TRANSMITTAL TO CITY COUNCIL

Case No.	Planning Staff Name(s) and Contact No.	C.D. No.
ZA-2009-3395-ZV-1A	Sue Chang (213) 978-3304	11

Related Case No(s).	Last Day to Appeal
None	July 15, 2011

Location of Project (Include project titles, if any.)

3544 South Centinela Avenue

Applicant(s) and Representative(s) Name(s) and Contact Information, if available.

Marla Rubin & David Shapendonk
Tel No. (310) 255-5637

James Repking/K. Paradise, Cox Castle & Nicholson, LLP
Tel No. (310) 284-2214

Appellant(s) and Representative(s) Name(s) and Contact Information, including phone numbers, if available.

Judith S. Deutsch
Tel No. (310) 390-3016

Final Project Description (Description is for consideration by Committee/Council, and for use on agendas and official public notices. If a General Plan Amendment and/or Zone Change case, include the prior land use designation and zone, as well as the proposed land use designation and zone change (i.e. "from Very Low Density Residential land use designation to Low Density land use designation and concurrent zone change from RA-1-K to (T)(Q)R1-1-K). In addition, for all cases appealed in the Council, please include in the description only those items which are appealable to Council.)

Project description:

A **Variance** from a [Q] Condition established by Ordinance No. 164,475, limiting building height to 33 feet to permit a loft resulting in an increase in height from 46 feet 6 inches to 49 feet in conjunction with the legalization of a loft through the ceiling and roof of an existing condominium building on a lot in the [Q]R3-1 Zone.

On June 1, 2011, the West Los Angeles Area Planning Commission took the following action:

1. **Granted** the appeal.
2. **Overturned** the Zoning Administrator's decision and approved a Variance from a [Q] Condition established by Ordinance No. 164,475, limiting building height to 33 feet to permit a loft resulting in an increase in height from 46 feet 6 inches to 49 feet in conjunction with the legalization of a loft through the ceiling and roof of an existing condominium building on a lot in the [Q]R3-1 Zone.
3. **Adopted** the environmental clearance Categorical Exemption ENV-2009-3396-CE.
4. **Adopted** the revised Findings and Conditions of Approval.

Items Appealable to Council

Zone Variance

Fiscal Impact Statement	Env. No.:	Commission Vote:
"If determination states administrative costs are recovered through fees, indicate "Yes." **Yes**	2009-3396-CE	**5 - 0**

In addition to this transmittal sheet, City Clerk needs:

(1) One original & two copies of the Commission, Zoning Administrator or Director of Planning Determination
(2) Staff recommendation report
(3) Appeal, if applicable;
(4) Environmental document used to approve the project, if applicable;
(5) Public hearing notice;
(6) Commission determination mailing labels
(7) Condo projects only: 2 copies of Commission Determination mailing labels (includes project's tenants) and 500 foot radius mailing list

Rhonda Ketay

Rhonda Ketay, Commission Executive Assistant
West Los Angeles Area Planning Commission

August 10, 2011
DATE:

WEST LOS ANGELES AREA PLANNING COMMISSION

200 N. Spring Street, Room 272, Los Angeles, California, 90012-4801, (213) 978-1300
www.lacity.org/PLN/index.htm

Determination Mailing Date: JUN 30 2011

Case No. **ZA 2009-3395-ZV-1A**
CEQA: ENV-2009-3396-CE

Location: 3544 South Centinela Avenue
Council District: 11
Plan Area: Palms-Mar Vista
Zone: [Q]R3-1
D.M.: 114B153
Legal Description: Lot 1, Tract 40133-C

Applicants/appellants: Marla Rubin & David Shapendonk
Representative: James Repking/K. Paradise, Cox Castle & Nicholson, LLP

At its meeting on **June 1, 2011**, the following action was taken by the West Los Angeles Area Planning Commission:

1. **Granted** the appeal.
2. **Overturned** the Zoning Administrator's decision and approved a Variance from a [Q] Condition established by Ordinance No. 164,475, limiting building height to 33 feet to permit a loft resulting in an increase in height from 46 feet 6 inches to 49 feet in conjunction with the legalization of a loft through the ceiling and roof of an existing condominium building on a lot in the [Q]R3-1 Zone.
3. **Adopted** the environmental clearance Categorical Exemption ENV-2009-3396-CE.
4. **Adopted** the attached revised Findings and Conditions of Approval.

This action was taken by the following vote:

Moved: Commissioner Donovan
Seconded: Commissioner Foster
Ayes: Commissioners Lee, Linnick, and Martinez

Vote: 5 - 0

Effective Date:
Effective upon the mailing of this report.

Appeal Status:
Further appealable to City Council.

Rhonda Ketay, Commission Executive Assistant
West Los Angeles Area Planning Commission

Effective Date / Appeals: The Commission's determination on the *Zone Variance* will be final 15 days from the mailing date of this determination unless an appeal is filed to the City Council within that time. All appeals shall be filed on forms provided at the Planning Department's Public Counters at 201 N. Figueroa Street, Fourth Floor, Los Angeles, or at 6262 Van Nuys Boulevard, Suite 251, Van Nuys.

LAST DAY TO APPEAL JUL 15 2011

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

Attachment(s): Conditions of Approval and revised Findings

cc: Notification List
Sue Chang, Zoning Administrator

CONDITIONS

[THE WEST LOS ANGELES AREA PLANNING COMMISSION MEETING ON JUNE 1, 2011]

1. All other use, height and area regulations of the Municipal Code and all other applicable government/regulatory agencies shall be strictly complied with in the development and use of the property, except as such regulations are herein specifically varied or required.

2. The use and development of the property shall be in substantial conformance with the plot plan, elevation plans and floor plans submitted with the application and stamp dated December 27, 2010 and January 28, 2011, and marked Exhibit "A".

3. The authorized use shall be conducted at all times with due regard for the character of the surrounding district, and the right is reserved to the Zoning Administrator to impose additional corrective Conditions, if, in the Administrator's opinion, such Conditions are proven necessary for the protection of persons in the neighborhood or occupants of adjacent property.

4. All graffiti on the site shall be removed or painted over to match the color of the surface to which it is applied within 24 hours of its occurrence.

5. A copy of the first page of this grant and all Conditions and/or any subsequent appeal of this grant and its resultant Conditions and/or letters of clarification shall be printed on the building plans submitted to the Zoning Administrator and the Department of Building and Safety for purposes of having a building permit issued.

6. The applicant shall defend, indemnify and hold harmless the City, its agents, officers, or employees from any claim, action, or proceeding against the City or its agents, officers, or employees to attack, set aside, void or annul this approval which action is brought within the applicable limitation period. The City shall promptly notify the applicant of any claim, action, or proceeding and the City shall cooperate fully in the defense. If the City fails to promptly notify the applicant of any claim action or proceeding, or if the City fails to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City.

7. The subject loft for Unit No. 303 shall be limited to the following:

a. The loft shall not exceed approximately 186 square feet of floor area with a dimension of 16 feet 6 inches by 11 feet 3 inches as shown on Exhibit "A".
b. The loft shall not result in cumulative height of 49 feet in height measured to the top of the sky light.
c. The loft shall be setback a minimum of 15 feet and 8 feet from the southerly and westerly edge of the roof, respectively.
d. The sky light on the loft shall not exceed a dimension of 4 feet and 8 feet in size.

8. The skylight shall not illuminate resulting in spillover lighting onto the residences in the building and in the surrounding properties at night. An internal shade or other system shall be installed in order to obscure illumination from the skylight at night. No other shade, fence or similar structures shall be added/installed on the roof in order to obscure lighting from the loft.

9. Under no circumstances shall the grant of this variance be used or relied on as precedent for other projects to exceed the height limits of the Q-condition or other requirements of the Zoning Code.

10. **Within 30 days of effective date of this action**, a covenant acknowledging and agreeing to comply with all the terms and conditions established herein shall be recorded in the County Recorder's Office. The agreement (standard master covenant and agreement form CP-6770) shall run with the land and shall be binding on any subsequent owners, heirs or assigns. The agreement with the conditions attached must be submitted to the Zoning Administrator for approval before being recorded. After recordation, a certified copy bearing the Recorder's number and date shall be provided to the Zoning Administrator for attachment to the subject case file.

FINDINGS

In order for a variance to be granted, all five of the legally mandated findings delineated in City Charter Section 562 must be made in the affirmative. Following (highlighted) is a delineation of the findings and the application of the relevant facts of the case to same:

1. **The strict application of the provisions of the Zoning Ordinance would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the zoning regulations.**

   The subject property is improved with a 21-unit residential condominium building, which was constructed in 1985. There are three residential levels in the building. Various rooftop structures exceed 45-feet in height, including a combined parapet wall and chimney facing Centinela Avenue, a roof access stairwell and an elevator shaft. The three top floor units facing Centinela Avenue have a double height ceiling in the living room, with stepped raised roofline projections.

   On March 26, 1989, Ordinance No. 164,475 became effective, which states "[n]o portion of any new building or structure associated with any multiple residential use of the subject properties in a residential or commercial zone . . . shall exceed two stories or 33 feet as measured from the top of the roof or parapet to the natural surface of the ground vertically below the point of measurement." Therefore, the existing building on site became legally permitted non-conforming in terms of the height of the building.

   On April 29, 2004, the applicants applied to the Department of Building and Safety for a building permit to construct a loft/home office that would entail raising the existing projection on the roof three feet. The Plot Plan submitted with the building permits contains a notation which states, "Raise Roof 3'-0." Ultimately, in response to the wishes of another resident in the building, the additional projection was reduced to 27 inches.

   The Department of Building and Safety Property Activity report for the Property states that the Q-condition was cleared on May 12, 2004, the building permit for the loft was approved on May 21, 2004, and the final inspection of the loft occurred on January 26, 2005. The report contains the notation "OK to Issue C of O."

The evidence in the record demonstrates that the applicants did not mislead the Department of Building and Safety when it issued the permit. Sia Poursabahian, Senior Structural Engineer at the Department of Building and Safety clarified in correspondence dated May 27, 2011 that "I conclude that the applicant DID NOT mislead LADBS in issuing the permit." He also stated, "[a]pplicant has built the loft addition per the approved set of plans by LADBS."

Prior to the construction of the loft, the applicants received approval from the Centinela Crest Homeowner's Association. Selected homeowners within the Association contested the loft twice, with each controversy resolved in a Settlement Agreement.

Four years after the Department of Building and Safety issued the building permits and the loft was constructed, the issue of whether the loft addition violated the Q-conditions was raised. The Department of Building and Safety issued an Order to Comply on August 7, 2009 and a Notice of Intent to Revoke Permit on August 31, 2009. The August 31, 2009 letter directed the applicants to "obtain the appropriate approval from the Department of City Planning for the building over-height-issue." On October 8, 2009, the Department of City Planning instructed the applicants to file for a variance.

The strict application of the 33-foot height limitation would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the zoning regulations. The applicants applied for and received a building permit from the Department of Building and Safety and the loft received a final inspection. The applicants have used the loft since it was constructed in 2005.

The applicants stated that removal of the loft would be prohibitively expensive and they have spent over $250,000 in construction costs, consultant costs, legal fees, and City permit fees. The removal of the loft would require months of additional construction and would severely impair the value of the condominium. This additional construction would adversely affect the applicants and other residents of the condominium building.

As the applicants complied with all City requirements prior to constructing the loft, requiring them now to remove the addition would cause unnecessary and unwarranted hardship. These hardships are not self-imposed because the loft was built in accordance with the approved set of plans and applicants did not mislead the Department of Building and

Safety.

2. **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.**

The existing building is legal non-conforming as to height. Various rooftop structures exceed 45-feet in height, including a combined parapet wall and chimney facing Centinela Avenue, a roof access stairwell and an elevator shaft. The three top floor units facing Centinela Avenue have a double height ceiling in the living room, with stepped raised roofline projections. The loft projection is lower than the tallest structure on the roof.

