braseth, Note, *The Effects of Land Use Patterns and Street Network Connectivity on the frequency of Child Pedestrian-Vehicle Collisions: An aggregate analysis in Portland, Oregon*, Department of Planning, Public Policy & Management, School of Architecture and Allied Arts, of the University of Oregon 43-44 (2012),

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

The Zoning Administrator's discussion of how this project will not adversely affect any element of the General Plan is general and fails to engage closely with specific concerns raised in the original appeal. The Zoning Administrator 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. Neglecting to discuss how the project advances the goals of Mobility Plan 2035 demonstrates how the Zoning Administrator erred in their judgment in this re-issued Letter of Determination.

To restate the concerns raised in the first appeal, Mobility Plan 2035 repeatedly calls for strong linkages between transportation, land use, and air quality. This neighborhood is a densely populated area, and allowing for a drive-thru variance is not following the types of land uses that are well-connected to pedestrian-enhanced districts, like Sunset Boulevard, where the Project is located.

The Zoning Administrator failed again to contend with the concerns raised in the original appeal about the *cumulative* amount of drive-thru fast food restaurants in the immediate area and how the proposed project represents the addition of the largest footprint for one of the currently most-popular fast food chains. As stated in the appeal to the original Letter of Determination, the proposed project would represent the *seventh* drive-thru fast food restaurant within a half-mile of the project site and the *third drive-thru fast food restaurant in a row* from the project site to the southwest corner of Sunset Boulevard and Highland Avenue.

The Sites where the Project will be located are classified as within Transit Priority Zones and Tier 3 within Transit Oriented Community classification. Low-density drive-thru establishments are not well-linked to land uses and circulation within transit-priority areas. As an example, within the Southeast Los Angeles Community Plan Implementation Overlay District⁹, drive through establishments are prohibited in the transit-oriented development subareas. As explained in this document, "TOD Subareas...promote walkable, vibrant, attractive and complete transit centers that provide a greater mix of housing for a range of incomes, jobs, goods and services, and that enhance community identity." Therefore, an existing ordinance in the City of Los Angeles has found inconsistency between drive-thru establishments' land use and circulation within transit-oriented districts and communities. Advancing such a decision within a Transit Priority Zone and Tier 3 Transit Oriented Community is inconsistent with the call for strong linkages between transportation and land use as outlined in the General Plan, Mobility Circulation Element, Plan 2035.

Furthermore, as proposed with the drive-thru element, the project presents a health and safety risk because of traffic crashes on a segment of known concern which conflicts with the objectives and goals of the Plan for Healthy LA, another element of the City of Los Angeles General Plan. The vision outlined in this plan is for a "balanced, multi-modal, and sustainable transportation system that offers safe and efficient options for all users." The degradation of the safety for people walking that this project will create stands in conflict with the outlined vision in the Plan for Healthy LA.

These negative effects and conflicts with Mobility Plan 2035 and the Plan for Healthy LA are a result of the drive-thru component to the project.

CONCLUSION

All five legally mandated findings delineated in City Charter Section 562 must be made in the affirmative for plan approval to be granted. The Zoning Administrator failed to provide such findings in the

affirmative in all five areas of the re-issued Letter of Determination as we have demonstrated.

This appeal is not directed at the existence of the Raising Cane's, rather to the existence of the drive-through portion of the project. We have highlighted the specific points at issue as to why allowing a zone variance to permit a drive-through partially in the RD1.5-1XL Zone should not have been approved by the Zoning Administrator and, therefore, why the Appeal should be supported, and the Zone Variance denied.