The parapet wall and chimney facing Centinela Avenue shield the loft projection from the street. The Staff Investigator Report, dated October 8, 2010, states that the loft is "barely noticeable" and "barely visible." While the loft can be seen from some vantage points, the same can be said of other rooftop structures such as the stairwell/elevator shaft.

The Department of Building and Safety issued a building permit for the loft in 2004 and the loft received final inspection in 2005. The applicants did not mislead the Department and the loft was built in accordance with the approved plans. The loft has been occupied by the applicants since it was constructed.

The legal non-conformity of the entire building, the approval of the loft by the Department of Building and Safety and the fact that the loft is minimally visible are special circumstances which support the variance grant. These special circumstances described above do not apply to other properties in the same zone and vicinity.

3. **Such 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 such special circumstances and practical difficulties or unnecessary hardships, is denied the property in question.**

The variance is necessary for the preservation and enjoyment of a substantial property right. The loft has been occupied by the applicants since it was constructed in 2005. The Department of Building and Safety issued a permit for the loft in 2004 and the loft received final inspection in 2005. The applicants did not mislead the Department; the loft was built in accordance with the approved plans.

Removal of the loft would substantially impair the applicant's property rights and create an extreme hardship. The applicants stated that they have spent over $250,000 in construction costs, consultant costs, legal fees, and City permit fees. The removal of the loft would require months of additional construction and would severely impair the value of the condominium. This is an unusual hardship which has not been imposed on other properties in the same zone and vicinity.

Granting the variance would act as a special privilege not afforded to others in the area. The surrounding area is developed with multi-family apartment buildings. On this block Centinela Avenue and just north of the building are three three-story apartment or condo buildings with subterranean garages. One of those buildings has at least three stories and one is stepped higher into the hill. There are also at least eighteen two-story apartment buildings on the block.

The applicants are not requesting that a special privilege be conferred, but are requesting that the city honor the permits it granted seven years ago for construction that has already been permitted and approved.

4. **The granting of such 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 loft projection is not 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 only potential impact from the loft is aesthetics and views. The color and texture of the lofts exterior walls is consistent with surrounding rooftop structures. While the loft can be seen from some vantage points, the same can be said of other rooftop structures. The parapet wall and chimney facing Centinela Avenue buffer the loft projection from the street.

Concerns have been raised regarding nighttime glare from the skylight. A condition is required to install an internal shade or other system which will obscure illumination from the skylight at night.

The Mar Vista Community Council and others raised concerns that the variance could create a precedent for allowing variances for larger projects in the area. However, this variance is granted based on the special circumstances and unusual hardships of this case. This variance

is conditioned that, under no circumstances shall the grant of this variance be used or relied on as precedent for other projects to exceed the height limits of the Q-Condition or other requirements of the Zoning Code.

There are no detrimental impacts to the public welfare or nearby property owners and, as such, the granting of a variance will not negatively affect properties in the vicinity.

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

The Palms-Mar Vista-Del Rey Community Plan Map designates the property for [Q]R3-1 "Medium Residential" land uses with the corresponding zones of R3 and R3(PV), and height limited to District No. 1. [Q] condition requires a maximum height of 33 feet on the project site. The property is located within the area of the Los Angeles Coastal Transportation Corridor and the West Los Angeles Transportation Improvement and Implementation Specific Plan. The application is not affected.

The use of this property is not changed by the loft addition. This loft addition does not increase the density of the building or the community. The Plan does not have any policies which conflict with the loft projection. The plan intends to promote stable residential neighborhoods and public safety. The conditions imposed will ensure that the residential neighborhoods will be protected and preserved in conformance with the intent and purpose of the General Plan. It is noted that the Palms-Mar Vista-Del Rey Community Plan does not specifically address variance.

ADDITIONAL MANDATORY FINDINGS

6. The National Flood Insurance Program rate maps, which are a part of the Flood Hazard Management Specific Plan adopted by the City Council by Ordinance No. 172,081, have been reviewed and it has been determined that the property is located in Zone C, areas of minimal flooding.

7. On October 20, 2009, the project was issued a Notice of Exemption (Article III, Section 3, City CEQA Guidelines), log reference ENV 2009-3396-CE, for a Categorical Exemption, Class 1, Category 1, City CEQA Guidelines, Article VII, Section 1; State EIR Guidelines, Section 15100.

CITY OF LOS ANGELES
DEPARTMENT OF CITY PLANNING
OFFICE OF ZONING ADMINISTRATION

STAFF INVESTIGATOR REPORT

October 8, 2010

Marla Rubin & David Shapendonk (A)(O)
3544 South Centinela Avenue, Unit 303
Los Angeles, CA 90066

James Repking/K. Paradise(R)
Cox Castle & Nicholson, LLP
2049 Century Park East, 28th floor
Los Angeles, CA 90067

CASE NO. ZA 2009-3395(ZV)
ZONE VARIANCE
3544 South Centinela Avenue
Palms-Mar Vista-Del Rey Planning Area
Zone : [Q]R3-1
D. M. : 114B153
C. D. : 11
CEQA : ENV 2009-3396-CE
Legal Description: Lot 1, Tract 40133-C

Request

Pursuant to the provisions of Section 12.27-B of the Los Angeles Municipal Code, a Variance from a [Q]Condition established by Ordinance No. 164,475, limiting building height to 33 feet to permit a loft with an existing 27-inch projection above the 33-foot height, resulting in an increase in height from 46 feet 6 inches to 49 feet at the location of the projection.

Property Description

The property is a slightly sloping, rectangular-shaped, interior record lot, consisting of 16,936.1 square feet, having a frontage of 115.67 feet on the east side of Centinela Avenue, and an even depth of 146.35 feet. The site is developed with a four-story, 21-unit condominium building originally constructed in 1985. There are three residential levels in the building. The ground level is partly subterranean and structured for parking. The property is located within the Palms-Mar Vista-Del Rey Planning Area.

The Project

The applicant is requesting a Zone Variance for an existing 27-inch building projection to exceed a 33-foot height limitation as defined by a [Q] condition established on March 26, 1989. The said building projection increases the building height above the roofline from 46.5 feet to 49 feet at the location of the projection for Unit No. 303. A permit application for the [Q] condition was cleared by the Planning Department on May 12, 2004.

As summarized by the applicant's representative, Mr. James Repking of Cox Castle & Nicholson:

> "The applicants, Marla Rubin and David Shapendonk, request a variance from the Q-conditions limiting the height of their condominium building located at 3544 South Centinela Avenue, Unit 303, Los Angeles CA 90066, APN 4248-025-073. The property is zoned [Q]R3-1. In an R3-1 zone, building height is limited to 45 feet. (Los Angeles Municipal Code "LAMC" § 12.21.1.) The Q-condition, which was added to the zone after the building was constructed, limits the height of buildings in the area to 33 feet. (Ordinance No. 164,475)."
>
> "In 2004, the applicants hired a licensed architect and contractor to construct a loft addition for their home. The Los Angeles Department of Building and Safety ("LADBS") issued the building permit (# 04014-30000-03731) for the loft on May 21, 2004. A copy of the application for a building permit and certificate of occupancy, and a Property Activity Report demonstrating that the Q-condition was cleared by LADBS, are attached as Exhibit 1."
>
> "Four years after LADBS issued its approval and the loft was constructed, the issue of whether the loft addition violated the Q-conditions was raised. An Order to Comply was issued by LADBS on August 7, 2009, a copy of which is attached as Exhibit 2. On August 31, 2009, the City issued a Notice of Intent to Revoke Permit, attached as Exhibit 3."
>
> "The loft and skylight were built with LADBS's approval and it has been in use for five years. If the 33-foot limit was strictly applied to this property, it would result in extreme difficulty and hardship for the applicants. First, the loft addition was completed many years ago and has been in continuous use since it was approved by the City. Moreover, it would be prohibitively expensive to remove the construction; the applicants estimate the cost of removal would be extremely significant and the loft cannot exist without the minor rooftop projection. Moreover, removal of the projection would require months of additional construction and would severely impair the value of the condominium."
>
> "As the applicants complied with all City requirements prior to constructing the loft, to now require them to remove the addition would cause them unnecessary and unwarranted hardship."

With regard to the matter of special circumstances, the applicant adds the following:

> "The City approved the loft addition in 2004, giving the applicants no reason to believe there was an issue regarding compliance with City codes and regulations. The applicants have used the loft for the past five years without incident."
>
> "Because the building was constructed in 1983, prior to the enactment of the 33-foot height limit, the building became a legal non-conforming structure which is grandfathered under the Zoning Code. (LAMC § 12.23(A).) As the loft is lower than the highest portion of the building, the loft does not expand the pre-existing non-conformity and, therefore, complies with the Zoning Code. (LAMC § 12.23(A)(2).) A photograph demonstrating the loft height is lower than the building parapets is attached as Exhibit 4. Therefore, the loft addition does not violate City codes and is a special circumstance justifying a variance."

With regard to practical difficulties or unnecessary hardships, the applicant adds further:

> "Prior to construction of the loft, the applicants enlisted qualified architects and contractors to work with the City in order to obtain the appropriate approvals for the loft. The City cleared the Q-conditions and issued a building permit in May 2004, and the applicants have enjoyed the use of their property ever since. Through no fault of the applicants, the City later discovered and alleged the loft violated the Q-conditions. These special circumstances warrant a variance from the Q-conditions because it would be impractical and unjust to now require the applicants to remove the lawfully constructed loft."
>
> "Moreover, as described above, the loft is grandfathered into the existing building's legal non-conformity with the Q-conditions. The condominium building is 51 feet at its highest point. However, the loft addition is a mere 27 inches above the roof and is 2 feet lower than the highest parapet on the building. Thus, because the loft does not increase the building height, it is grandfathered into the building's existing legal non-conformity with the Q-conditions height restrictions."

Due to the controversial issues surrounding the case, the Zoning Investigator walked and drove extensively through the surrounding area to observe if the roof structure presented a visible eyesore. In all honesty, I found the structure to be barely noticeable. Even when approaching from the southerly and westerly directions, the elevation of the building and the foliage lining the street served to make the roof projection barely visible. The adjoining properties that would be potentially most affected, particularly in terms of visibility, include high vantage point locations from the multi-story residential buildings in the general vicinity. There are several two- and three-story buildings along either side of Centinela Avenue. The elevations of these buildings are lower, particularly the two-story apartment (or condo) buildings to the direct north and direct south of the subject address (3540 and 3552 South Centinela, respectively). Therefore, from the upper floor windows of these two buildings, the rooftop structure could not be seen. What could be seen most noticeably from the surrounding area were the three rooftop chimneys and an approximately 8-foot high enclosed stairwell entrance that exceeded the subject projection in height by a matter of nearly 1-foot.

The Zoning Investigator observed that the top of the loft may barely be seen from pedestrians and motorists traveling north along Centinela Avenue, and possibly (or to a lesser degree) along east- and west-oriented side streets, namely Westminster Avenue and Greenwood Street, if the pedestrians or motorists strain to see it from afar. To the casual motorist or pedestrian, it is practically unnoticeable. The rooftop has an existing parapet wall, exterior air conditioning and heating equipment, and other fixtures such as an enclosed stairwell entrance and chimney structure. The latter of which measurably exceeds the height of the protruding loft addition under consideration in this case. The color and texture of the loft's exterior walls matched the surrounding rooftop structures.

The Zoning Investigator has been informed, however, that the residents located in buildings situated on higher elevations in the surrounding area can see the loft and the roof-top skylight lit up, especially during the night. The Zoning Investigator did not visit the site during late evening hours to determine the extent of glare that the skylight indeed caused, or if there was any adverse visual impact at all.

The Zoning Investigator is in general agreement with the applicant's statement that, "The highest point of the 27-inch addition is lower than several other rooftop structures and parapets of the building. The loft projection is not visible from the front or rear of the building. The loft does not affect the population density of the complex, the use of the building or the surrounding community".

An adjacent property owner's list has been provided with the application; however, the signatures of all of the abutting property owners in support of the request have not been included on the applicant's Master Land Use application. The proposed project is expected to be controversial. The proposed project may result in some degree of controversy due to the fact that some neighbors have continued to disagree with the project proposal for longstanding inter-personal and technical reasons. The overwhelming factor remains that the height of the loft does technically exceed the 33-foot height limit as established by a [Q] condition on March 26, 1989. There is a general concern by several neighbors that an approval of the zone variance will set a disturbing precedent and encourage others in the vicinity to request project proposals that would likewise exceed the existing 33-foot height limit. Several members of the local Neighborhood Council have received an indication that future requests to build higher than the 33-foot height limitation in direct violation of the existing [Q] condition are forthcoming. In particular, development proposals at the Mormon Temple, Mrs. Gooch's, and the old Fire House were specifically mentioned.

At the time of the Zoning Investigator's site visit on September 23, 2010, an official Notice of Public Hearing was not yet posted on the property. The Code requires the ZA notice to be posted at least ten (10) days prior to the scheduled hearing date. The Office of Zoning Administration received confirmation from BTC that the applicant and all parties required by the Municipal Code were mailed a Notice of Hearing regarding the subject property on September 15, 2010.

On September 22, 2010, the Zoning Investigator spoke with Mr. Albert Olsen, present Chairman of the Mar Vista Community Council (Telephone No. 310-301-1551). Mr. Olsen stated that on December 8, 2009, the Board of Directors met and decided, due to the contentious nature of the arguments presented on both sides, NOT to make a recommendation with regard to the subject property.

> "The Mar Vista Community Council, at its December 8th, 2009 regular Board meeting, considered and deliberated a motion to deny a variance for the project identified above. After listening to public testimony from all concerned parties, and thorough deliberation of the Board on the issue, the Board decided that because of the harshly conflicting statements by both sides of this issue, and because the MVCC had no way of adjudicating between these statements and determining the truth of the matter, the Board should table the motion. A motion to table the issue was made, and the vote was 7 ayes, 4 nays, and one abstention. Thus the motion was tabled, and the MVCC in effect chose not to get involved in the issue."

In order to receive an approval from the Zoning Administrator for the requested Zone Variance (ZV), the applicant has forwarded the following Findings for consideration and review: 1) The strict application of the provisions of the Zoning Ordinance would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the zoning

regulations; 2) There are special circumstances applicable to the subject property such as size, topography, location or surroundings that do not apply generally to other property in the same zone and vicinity; 3) 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) The granting of such 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) The granting of such variance will not adversely affect any element of the General Plan (See applicant's responses within the case file).

Surrounding Land Uses

Surrounding properties along the east side of Centinela Avenue are zoned [Q]R3-1. Those along the west side are zoned [Q]RD1.5-1. Both sides are characterized by a mixture of one- and two-story multi-family dwellings as well as multi-story apartment buildings. There is a relatively small commercial area zoned [Q]C1-1VL one-block north along Palms Boulevard, characterized by neighborhood-serving businesses.

Previous Cases, Affidavits, Permits, and Orders on the Applicant's Property

There are no similar or relevant Office of Zoning Administration, Area Planning Commission, or City Planning Commission cases on the applicant's property, specifically as they relate to the existence of the loft.

Case No. CPC 2005-8252(CA) – On January 11, 2007, the City Planning Commission approved a code amendment affecting areas within the Palms-Mar Vista-Del Rey Planning and an ordinance establishing permanent regulations implementing the Mello Act in the Coastal Zone.

Case Nos. CPC 87-0932 ZC/GPA and 88-0130 HD – On February 15, 1989, the City Council adopted Council-initiated changes of zone and height district for properties located along the northeast and southwest sides of Bundy Drive and Centinela Avenue between National Boulevard and Venice Boulevard. The commercial properties adjacent to the subject property along the southwest side of Centinela Avenue were re-zoned from C1-1VL to [Q]C1-1VL. Any residential use of those properties are limited to the density and Code requirements of the RD1.5 Zone, and any multiple residential use of those properties is limited to 33 feet in height.

Ordinance No. 164,475. Effective March 26, 1989, the City Planning Commission approved the following [Q] Condition for the subject property.

"Northeast side of Centinela Avenue between Palms and Venice Boulevards and southwest side of Centinela Avenue between Palms and Venice Boulevards: No portion of any new building or structure associated with any multiple residential use of the subject properties in a residential or a commercial zone and located within 50 feet of a General Plan-designated R1 Zone shall exceed two stories or, 25 feet in height measured from the top of the roof or parapet to the natural surface of the ground vertically below the point of measurement. Any portion of a new building or structure associated with any multiple residential uses in a residential or a commercial zone located more than 50 feet from a General Plan-designated R1 Zone shall not exceed

33 feet as measured from the top of the roof or parapet to the natural surface of the ground vertically below the point of measure."

Case No. CPC 87-0932(ZC)(GPA) – On March 16, 2007, the Planning and Land Use Management Committee adopted a resolution to restore the zoning of the rear portion of the property located at 3424 to 3428 Centinela Avenue.

Order to Comply No. CM2009-2 – Effective August 10, 2009, the Department of Building and Safety issued a Substandard Order, Case No. CM2009-2, for the following violation:

"An inspection of the site on July 24, 2009 revealed that the loft addition (11' – 3" x 16' – 6") constructed under the Permit No. 04014-30000-03731 has been occupied without the authorization of a Certificate of Occupancy. In addition, the height of the loft addition exceeded the permitted height limit; which is stated on the plot plan – (NO HIGHER THAN THE EXISTING PARAPET). Further investigation also revealed that a skylight (8'-6" x 4'-6") was installed on the roof without the benefit of the permit, inspections, and approvals.

04014 30000 03731	Bldg-Addition	Intent to Revoke	09/02/2009	ADD LOFT (11.25'X16.5', 185.5 S.F.) to (E) CONDO (3-RD FLR, UNIT #303)
04014 30000 02832	Bldg-Addition	Application Submittal	04/01/2004	Add mezzanine in unit 303, elevate roof height over the proposed mezzanine.
00016 30000 08858	Bldg-Alter/Repair	Permit Finaled	08/03/2001	NONSTRUCTURAL INTERIOR REMODEL: RELOCATE PORTION OF NONBEARING PARTITION BET BED
00016 30000 17055	Bldg-Alter/Repair	Permit Finaled	10/20/2000	change out 1 window and door(same size and location)
05041 20000 00733	Electrical	Permit Finaled	01/14/2005	RELOCATE FIRE ALARM HORN IN UNIT
04041 30000 19503	Electrical	Permit Finaled	12/27/2004	Install new circuits & smoke detectors.

Previous Cases, Affidavits, Permits, and Orders on Surrounding Properties

On September 21, 2010, staff utilized a 500-foot radius via the Zoning Information Access System (ZIMAS) and the Planning Case Tracking System (PCTS), seeking recent and past Zoning Administrator determinations, specifically as they related to zone variance approvals. The only case found in the immediate area was the following:

Case No. ZA 2000-3338(ZAA)(ZAD) – On December 26, 2000, the Zoning Administrator approved an application to permit the construction of a single-family dwelling located at 12424 West Palms Boulevard.

General Plan, Specific Plans and Interim Control Ordinances

Community Plan:

The Palms-Mar Vista-Del Rey Community Plan Map designates the property for [Q]R3-1 "Medium Residential" land uses with the corresponding zones of R3 and R3(PV), and height limited to District No. 1.

Specific Plans and Interim Control Ordinances:

The property is located within the area of the Los Angeles Coastal Transportation Corridor and the West Los Angeles Transportation Improvement and Implementation Specific Plan. The application is not affected.

Streets

Centinela Avenue, adjoining the property to the west, is a Major Highway Class II, with a variable width of 83 to 93 feet and improved with curb, gutter, and sidewalk on both sides.

The alleyway, adjoining the property to the rear, is a through alley and is improved with asphalt pavement and concrete gutter within a variable 15- to 17.5-foot dedication.

Flood Hazard Evaluation

The National Flood Insurance Program rate maps, which are a part of the Flood Hazard Management Specific Plan adopted by the City Council by Ordinance No. 172,081, have been reviewed and it has been determined that the property is located in Zone C, areas of minimal flooding.

Environmental Clearance

On October 20, 2009, the project was issued a Notice of Exemption (Article III, Section 3, City CEQA Guidelines), log reference ENV 2009-3396-CE, for a Categorical Exemption, Class 1, Category 1, City CEQA Guidelines, Article VII, Section 1, State EIR Guidelines, Section 15100.

Comments from Other Departments or the General Public

At the time of report preparation, no public agency had submitted any written comments. The Council Office is fully aware of the entitlement request and its surrounding issues. No comments are included within this report. A representative may be present at the upcoming hearing.

The Mar Vista Community Council (MVCC) elected not to take an official stance on the matter. However, there were numerous statements submitted in opposition to the proposed variance, primarily from those associated with Judith Deutsch and several other members of the Centinela Crest Homeowner's Association. The Office of Administration received form letters of opposition from Kent and Marlene Alves, Denise DuRoss, Glen and Donna Egstom, Cara Jaffee, Bruce McHugh, Mary Ann Murphy, Mr. & Mrs. S. N. Shafi, Joan Temple, and Earl and Julia Trusty. Original letters of opposition were received from Wayne and Mary Boehle, Joyce and

Michael Simmons, and Upadi Yuliatmo, who raised certain technical questions. A general letter of inquiry was received from Glenn Shull.

Names in support of the variance include Monique Eid-Loeschle, Judy Felton, Gerald Rohwedder, Patty Springer, and Craig Wu. Adriana Stralberg-Mackavoy, Quin Neumeyer, and Christine Davis were signatories on the settlement with Rapkin, Gitlin, and Beaumont (RGB).

M. Andre Parvenu

M. ANDRE PARVENU
Zoning Investigator

MAP:aln

LINN K. WYATT
CHIEF ZONING ADMINISTRATOR

ASSOCIATE ZONING ADMINISTRATORS
R. NICOLAS BROWN
SUE CHANG
LOURDES GREEN
MAYA E. ZAITZEVSKY

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February 16, 2011

Marla Rubin & David Shapendonk (A)(O)
3544 South Centinela Avenue, Unit 303
Los Angeles, CA 90066

James Repking/K. Paradise (R)
Cox Castle & Nicholson, LLP
2049 Century Park East, 28th Floor
Los Angeles, CA 90067

CASE NO. ZA 2009-3395(ZV)
ZONE VARIANCE
3544 South Centinela Avenue
Palms-Mar Vista-Del Rey Planning Area
Zone : [Q]R3-1
D. M. : 114B153
C. D. : 11
CEQA : ENV 2009-3396-CE
Legal Description: Lot 1, Tract 40133-C

Pursuant to Charter Section 562 and Los Angeles Municipal Code Section 12.27-B, I hereby DENY:

> a Variance from a [Q] Condition established by Ordinance No. 164,475, limiting building height to 33 feet to permit a loft resulting in an increase in height from 46 feet 6 inches to 49 feet in conjunction with the legalization of a loft through the ceiling and roof of an existing condominium building on a lot in the [Q]R3-1 Zone.

FINDINGS OF FACT

After thorough consideration of the statements contained in the application, the plans submitted therewith, the report of the Zoning Analyst thereon, the statements made at the public hearing on October 14, 2010, all of which are by reference made a part hereof, as well as knowledge of the property and surrounding district, I find that the five requirements and prerequisites for granting a variance as enumerated in Section 562 of the City Charter and Section 12.27-B,1 of the Municipal Code have not been established by the following facts:

BACKGROUND

The property is a slightly sloping, rectangular-shaped, interior record lot, consisting of 16,936 square feet, having a frontage of 115.67 feet on the east side of Centinela Avenue, and an even depth of 146.35 feet. The site is developed with a four-story, 21-unit condominium building originally constructed in 1985. There are three residential levels in the building. The ground level is partly subterranean and structured for parking. The property is located within the Palms-Mar Vista-Del Rey Planning Area.

The applicant is requesting a Zone Variance for an existing 27-inch building projection to exceed a 33-foot height limitation as defined by a [Q] condition established on March 26,

1989. The said building projection increases the building height above the roofline from 46.5 feet to 49 feet at the location of the projection for the subject Unit No. 303.

As summarized by the applicant's representative, Mr. James Repking of Cox Castle & Nicholson:

> *"The applicants, Marla Rubin and David Shapendonk, request a variance from the Q-conditions limiting the height of their condominium building located at 3544 South Centinela Avenue, Unit 303, Los Angeles CA 90066, APN 4248-025-073. The property is zoned [Q]R3-1. In an R3-1 zone, building height is limited to 45 feet. (Los Angeles Municipal Code "LAMC" § 12.21.1.) The Q-condition, which was added to the zone after the building was constructed, limits the height of buildings in the area to 33 feet. (Ordinance No. 164,475)."*
>
> *"In 2004, the applicants hired a licensed architect and contractor to construct a loft addition for their home. The Los Angeles Department of Building and Safety ("LADBS") issued the building permit (# 04014-30000-03731) for the loft on May 21, 2004. A copy of the application for a building permit and certificate of occupancy, and a Property Activity Report demonstrating that the Q-condition was cleared by LADBS, are attached as Exhibit 1."*
>
> *"Four years after LADBS issued its approval and the loft was constructed, the issue of whether the loft addition violated the Q-conditions was raised. An Order to Comply was issued by LADBS on August 7, 2009, a copy of which is attached as Exhibit 2. On August 31, 2009, the City issued a Notice of Intent to Revoke Permit, attached as Exhibit 3."*
>
> *"The loft and skylight were built with LADBS's approval and it has been in use for five years. If the 33-foot limit was strictly applied to this property, it would result in extreme difficulty and hardship for the applicants. First, the loft addition was completed many years ago and has been in continuous use since it was approved by the City. Moreover, it would be prohibitively expensive to remove the construction; the applicants estimate the cost of removal would be extremely significant and the loft cannot exist without the minor rooftop projection. Moreover, removal of the projection would require months of additional construction and would severely impair the value of the condominium."*
>
> *"As the applicants complied with all City requirements prior to constructing the loft, to now require them to remove the addition would cause them unnecessary and unwarranted hardship."*

With regard to the matter of special circumstances, the applicant adds the following:

> *"The City approved the loft addition in 2004, giving the applicants no reason to believe there was an issue regarding compliance with City codes and regulations. The applicants have used the loft for the past five years without incident."*
>
> *"Because the building was constructed in 1983, prior to the enactment of the 33-foot height limit, the building became a legal non-conforming structure which is*

grandfathered under the Zoning Code. (LAMC § 12.23(A).) As the loft is lower than the highest portion of the building, the loft does not expand the pre-existing non-conformity and, therefore, complies with the Zoning Code. (LAMC § 12.23(A)(2).) A photograph demonstrating the loft height is lower than the building parapets is attached as Exhibit 4. Therefore, the loft addition does not violate City codes and is a special circumstance justifying a variance."

With regard to practical difficulties or unnecessary hardships, the applicant adds further:

"Prior to construction of the loft, the applicants enlisted qualified architects and contractors to work with the City in order to obtain the appropriate approvals for the loft. The City cleared the Q-conditions and issued a building permit in May 2004, and the applicants have enjoyed the use of their property ever since. Through no fault of the applicants, the City later discovered and alleged the loft violated the Q-conditions. These special circumstances warrant a variance from the Q-conditions because it would be impractical and unjust to now require the applicants to remove the lawfully constructed loft."

"Moreover, as described above, the loft is grandfathered into the existing building's legal non-conformity with the Q-conditions. The condominium building is 51 feet at its highest point. However, the loft addition is a mere 27 inches above the roof and is 2 feet lower than the highest parapet on the building. Thus, because the loft does not increase the building height, it is grandfathered into the building's existing legal non-conformity with the Q-conditions height restrictions."

The rooftop has an existing parapet wall, exterior air conditioning and heating equipment, and other fixtures such as an enclosed stairwell entrance and chimney structure. The latter of which measurably exceeds the height of the protruding loft addition under consideration in this case. The color and texture of the loft's exterior walls matched the surrounding rooftop structures.

The Zoning Investigator has been informed, however, that the residents located in buildings situated on higher elevations in the surrounding area can see the loft and the roof-top skylight lit up, especially during the night. The Zoning Investigator did not visit the site during late evening hours to determine the extent of glare that the skylight indeed caused, or if there was any adverse visual impact at all.

There is a general concern by several neighbors that an approval of the zone variance will set a disturbing precedent and encourage others in the vicinity to request project proposals that would likewise exceed the existing 33-foot height limit. Several members of the local Neighborhood Council have received an indication that future requests to build higher than the 33-foot height limitation in direct violation of the existing [Q] condition are forthcoming. In particular, development proposals at the Mormon Temple, Mrs. Gooch's, and the old Fire House were specifically mentioned.

The surrounding properties along the east side of Centinela Avenue are zoned [Q]R3-1. Those along the west side are zoned [Q]RD1.5-1. Both sides are characterized by a mixture of one- and two-story multi-family dwellings as well as multi-story apartment

buildings. There is a relatively small commercial area zoned [Q]C1-1VL one-block north along Palms Boulevard, characterized by neighborhood-serving businesses.

Centinela Avenue, adjoining the property to the west, is a Major Highway Class II, with a variable width of 83 to 93 feet and improved with curb, gutter, and sidewalk on both sides.

The alleyway, adjoining the property to the rear, is a through alley and is improved with asphalt pavement and concrete gutter within a variable 15- to 17.5-foot dedication.

Previous zoning related actions on the site/in the area include:

Subject property:

Ordinance No. 164,475 - Effective March 26, 1989, the City Planning Commission approved the following [Q] Condition for the subject property.

"Northeast side of Centinela Avenue between Palms and Venice Boulevards and southwest side of Centinela Avenue between Palms and Venice Boulevards: No portion of any new building or structure associated with any multiple residential use of the subject properties in a residential or a commercial zone and located within 50 feet of a General Plan-designated R1 Zone shall exceed two stories or, 25 feet in height measured from the top of the roof or parapet to the natural surface of the ground vertically below the point of measurement. Any portion of a new building or structure associated with any multiple residential uses in a residential or a commercial zone located more than 50 feet from a General Plan-designated R1 Zone **shall not exceed 33 feet** as measured from the top of the roof or parapet to the natural surface of the ground vertically below the point of measure."

Order to Comply No. CM2009-2 – Effective August 10, 2009, the Department of Building and Safety issued a Substandard Order, Case No. CM2009-2, for the following violation:

"An inspection of the site on July 24, 2009 revealed that the loft addition (11' – 3" x 16' – 6") constructed under the Permit No. 04014-30000-03731 has been occupied without the authorization of a Certificate of Occupancy. In addition, the height of the loft addition exceeded the permitted height limit; which is stated on the plot plan – (NO HIGHER THAN THE EXISTING PARAPET). Further investigation also revealed that a skylight (8'-6" x 4'-6") was installed on the roof without the benefit of the permit, inspections, and approvals.

04014 30000 03731	Bldg-Addition	Intent to Revoke	09/02/2009	ADD LOFT (11.25'X16.5', 185.5 S.F.) to (E) CONDO (3-RD FLR, UNIT #303)
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05041 20000 00733	Electrical	Permit Finaled	01/14/2005	RELOCATE FIRE ALARM HORN IN UNIT
04041 30000 19503	Electrical	Permit Finaled	12/27/2004	Install new circuits & smoke detectors.

Surrounding properties:

Case Nos. CPC 87-0932 ZC/GPA and 88-0130 HD – On February 15, 1989, the City Council adopted Council-initiated changes of zone and height district for properties located along the northeast and southwest sides of Bundy Drive and Centinela Avenue between National Boulevard and Venice Boulevard. The commercial properties adjacent to the subject property along the southwest side of Centinela Avenue were re-zoned from C1-1VL to [Q]C1-1VL. Any residential use of those properties are limited to the density and Code requirements of the RD1.5 Zone, and any multiple residential use of those properties is limited to 33 feet in height.

Case No. CPC 87-0932(ZC)(GPA) – On March 16, 2007, the Planning and Land Use Management Committee adopted a resolution to restore the zoning of the rear portion of the property located at 3424 to 3428 Centinela Avenue.

The following was received to the file:

In support of the applicant's request:

- The property owners of Unit Nos. 102, 203, and 302 of 3544 Centinela, located on the subject site.
- Judy Felton [a home owner of 3544 Centinela, no unit number is indicated]
- A former owner of Unit No. 101 of 3544 Centinela.

In opposition to the applicant's request:

- The home owners/residents of Unit Nos. 206, 207, 306, 307 of 3544 Centinela, located on the subject site]
- The property owners/residents of
  3222 and 3228 Grand View Blvd
  3428 S. Centinela Ave, #3
  3440 S. Centinela Ave
  3444 S. Centinela Ave, #3
  12304 Dewey St
  12331 Stanwood Dr
  3550 and 3551 Ocean View Ave
  Cara Jaffee [no address indicated]
  Mary Ann Murphy [no address indicated]

Mr. & Mrs. A. N. Shafi [no address indicated]
Wayne J. Boehle and Mary C. Boehle [no address indicated]
Binod and Gyan Prasad [resident on Ocean View [No address]

- A total of 30 names of the property owners/residents in the area were submitted in opposition [No addresses]

The Mar Vista Community Council (MVCC) dated September 22, 2010 states the following:

> *"The Mar Vista Community Council, at its December 8th, 2009 regular Board meeting, considered and deliberated a motion to deny a variance for the project identified above. After listening to public testimony from all concerned parties, and thorough deliberation of the Board on the issue, the Board decided that because of the harshly conflicting statements by both sides of this issue, and because the MVCC had no way of adjudicating between these statements and determining the truth of the matter, the Board should table the motion. A motion to table the issue was made, and the vote was 7 ayes, 4 nays, and one abstention. Thus the motion was tabled, and the MVCC in effect chose not to get involved in the issue."*

At the public hearing, which was conducted by the Zoning Administrator on October 14, 2010, a letter from the Mar Vista Community Council dated October 12, 2010 was submitted stating the following:

> *"The Mar Vista Community Council of Directors, at its regular October 12th meeting, approved the following motion:*
>
> *Although the MVCC has chosen not to take a position on ZONE VARIANCE CASE NO ZA2009-3395(ZV) CEQA NO. ENV 2009-3396-CE at 3544 Centinela Avenue, 90066, the Mar Vista Community Council strongly supports the maintenance of Ordinance 164475 and the Q conditions which established height and density limits along Centinela Avenue between Palms and Venice Boulevards."*

PUBLIC HEARING:

The public hearing was conducted on October 14, 2010 in the West Los Angeles Municipal building and was attended by the applicant, the applicant's representatives, residents/property owners of the subject condominium building, in which the subject loft is located and in the surrounding properties and the representatives of the Centinela Crest Homeowners' Association and the Mar Vista Community Council.

The applicant and the applicant's representative stated the following:

- The applicant purchased Unit No. 303 of the subject building in 2000.
- The loft was approved by the Centinela Crest Homeowners' Association.

- Ordinance No. 164,475 became effective in 1989 and a maximum height restriction of 33 feet has been imposed in the ordinance area, in which the subject site is located.
- The building permit for the subject loft was issued in 2004 and the applicable [Q] conditions of Ordinance No. 164,475 including the height limit of 33 feet were cleared for the building permit on May 12, 2004.
- A skylight is shown on the plans submitted for the permits.
- A lawsuit was filed by the Homeowners' Association against the applicant for the subject loft, but was settled on March 10, 2010.
- The existing 21-unit condominium building on-site was constructed in 1985 with a 46.5-foot building height when the maximum permitted height on the subject property was 45 feet. However, the building is 51 feet in height as measured to the top of highest structures on the roof by the current height measurement.
- The subject loft is 27 inches above the highest point of the existing roof [46.5 feet] resulting in a building height of 49 feet.
- The construction of the subject loft was complete and has been in use for five years by the applicant.
- The height limit of 33 feet required by the [Q] conditions became an issue when the applicant was in the process of applying for a Certificate of Occupancy.

Three speakers including a treasurer of the Centinela Crest Homeowners' Association testified in support of the applicant's request stating the following:

- The subject loft is not visible from outside and may increase the property value.
- A majority of the owners in the Homeowners' Association voted for settlement of the lawsuit filed for the subject loft as long as the loft is approved by the city in compliance with the code.
- The loft is minimally visible from the outside just as the other structures on the roof.
- The loft and light emanating from the sky light are visible from Unit No 307, which is diagonally located from the subject loft; but, the glare from the sky light is no more than the glare from windows of other units on site.
- A 6-inch sheet metal can be installed to block the light from the loft.
- The loft was completed in July, 2009 and the demolition of the loft will result in unnecessary hardship on the applicant.

Six speakers including a representative of the Mar Vista Community Council spoke in opposition to the subject application stating the following:

- The applicant cannot apply for a variance for the loft, which is located in the common area of the condominium building and is owned by all condominium owners in the building. The applicant does not have ownership of the common area. The loft is in violation of the CC&R's because the loft is located in a common area.
- The loft was approved by the Homeowners' Association when the applicant was serving as a member of the board resulting in a conflict of interest. In addition, the other owners/residents in the building were misled by the applicant by stating that the loft will be within his unit. The loft projecting into the roof and exceeding the adjacent roof parapet was not clearly explained.

- The loft is clearly visible from units in the building on-site, the easterly neighboring properties and the properties in the hillside located on higher elevation than the subject site.
- The skylight has a dimension of 8 feet by 4 feet resulting in overflow lighting to the neighboring units on site. [Photographs were submitted to the file].
- The loft is not structurally safe and creates maintenance problems on the roof.
- The lawsuit settlement was due to the financial burden to other property owners in the building that may be caused by litigation and was based on information that the loft is not permitted by the [Q] condition to begin with; therefore, will not be permitted by the City.
- The loft was not inspected for a Certificate of Occupancy; therefore, cannot be legally used/occupied. The applicant failed to apply for an inspection of the loft and has illegally occupied the loft without a Certificate of Occupancy.
- The loft will result in an increase in the property value of the applicant's unit, but will result in an increase in the maintenance responsibilities/costs to other owners in the building.
- Granting the applicant's request will set a precedent in the project area.
- The representative of the Mar Vista Community Council clarified that the Community Council voted not to take a position on the subject application as stated on a letter dated October 12, 2010; however, the Community Council strongly supports enforcement of the height limit of 33 feet as required by [Q] conditions.

After testimony was taken, the Zoning Administrator took the case under advisement for two weeks in order to allow the applicant to submit elevation plans of all directions showing the subject loft in relation to the location and the height of other roof structures and roof parapet on the subject property. The following was received:

- On October 28 and December 27, 2010, the applicant submitted elevation plans to the file; however, the plans do not show the subject loft in relation to the height and the location of other structures on the roof.
- On January 28, 2011, the applicant submitted plans showing the southwest elevation and the existing roof plan.
- A letter from the owner of Unit No. 307 in opposition to the subject loft.

MANDATED FINDINGS

In order for a variance to be granted, all five of the legally mandated findings delineated in City Charter Section 562 and Municipal Code Section 12.27 must be made in the affirmative. Following (highlighted) is a delineation of the findings and the application of the relevant facts of the case to same:

1. **The strict application of the provisions of the Zoning Ordinance would not result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the zoning regulations.**

   The subject property is improved with a 21-unit residential condominium building, which was constructed in 1985. There are three residential levels in the building.

The ground level is partly subterranean and is used for parking. The applicant states that the existing building is 51 feet in height as measured to the stairwell and 50 feet to the roof parapet and 49 feet to the subject loft.

On March 26, 1989, Ordinance No. 164,475 became effective limiting a building height on the subject property to a maximum of 33 feet; therefore, the existing building on site became legally permitted non-conforming in terms of height of the building.

The applicant requests a variance to allow a loft with a dimension of 18 feet by 16 feet 6 inches [measured on the roof] with a sky light installed on top of a loft in the applicant's unit resulting in an increase in height from 46 feet 6 inches to 49 feet at the location of the projection in lieu of 33 feet, which is the maximum height permitted by the [Q] condition of Ordinance No. 164,475. The applicant purchased Unit No. 303 in 2000. The building permit No. 04014-3000-03731 was issued for a loft on May 21, 2004. The permit clearance information shows that [Q] conditions were cleared for the building permit in error on May 12, 2004.

On August 7, 2009, an Order to Comply was issued by the Department of Building and Safety for the subject loft. The Order states the following:

> *"An inspection of the site referenced above on July 24, 2009, revealed that the loft addition (11'3" X 16'-6") constructed under the permit # 04014-3000-03731 has been occupied without the authorization of a Certificate of Occupancy. In addition, the height of the loft addition exceeded the permitted height limit; which is stated on the plot plan – (**NO HIGHER THAN EXIST'G. PARAPET**). Further investigation also revealed that a skylight (8'-6" X 4'-6") was installed on the roof without the benefit of the permit, inspections and approval ..."*

On August 31, 2009, the Department of Building and Safety issued a Notice of Intent to revoke the building permit for a loft addition. The authority to revoke a permit is contained in Los Angeles Municipal Code, Section 98.06060(a)2, which reads:

> *"The Department shall have the authority to revoke any permit, slight modification or determination whenever such action was granted in error or in violation of other provisions of the code and conditions are such that the action should not be allowed."*

The applicant states that "... *Four years after LADBS issued its approval and the loft was constructed, the issue of whether the loft addition violated the Q-conditions was raised ... The loft and skylight were built with LADBS's approval and it has been in use for five years. If the 33-foot limit was strictly applied to this property, ... it would be prohibitively expensive to remove the construction ... would cause them unnecessary and unwarranted hardship.*"

It appears that the building permit for the loft was issued in error. In addition, as indicated in the Order to Comply, the loft was not constructed as indicated on the building plans submitted for the building permit. Even though the subject application

is to allow over-in-height structure, elevation plans showing the height of the loft in relation to other structures on the roof were not submitted with the application. The plans submitted for the building permit states "*No higher than exist'ng parapet*" and the applicant states that "*the loft is behind the parapet and cannot be seen from virtually all vantage points in the surrounding area and within the interior courtyard of the condo building*". However, photographs submitted by other residents in the building at the hearing shows that the loft is higher than the existing roof parapet and is clearly visible to other units in the building.

In order to clarify the conflicting statements, the Zoning Administrator requested the applicant submit elevation plans showing the loft in relation to the heights of other structures on the roof. On December 27, 2010, the applicant submitted elevation plans, a roof plan, a site plan and a plot plan attachment submitted for the building permit No. 04014-30000-03731 for the subject loft. The applicant notes on the west elevation that "*Loft is behind this parapet*" indicating that the loft is lower than the height of the existing parapet. The plot plan submitted for the building permit [No. 04014-30000-03731] has a notation stating that *"(NO HIGHER THAN EXIST'G PARAPET)"*. Even though the plot plans submitted to the subject file by the applicant appear to be the same plot plan, which was submitted for the building permit, such a notation for *"(NO HIGHER THAN EXIST'G PARAPET)"* has been taken out from the plot plans submitted to the subject file.

The loft was approved by the condo Homeowners' Association when the applicant was a board member of the Association. However, soon after the construction had started, the subject loft became a controversial issue for property owners resulting in a lawsuit filed by the condo Homeowners' Association against the applicant, which was settled due to the financial burden to continue the litigation. Even though the over-in-height issue exceeding the height limit required by [Q] conditions came up in 2007 and 2008 when the loft was presented to the Mar Vista Community Council, the applicant continued to complete the construction and failed to obtain an inspection by the Department of Building and Safety for a Certificate of Occupancy.

Contrary to the applicant's statement, the loft is higher than the existing roof parapet and is clearly visible from other units in the building. The roof plan and the southwest elevation plan submitted by the applicant on January 31, 2011 show that the subject loft is 9 feet 7 inches in height measured to the loft and 10 feet 11 inches measured to the skylight resulting in a total building height of 48 feet 6 inches, which is higher than the adjacent roof parapet.

The applicant contends that strict application of the provisions of the Zoning Ordinance would result in financial burden to the applicant resulting in practical difficulties and hardships. However, in the opinion of the Zoning Administrator, such difficulties and hardships are economic in nature and can be considered to be self-imposed by the applicant. Granting this variance would not only set a precedent in the area, but would also act as a special privilege that is not permitted to other dwelling units on the subject site and properties in the surrounding area.

It is noted that the previous owner of Unit #303 [the applicant's unit] had a loft in the unit that did not breach the roof, such that the loft cannot be seen by any other units in the building.

2. **There are no 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.**

The subject property is a record lot with essentially the same characteristics as other properties in the area. There is nothing that sets the site apart from other nearby sites. The lot size and width of the property are the same or similar to the other properties in the project block and in the surrounding area, a majority of which are improved primarily with single family and multi-family residential buildings. There are seven (7) dwelling units on each floor of the condo building for a total of 21 units on the subject site. However, there is nothing that sets the applicant's unit apart from other units in the building.

3. **Such variance is not 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 such special circumstances and practical difficulties or unnecessary hardships, is denied the property in question.**

The existing development in the vicinity of the project site is generally characterized by single- and multi-family dwellings. The other properties in the project block on both sides of Centinela Avenue between Woodgreen Street and Charnock Road are all improved with single- and multi-family dwellings, a majority of which are one- to two-story structures. The properties behind those dwelling units are zoned for an R1 Zone and are all improved with single-family dwelling units. There are no other units in the condo building or other properties in the [Q]R3-1 Zone in the area that were allowed to add additional building height to a non-conforming building, which already exceeds the height limit of 33 feet required by [Q] condition. Therefore, the applicant is not denied the preservation and enjoyment of a substantial property right or use generally possessed by other properties in the same zone and vicinity.

4. **The granting of such 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.**

While the applicant states that the loft projection cannot be seen from virtually all vantage points in the surrounding area and within the interior courtyard of the condo building, photographs submitted to the file show that the loft and skylight are clearly visible from other dwelling units on the site. The property owners/residents in the area also testified that the subject condo building is clearly visible from properties in the hillside area, which are located in higher elevation than the subject location resulting in adverse impacts on glare and aesthetics. The height of the existing condo building ranges from 46 feet 6 inches measured to the roof parapet to 51 feet to the stairwell as measured by the current height measurement, which is 40 to 55 percent higher than the current height limit of 33 feet.

A majority of other properties on the block are developed with one- or two-story residential structures, but the subject property is improved with a four-story [three levels for dwelling units and one level subterranean parking structure], which is the tallest building on the block. Granting the request will worsen the non-conforming status of the existing building height resulting in intensification of the development that is not compatible with other neighboring properties in the area. Therefore, the granting of such 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.

Several members of the local Neighborhood Council have received an indication that future requests to build higher than the 33-foot height limitation in direct violation of the existing [Q] condition are forthcoming. In particular, development proposals at the Mormon Temple, Mrs. Gooch's, and the old Fire House were specifically mentioned. Granting the request will set a precedent resulting in cumulative impacts to the surrounding area.

5. **The granting of the variance will adversely affect any element of the General Plan.**

The Palms-Mar Vista-Del Rey Community Plan Map designates the property for [Q]R3-1 "Medium Residential" land uses with the corresponding zones of R3 and R3(PV), and height limited to District No. 1. The property is located within the area of the Los Angeles Coastal Transportation Corridor and the West Los Angeles Transportation Improvement and Implementation Specific Plan.

The zone change Ordinance No. 164,475 was enacted with a [Q] condition that limits the building height to a maximum 33 feet in order to protect single-family dwellings for view, glare, privacy and other adverse impacts from the surrounding multi-family or commercial development in the area.

The existing building on site is 40 to 55 percent greater in height than is permitted on the property. Allowing structures that will add additional height to an existing non-conforming building will result in intensification of the development and adverse impacts to the surrounding properties. The zoning code is an implementing tool of the general plan and the subject loft will exceed the maximum height limit required by the code. A variance from the required code is permitted through a discretionary action when the required findings for an approval can be made. The required findings for a variance cannot be made in the affirmative as stated herein; therefore, the subject loft that exceeds the maximum height limited by the [Q] condition will adversely affect any element of the General Plan, which intends to protect single family dwellings and to promote orderly development.

ADDITIONAL MANDATORY FINDINGS

6. The National Flood Insurance Program rate maps, which are a part of the Flood Hazard Management Specific Plan adopted by the City Council by Ordinance No.

172,081, have been reviewed and it has been determined that this project is located in Zone C, areas of minimal flooding.

7. On October 20, 2009, the subject project was issued a Notice of Exemption (Subsection c, Section 2, Article II, City CEQA Guidelines), log reference ENV 2009-3396-CE, for a Categorical Exemption, Class 1, Category 1. Article III, Section 1, City CEQA Guidelines (Sections 15300-15333, State CEQA Guidelines). The potential impacts associated with the subject loft such as aesthetics, light and glare, and incompatible land use are not analyzed and no mitigation measures for such impacts are available or proposed. Therefore, the Notice of Exemption is not adopted herein.

APPEAL PERIOD - EFFECTIVE DATE

The Zoning Administrator's determination in this matter will become effective after MARCH 3, 2011, unless an appeal therefrom is filed with the City Planning Department. It is strongly advised that appeals be filed early during the appeal period and in person so that imperfections/incompleteness may be corrected before the appeal period expires. Any appeal must be filed on the prescribed forms, accompanied by the required fee, a copy of the Zoning Administrator's action, and received and receipted at a public office of the Department of City Planning on or before the above date or the appeal will not be accepted. **Forms are available on-line at http://planning.lacity.org**. Public offices are located at:

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

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

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

SUE CHANG
Associate Zoning Administrator
Direct Telephone No. (213) 978-3304

SC:lmc

cc: Councilmember Bill Rosendahl
Eleventh District
Adjoining Property Owners

DETERMINATION LETTER
ZA-2009-3395-ZV-1A
MAILING DATE: 06/30/11

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Los Angeles, CA 90066

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Los Angeles, CA 90066

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City Hall, Room 763
Mail Stop #395

GIS/Fae Tsukamoto
City Hall, Room 825
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Sue Chang
Zoning Administrator
City Hall, Room 763
Mail Stop #395

Dept of Engineering
quyen.phan@lacity.org

MASTER APPEAL FORM

City of Los Angeles – Department of City Planning

ORIGINAL

LOS ANGELES CITY PLANNING

2011 JUL 15 AM 11:19

APPEAL TO THE: City Council
(DIRECTOR, AREA PLANNING COMMISSION, CITY PLANNING COMMISSION, CITY COUNCIL)

REGARDING CASE #: ZA-2009-3395 ZV-1A

PROJECT ADDRESS: 3544 Centinela Ave., Unit 303, Los Angeles, CA 90066

FINAL DATE TO APPEAL: 7/15/11

TYPE OF APPEAL:

1. ☐ Appeal by Applicant
2. ☑ Appeal by a person, other than the applicant, claiming to be aggrieved
3. ☐ Appeal by applicant or aggrieved person from a determination made by the Department of Building and Safety

APPELLANT INFORMATION – Please print clearly

Name: Judith Deutsch

- Are you filing for yourself or on behalf of another party, organization or company?

☑ Self ☑ Other: Donna Ostrom & Adriana Strelbery & Hilltop Neighborhood individuals

Address: 3544 Centinela Ave., Unit 307, Los Angeles, CA 90066

Zip:

Telephone: 310-390-3016 day 310-670-2870 E-mail: jdeutsch@ucla.edu

- Are you filing to support the original applicant's position?

☐ Yes ☑ No

REPRESENTATIVE INFORMATION

Name:

Address:

Zip:

Telephone: E-mail:

This application is to be used for any appeals authorized by the Los Angeles Municipal Code for discretionary actions administered by the Department of City Planning.

JUSTIFICATION/REASON FOR APPEALING – Please provide on separate sheet.

Are you appealing the entire decision or parts of it?

☑ Entire ☐ Part

Your justification/reason must state:

- The reasons 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

ADDITIONAL INFORMATION/REQUIREMENTS

- Eight (8) copies of the following documents are required (1 original and 7 duplicates):
  - Master Appeal Form
  - Justification/Reason for Appealing document
  - Original Determination Letter
- Original applicants must provide the original receipt required to calculate 85% filing fee.
- Original applicants must pay mailing fees to BTC and submit copy of receipt.
- Applicants filing per 12.26 K "Appeals from Building Department Determinations" are considered original applicants and must provide notice per 12.26 K 7.
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the City (Area) Planning Commission must be filed within 10 days of the written determination of the Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (i.e. ZA, APC, CPC, etc...) makes a determination for a project that is not further appealable.

> *"If a nonelected decision-making body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decision-making body, if any."*
> *--CA Public Resources Code § 21151 (c)*

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

Appellant Signature: Judith A. Dietsch Date: 7/13/11

Planning Staff Use Only

Amount $105.02	Reviewed and Accepted by Eggenhuisen	Date 7/13/11
~~Receipt~~ Invoice No. 3734	Deemed Complete by	Date

☑ Determination Authority Notified ☐ Original Receipt and BTC Receipt (if original applicant)

Office: Downtown
Applicant Copy
Invoice No: 3734

City of Los Angeles
Department of City Planning

City Planning Request

NOTICE: The staff of the Planning Department will analyze your request and accord the same full and impartial consideration to your application, regardless of whether or not you obtain the services of anyone to represent you.

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

Applicant:
Representative: DEUTSCH, JUDITH (310-6702870)
Project Address: 3544 Centinela Avenue, Unit 303

NOTES: This is a second level appeal filed by an aggrieved party. on ZA-2009-3395-ZV-1A

Item	Fee	%	Charged Fee
Other	$105.02	100%	$105.02
OSS Surcharge 2%			$0.00
Development Surcharge 6%			$0.00
Operating Surcharge 7%			$0.00
General Plan Maintenance Surcharge 3%			$0.00
		Case Total	$105.02
		(Items with * are subject to surcharges) **Case(s) Grand Total**	$105.02
		Total Credit	$0.00
		Total Invoice	$105.02
		Total Overpayment Amount	$0.00
		Total Paid (this amount must equal the sum of all checks)	$105.02

Processed by GUTIERREZ, EMMANUELA on 07/13/2011
Signature:

Council District:
Plan Area:

LA Department of Building and Safety
LA 03 17 304608 07/13/11 03:48PM

PLAN & LAND USE $105.0

Total Due: $105.0
Credit Card: $105.0
147589

Printed by GUTIERREZ, EMMANUELA on 07/13/2011

Appeal to LA City Council PLUM Committee

Case No. ZA-2009-3395-ZV-1A

Submitted by
Judith S. Deutsch
On behalf of Various Concerned
Homeowners in the Mar Vista Community

July 13, 2011

Appeal to LA City Council PLUM Committee

Case No. ZA-2009-3395-ZV-1A

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BRIEF PROCEDURAL HISTORY

David Shapendonk and Marla Rubin (hereinafter, "the Shapendonks") are homeowners in a 21-unit condominium building located at 3544 Centinela Avenue in West Los Angeles. In 2004, they applied for a permit for the construction of a loft in Unit 303. The loft immediately became an issue with the other members of the Centinela Crest Homeowners Association (hereinafter, "CCHOA") and they and other local residents have continually fought to ensure that all procedural requirements and zoning laws have been met.

The loft as constructed is not in accordance with the plans that were approved by the Los Angeles Department of Building and Safety (hereinafter, "LADBS") as part of the permit process. Specifically, it exceeds the height requirements on the approved Plot Plan and it has a large skylight (8'-6" x 4'-6") that was installed without the benefit of a permit, inspections, or approvals. (See Exhibit 1, photos of the loft exterior.)

While CCHOA homeowners have continually fought the construction of the loft, it was only in 2008 that we became aware that the loft was also in violation of the Q condition, and upon advice from our attorney, sought remedy from LADBS. Thereafter, LADBS issued a Notice of Intent to Revoke Permit (August 31, 2009) signed by Lincoln Lee, Assistant Chief, Engineering Bureau. In 2009, after the fact, the Shapendonks finally filed for a variance to the Q condition – something that should have been done well before construction began.

The Shapendonks now apply circular reasoning – to wit, they rely upon the 2004 issuance of a permit for their loft as a rationale for granting the variance. In addition, they conveniently ignore the fact that the loft was not constructed in accordance with the approved Plot Plan on file.

On February 16, 2011, Zoning Administrator Sue Chang denied the Shapendonks' application for a variance. (See Exhibit 2, the February 16, 2011 decision by Zoning Administrator Chang, hereinafter, the "Zoning Administration Decision.") The Zoning Administration Decision was based on Administrator Chang's numerous communications with a variety of LADBS supervisors and inspectors during repeated phone calls and interviews, as well as testimony at the hearing and the papers submitted by the parties.

The Shapendonks appealed the Zoning Administration Decision and a hearing was held on June 1, 2011, before the West Los Angeles Area Planning Commission (hereinafter, the "Planning Commission").

At the hearing, the Shapendonks' appeal was supported by legal counsel; architect Michael Kent; Mark and Lynn Rogo, friends of the Shapendonks and real estate agents with clients in Beverly Hills and Westwood who have no experience in the Mar Vista area; and Judith Felton, who as president of CCHOA initiated the investigation by LADBS as well as the lawsuit **against** the Shapendonks.

Those opposing the variance included Sharon Commins, Co-chair of the Property and Land Use Management Committee of the Mar Vista Community Council (hereinafter, "PLUM Committee") **and** Co-chair of the Mar Vista Community Council and represented both organizations; Judith Deutsch, CCHOA past president and homeowner, President of the Hilltop Neighborhood Association, member of the Community Emergency Response Team, and member of the Mar Vista Community Council Ad Hoc Historic Fire Station 52 Committee representing herself and CCHOA homeowners Adrian Stralberg, Michael Mackavoy, Julie Jameson, and Upadi Yuliatmo; Donna Egstrom, 55-year resident who owns apartments and a house on Centinela Avenue and member of the Community Emergency Response Team and Hilltop Neighborhood Association representing herself and her husband, Glen; Michael Simmons, a homeowner directly in line with the loft and member of the Community Emergency Response Team representing himself and his wife, Joyce; Mary Ann and Bill Sherritt, longtime community members on Hilltop and Community Emergency Response Team members – Mary Ann is also on the Board of Hilltop Neighborhood Association representing themselves; and Victor Deutsch, trustee of Condo 307, and his wife, Ailsa representing themselves.

At the hearing, two of the Commissioners agreed with the Zoning Administrator that the issuance of the loft permit by LADBS was in error. (See Exhibit 2, p. 9, and Exhibit 3, the CD of the Planning Commission Hearing at Track C, 24:21-34. and Track D, 1:40-2:03.)

The Planning Commission granted the Shapendonks' appeal, overturning the Zoning Administration Decision, and issued its determination on June 30, 2011 (hereinafter the "Planning Commission Decision"). (See Exhibit 4, the Planning Commission Decision.)

This appeal is filed on behalf of certain individual homeowners at Centinela Crest and members of the surrounding community who are adversely impacted by the Planning Commission's Decision to grant a variance and allow the loft.

ARGUMENT

In order to issue a variance, the Shapendonks must meet five distinct criteria – if any of the five criteria is not met, the variance **MUST** be denied. (City Charter Section 562 and Municipal Code Section 12.27.)

After an exhaustive review of seven years of documentation regarding this matter, Zoning Administrator Sue Chang found that the Shapendonks did not meet a single one of the criteria required in order to grant a variance. (See Exhibit 2, pp. 8 - 12.)

In fact, the Zoning Adminstrator states, and the Planning Commission agreed, that the permit for the loft was apparently issued by the City in error. (See Exhibit 2, p. 9, and Exhibit 3, Track C, 24:21-34. and Track D, 1:40-2:03.) The fact that the Shapendonks fortuitously got an erroneous rubber stamp approval does not mean that the rest of the community should suffer in perpetuity for this mistake.

This is certainly an unfortunate situation and had proper procedures been followed, we would not find ourselves here today. But it is clear that the loft is in violation of the Q Condition that Mar Vista residents fought so hard to obtain. To grant the variance opens the door to substantial alteration of the character of the neighborhood that is inconsistent with the General Plan – and which would **deprive hundreds of other residents of the enjoyment of their homes and preservation of their views.** The good of the many must not be subjugated to special privileges that would be afforded to a single household by granting the variance.

Below is a summary of each of the five required criteria and explanations of the Planning Commission's errors, the reasons for our appeal, the specific points at issue, and how we are aggrieved by the decision.

CRITERIA 1: That strict application of the provisions of the Zoning Ordinance would result in practical difficulties or unnecessary hardships consistent with the general purpose and in intent of the zoning regulations.

1. The Planning Commission erred in finding that the loft conformed to the plans submitted and approved.

It is clear that the loft was not constructed as indicated on the building plans submitted and approved by LADBS as part of the permitting process. The plans approved in conjunction with the permit application clearly have a notation stating "No higher than exist'g parapet."

Regardless of any findings on the other four criteria, this fact in and of itself is definitive grounds for denial of the variance.

The Zoning Administrator's findings in this regard were clear:

> *[T]he loft is higher than the existing roof parapet and is clearly visible from other units in the building. The roof plan and southwest elevation plan submitted . . . show that the subject loft is 9 feet 7 inches in height measured to the loft and 10 feet 11 inches measured to the skylight resulting in a total building height of 48 feet 6 inches, which is higher than the adjacent parapet.*
>
> *(See Exhibit 2, p.10.)*

The Planning Commission ignored the Zoning Administration's finding which is also supported by actual plan submitted to LADBS when the approval was first sought. (See Exhibit 5, the Plot Plan approved by LADBS with directions to the architect and contractor that the loft could not be higher than the existing parapet.) [1]

2. The Planning Commission erred in calculating the height of the building.

The height of the loft is **the most critical issue** in this case. Whether it is only 2 inches higher than the parapet or nearly 3 feet higher – is irrelevant. The fact that it is higher than the parapet is definitive. See Exhibit 6, Ordinance 164475 (hereinafter, the "Ordinance") and the Q Condition which specifies in Section 4) a, that measurement of any portion of a new building or structure "shall be measured from the top of the roof or parapet to the natural surface of the ground vertically below the point of measurement."

Section 4) c of the Ordinance states that "there shall be no exceptions to these height limits."

In coming to their decision, the Planning Commission specifically stated that "various rooftop structures exceed the 45-feet height, including a combined parapet wall and chimney facing Centinela Avenue, a roof access stairwell and an elevator shaft." The Planning Commission used the height of these other structures as a justification for approval of the loft. (See Exhibit 3, Track A 15:05-15:20.) In fact, Administrator Chang went to great lengths to educate Commissioner Donovan in this regard. (See Exhibit 3 at 21:48-23:07.)

This ignores the common understanding of how the height of a building is calculated. Given their role as arbiters of these sorts of disputes, we would expect the Planning Commission to have a clearer understanding of the applicable law and appropriate guidelines.

Pursuant to LADBS Information Bulletin/Public Zoning Code Reference Zoning Code 12.03 regarding the *Determination of the Zoning "Height of a Building or Structure,"* certain roof top structures (e.g. antennas, chimneys, stairway towers, elevator towers, etc.) are allowed to exceed the height limit. (See Exhibit 7, LADBS Information Bulletin/Public Zoning Code Reference

[1] Curiously, after the Zoning Administration Hearing, at Administrator Chang's request, the parties were asked to submit a copy of the Plot Plan. The plan submitted by the Shapendonks conveniently had this notation removed. (See Exhibit 1, p. 10.)

Zoning Code 12.03 regarding the *Determination of the Zoning "Height of a Building or Structure."*) The fact that these particular roof top structures exceed the parapet is not be taken into consideration when measuring the height of the loft.

However, at the hearing, the Planning Commission totally ignored this and specifically stated that the loft was appropriate was because "it's not like it is the only thing sticking out on the roof" and also because "chimney is part of the building." (See Exhibit 3, Track D, at3:50–4:02, and Track C, at 24:06–24:15.) In fact, one Commissioner stated that while the law may not consider the chimney as part of the building, he did not "agree" with that and that as long as it wasn't higher than the chimney, he'd just leave it alone. (See Exhibit 3, Track C, 25:10-25:27)

Given that the approved plans state that the loft is not to exceed the existing parapet, the height of the chimney, elevator tower, etc. are by law, irrelevant, as is the relationship of the loft to those other rooftop structures.

This misapplication of the law is perhaps the most egregious error that the Planning Commission made.

3. The Planning Commission erred by not following the applicable law because they "disagreed" with it.

At the hearing, the Planning Commission conceded that the Zoning Administrator "followed the letter of the law" – but unbelievably, said they were not going to follow the law, because they did not agree with it. (Exhibit 3, Track C 25:10-25:28; and Track D, 13:13-13:20.) Whether or not the Planning Commission agrees with the law is irrelevant. Their obligation is to enforce the law dispassionately and they erred in not doing so.

This is particularly true in this case, where Mar Vista residents fought so long and hard to obtain the Q condition. What the Planning Commission may not realize is that Ordinance 164475 came about in response to the building of 3544 Centinela which towered over the one and two story buildings along Centinela Avenue. In fact, tempers were so hot during the construction of the building, that someone committed arson and burned it to the ground.

For the Planning Commission to so cavalierly dismiss and indeed subvert, the concerns and sentiments of hundreds of local residents because they personally are in disagreement with a law that the community fought so hard to obtain is nothing short of **outrageous.**

On second thought, this may be the most egregious – and certainly it is the most insulting – error that the Planning Commission made.

4. The Planning Commission erred in basing its decision on economic hardship.

At the hearing, and throughout its written decision, the Planning Commission offered the excuse of economic hardship as a rationale for granting the variance. (See Exhibit 4, pp. F-2, F-4, and Exhibit 3, Track D, 5:23–6:08.)

However, the law is clear that **economic hardship is not a basis for granting a variance:**

> Review of a proposed variance must be limited solely to the physical circumstances of the property. "The standard of hardship with regard to applications for variances relates to the property, not to the person who owns it. (*California Zoning Practice,* Hagman, et al.). Financial hardship, community benefit, or the worthiness of a project are not considerations in determining whether to approve a variance (*Orinda Association v. Board of Supervisors* (1986) 182 Cal. App. 3d, 1145).
>
> (See Exhibit 8, The Planner's Training Series: The Variance, issued by The Governor's Office, p. 4.)

The Planning Commission has clearly erred by even considering any economic hardship that may flow to the Shapendonks in this case. Commissioner Donovan in particular, raised "economic hardship" several times throughout the hearing. (See Exhibit 3, Track A, 16:31–19:15.) This is clearly erroneous and contrary to law. At least Commissioner Foster seemed to recognize the inappropriateness of this argument at Exhibit 3, Track D, 00:28-1:15. As she stated, someone could do something really horrible and then refuse to fix it because it would too costly to do so. Interestingly, Commissioner Donovan specifically spoke about this not being applicable if the economic hardship was "self-imposed" or whether there was a fraud. (See Exhibit 3, Track C, 5:00–6:08.) Apparently, Commissioner Donovan failed to review the entire file and he certainly did not listen to Administrator Chang, because if he had, he would have seen considerable documentation of the Shapendonks' willful misrepresentations from the moment they planned the loft.

But even assuming arguendo, economic hardship were a valid reason for granting the variance, it is important to note that any such hardship that the Shapendonks face is completely and utterly of their own making. Guided by a professional architect and contractor who were familiar with the permitting and construction requirements, they either deliberately – or perhaps unwittingly following professional advice – pursued a course of "build first and deal with the flack later."

Contrary to their claims at the hearing, from the moment they breached the roof without having advised their fellow homeowners, or other area residents of the true nature of the loft, the Shapendonks themselves created this situation. At an emergency meeting of homeowners on July 24, 2004 (which was taped), the attorney for CCHOA said that had either the Shapendonks

or the CCHOA consulted with legal counsel first, he would have advised that they could not build the loft. [2]

Instead, they proceeded with the construction, even after homeowners complained about the procedural irregularities, violation of the CC&R's and misappropriation of common property. CCHOA spent five fruitless years attempting to settle the dispute, but the Shapendonks did not negotiate or failed to respond to various proposals by the board, apparently in hopes that the statute of limitations would run out. It was only in 2008 that we learned there were additional Building & Safety violations, and at that point, when continued pursuit of the lawsuit would have created a financial hardship for some CCHOA members, upon advice from counsel, we abandoned the suit and turned to LADBS to enforce the zoning code.

Had the professionals guiding the Shapendonks insisted that appropriate procedures such as proper notification and a hearing on the application for the variance take place *prior* to construction, we would not be here today. (See Exhibit 9, a collection of letters showing the immediate concern about the loft; Exhibit 10, a partial list of area residents who wrote to the Planning Commission urging that it deny the application of the variance; Exhibit 11, selected individual letters urging denial of the variance including an October 20, 2010 letter from Ms. Deutsch to Administrator Change declining to take on the liability of negotiating on behalf of the community at large, without authorization to do so; Exhibit 12, e-mail correspondence between Mr. Shapendonk and the editor of the Hilltop Association E-Mail Blast showing that public sentiment is strongly against the variance; Exhibit 13, Minutes of the December 8, 2009 Mar Vista Community Counsel indicating that they recommend a denial of the variance at p. 2, section 8) c; and Exhibit 14, letters from CCHOA counsel outlining various procedural irregularities, a recitation of the the Shapendonks' deceptive activities and their failure to negotiate a settlement in good faith.)

For the Planning Commission to ignore the fact that any hardship was entirely of the Shapendonks' own making, is ridiculous. Even if the law did permit the Shapendonks to argue economic hardship, it would most assuredly take a dim view of the fact that they brought this situation upon themselves. No one forced the Shapendonks to begin construction without telling their neighbors that the intended to breach the roof. No one forced them to disregard the protocols of filing for a permit and obtaining a variance before beginning construction.

To reward them by granting the variance now, sets a dangerous precedent – and one that should strike fear in the hearts of homeowners everywhere. It basically encourages others to forego all the rules, zoning laws, procedures and other legal requirements when putting on new additions, yet allows them to later argue that it's a done deal and too expensive to reverse. Letting the Shapendonks get away with this would be a travesty.

[2] We are in the process of converting of the tape to CD and will be submitting it in a supplemental filing.

If the citizens of Los Angeles cannot rely upon the Planning Commission to carry out the zoning laws as clearly written, then this is a very sad day for our City.

5. The Planning Commission abused its discretion in relying upon the notation on the Plot Plan of "Raises Roof 3'-0."

The Planning Commission found that the submitted Plot Plan contained a notation stating that it would raise the roof 3 feet. (See Exhibit 4, p. F-1.) However, this completely ignores the fact that LADBS placed a limitation on the plans as submitted by noting just below that notation that the loft could be "No higher than exist'g parapet." When the Zoning Administrator requested clarification on this issue, applicants conveniently submitted to her a plot plan with the notation about the parapet removed. (See Exhibit 2, p. 10.)

Commissioner Donovan in particular had a difficult time grasping this concept, although Zoning Administrator Chang went to great lengths to explain in detail that it is the usual practice and procedure of LADBS to make additional directives and notations on the Plot Plan. (See Exhibit C, Track A, 17:47-20:03.) Simply put, the fact that the original plans may have called for raising the roof, is completely negated by the LADBS subsequent notation that the loft roof cannot be higher than the existing parapet. It is the final Plot Plan with direction from LADBS that is governing.

6. The Planning Commission erred in its decision because they "disagreed" with the law.

At the hearing, the Planning Commission conceded that the Zoning Administrator "followed the letter of the law" – but said, essentially, that they disagree with the law. (See Exhibit 3, Track C, 25:10-25:28.) Whether or not the Planning Commission agrees with the law is irrelevant. Their obligation is to enforce the law dispassionately and they erred in not doing so.

As noted above, this sets a very dangerous precedent, and indeed, is an insult to the entire Mar Vista community who worked so long and hard to adopt the Ordinance with the Q condition precisely so that their property values would not be diminished and that the character of the neighborhood would be retained.

7. The Planning Commission erred in its reliance upon the Shapendonks' false representations that this matter had been settled with the CCHOA.

The Planning Commission erroneously relied upon the Shapendonk's false representations that their settlement with the CCHOA was a full resolution of this matter. (See Exhibit 3, Track D, 7:00–8:00, 8:26–8:44, and 18:21-45.) This particular section clearly shows that the Planning Commission only relied on statements provided by the Shapendonks and failed to consider the multiple documents and multiple residents who claimed they had been misled about the loft for years. In fact, the settlement only pertained to the dismissal of the lawsuit with regard to the

Shapendonk's flagrant violations of CCHOA policies in getting a bogus "approval" for the loft. (See Exhibit 15, the Settlement Agreements.) Whatever agreements CCHOA may have entered into, it had neither the expertise nor the authority to resolve any outstanding zoning or code issues that the Shapendonks had with the City and LADBS.

Certainly the Planning Committee is not suggesting that the City would so easily abdicate its responsibilities for ensuring compliance with zoning ordinances and building and safety codes to untrained residents!! To do so, would open up a gaping loophole allowing virtually any homeowner to easily get around zoning laws or code requirements – or as in this case, to illegally appoint two friends as temporary HOA board members, thereby securing a majority vote, fail to disclose building plans only to other residents and push through an approval behind their backs, and wait until construction begins for anyone else to even realize that the plans included breaking through the roof to erect a structure that as it turns out, **is in violation of a well-established height ordinance.** (See also, Exhibit 14, specifically the July 11, 2007 letter the Shapendonks' then counsel outlining their many deceptive practices.)

8. <u>The Planning Commission erred in its finding that the loft owners did not mislead LADBS.</u>

It appears that the Planning Commission based its decision that the Shapendonks acted in good faith when dealing with the City upon a single e-mail sent to Ms. Sue Chang and copied to Len Nguyen of Councilman Bill Rosendahl's Office by LADBS Office Manager Sia Poursabahian, dated May 27, 2011 – just five days before the hearing.[3] (See Exhibit 16, the May 27, 2011 e-mail from Sia Poursabahian to Administrator Chang; Exhibit 4, p. F-2;" Exhibit 3, at D, 2:26–2:35, 8:18–8:25.) Those who want the loft removed and the Ordinance with its Q condition preserved, were not provided a copy of the e-mail at the hearing and thereby were denied the opportunity to present their evidence to the contrary. There is contradictory evidence in the Planning Commission file for their review, but we wonder if it was ever read inasmuch as not a single Commissioner ever referred to any of the documents filed in opposition the variance.

[3] Opponents to the variance were blindsided by discussion of this communication that apparently found its way into the Planning Commission's hands a few days before the appeal hearing. We did not have an opportunity to review, much less refute, the contents of the e-mail. After the fact, our attempts to get the communication were initially stonewalled by the author, Mr. Poursabahian and as of this writing, the Records Dept. of the Planning Commission has been unable to find the e-mail. After further complaints, we eventually got the e-mail. This e-mail, months after Administrator Chang's report but amazingly, just days before the hearing is quite serendipitous – and one cannot help but wonder what might have motivated Mr. Poursabahian to compose this e-mail at the 12th hour. And why on earth, was Mr. Nguyen copied on it? Particularly since Councilman Bill Rosendahl has advised us that he was unaware of this matter. As Associate Planning Deputy, his aide, Whitney Blumenfeld, is responsible for land use and management issues – not Mr. Nguyen. Yet she is not copied on the e-mail. For someone not tasked with handling land use issues, Mr. Nguyen has been most assertive in lobbying for the Shapendonks.

The documentation of these omissions and falsehoods could fill binders, but some of the salient points follow. See Exhibits 9 and 14 which support and reference the many irregularities surrounding the construction of the loft, to wit:

- The Shapendonks did not advise LADBS of the homeowners' association and neighborhood controversy over the height of the loft while it was being built;

- They neglected to advise LADBS that the did not provide neighbors with a notice that they were applying for a building permit, nor did they place an announcement in a newspaper;

- They provided LADBS with an agreement between CCHOA and an illegal board of five officers when the CC&Rs limit the board to three officers, making the agreement approving the loft invalid – Mr. Shapendonk appointed two additional officers including the president who signed the loft agreement;

- They did not tell LADBS that the CC&Rs do not permit the board to approve any alteration to the common area, such as the roof, on behalf on an individual homeowner;

- The Shapendonks failed to adjust the height of the loft to the specifications of LADBS so as not to exceed the height of the parapet. We believe this is because lowering roof to be below the parapet would not allow them to meet the height requirement **inside** the loft (the prior owner of unit 303, Scott Wallace, could not put in a legal loft); (See Exhibit 17, July 8, 2004 correspondence between Mr. Shapendonk and Ms. Deutsch indicating that they could only lower the height of the loft by 6 inches, otherwise they would be in violation of city building codes for the loft.)

- The Shapendonks did not file with LADBS for a variance until seven years after they built the loft, making it a done deal;

- The Shapendonks did not tell LADBS that the CCHOA attorney, at a special meeting called by the homeowners in on 24, July 2004, while the loft was in progress, told them that if they (or the CCHOA Board) had sought legal counsel at the outset, he would have told them that the loft could not be built.

- David Shapendonk did not tell LADBS that the later vote by homeowners to approve the loft was not a legal vote because he only supplied a selection of homeowners to receive meeting notices and/or ballots. He also later admitted in a taped meeting on July 24, 2004 that he erroneously told homeowners that the

loft would not be seen from inside any of the units, particularly unit 307 where it figures front and center in the unit's dining room and kitchen windows.

- The Shapendonks "bullied" at least one CCHOA homeowner to write a letter in support of the loft appeal. The homeowner complained to CCHOA board member Adriana Stralberg. (Exhibit 18, May 18 and 19, 2011 e-mails from Ms. Stralberg recounting the bullying attempts; See also, Exhibit 17 which also indicates bullying as far back as July of 2004.)

- The Shapendonks told others that homeowners would have to pay to have the loft removed if they lost the appeal, knowing that they just signed an agreement with CCHOA holding the Association harmless, making any letters or petitions in favor of the appeal suspect.

- We believe that some of the letters which the Shapendonks submitted to the LADBS in support of the variance were written by individuals who no longer own property at 3544 Centinela Avenue.

- Without the law to back them up, the Shapendonks resorted to attempts to discredit acting CCHOA board members through the use of disinformation and personal attacks.

- The Shapendonks led LADBS to believe that the 2009 Agreement dropping the lawsuit filed by the CCHOA against the Shapendonks included CCHOA approval of the loft. IT DID NOT. In fact, the agreement merely says that CCHOA will not pursue the lawsuit and the CCHOA accepted $7,000 to help defray Association legal costs. The suit was dropped due to financial considerations and because we were relying upon LADBS and the Zoning Administrator to enforce existing law. (See Exhibit 15.)

- The Shapendonks know full well that the 2009 agreement does not deny other homeowners, much less Hilltop residents, the right to seek the protection of the LADBS and the Zoning Administration to cure violations of the zoning ordinances. This recognition is borne out by their attempt to come to an additional private agreement with individual CCHOA homeowners. (See Exhibit 19, October 9, 2009 e-mail from Mr. Shapendonk to Ms. Stralberg and Ms. Deutsch, offering a private settlement.)

- The Shapendonks failed to tell LADBS that two of three board members they had recalled **a month before regular elections** are currently serving on the new board. The third did not run due to new commitments. Adriana Stralberg was voted onto the board within minutes of being recalled with a landslide vote of 20 to 11 for each of the other candidates.

CRITERIA 2: That there are special circumstances applicable to the subject property such as size, topography, location or surroundings that do not apply generally to other property in the same zone and vicinity.

1. The Planning Commission abused its discretion in finding that there are special circumstances that support approval of the variance.

In their findings, the Planning Commission does not articulate a single special circumstance related to size, topography, location or surroundings that would support approval of the variance. Instead, they merely recite statements about visibility and rooftop structures of chimney, stairwell and elevator shaft that already exceed the 45 foot height limit.

The Planning Commission found that the loft is "barely noticeable" and "barely visible" – based on a single report of October 8, 2010. (See Exhibit 4, p. F-3, Planning Commission Decision.) In order to reach this decision, Planning Commission had to completely ignore the many photographs showing that the loft is clearly visible from a variety of different vantage points. (See Exhibit 1.)

In addition, Planning Commission disregarded numerous letters of complaint from area homeowners (as well as testimony at the hearing) stating that the loft interfered with their ocean views, threw off bright light at night and otherwise interfered with the enjoyment of their homes. (See Exhibits 10 and 11.) The Planning Commission also ignored Commissioner Chang's finding that the loft was 49 feet, or 3 1/2 feet higher than the existing roof of 46 ½ feet. (See Exhibit 2, p. 7.) In fact, at the hearing, at least two of the Commissioners stated that they had gone to see the building and the loft could be clearly seen. (See Exhibit 3, Track D, 3:50-4:15 and later at 15:13-15:22.)

The Planning Commission erroneously concluded that the fact that the loft had been occupied since it was constructed, is a special circumstance. This conveniently overlooks the fact that it was occupied without benefit of a certificate of occupancy. (See Exhibit 4, p. F-3.) And it is but another example of circular reasoning – the Shapendonks never got a certificate of occupancy and they weren't legally allowed to occupy the loft – but since they went ahead and occupied in anyway, in violation of these rules, they've unilaterally created a special circumstance that now entitles them to be granted a variance.

We vehemently object to the Planning Commission's bogus conferral of a special circumstance to the Shapendonks – particularly as it suggests that the negative impact of the loft upon hundreds of other residents is of utterly no consequence.

CRITERIA 3: That such 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 such special circumstances and practical difficulties or unnecessary hardships, is denied to the property in question.

1. The Planning commission erred in finding that the variance is necessary so as not to deny substantial property rights.

The Shapendonks have never been denied substantial property rights. Their unit was on a par with the three, top level units in 3544 Centinela. In fact, the Shapendock's unit was the largest in the building even before the construction of the loft. The Shapendonks' loft conveys upon them the largest unit in them building by far, providing them with significantly more living space than other owners while very little adjustment is made in their monthly assessment. This puts a bigger burden on our 750 sq. ft., one bedroom condos, who are subsidizing the larger units. The monthly assessment is not graduated by unit size. It also makes the building the highest in the area, denying some area homeowners of their previously uninterrupted ocean views. This is all overlooked by the Planning Commission. Instead, they refer back to the spurious rationales they provided earlier – e.g. the economic hardship to the Shapendonks, which they clearly are not allowed to consider.

However, if arguendo the Planning Commission were allowed to consider economic hardship, and for some unfathomable reason did not find the hardship to be of their own doing, the Shapendonks had the benefit of professionals to assist them in the building of the loft. Their architect and contractor know the policies and procedures of LADBS, and possessed a thorough understanding of the permitting process and presumably, were (or should have been) well aware of the zoning law requirements. If these professionals committed malpractice which results in the removal of the loft, then the Shapendonks surely have recourse against them. So – even if the Planning Commission were able to consider the personal economic hardship to the Shapendonks, in reality, the Shapendonks have other deep pockets to pursue.

2. The Planning commission erred in finding the granting of the variance does not grant a special privilege.

The Planning Commission offers no evidence for its finding that the variance does not grant the Shapendonks a special privilege. Approval of a loft, clearly in violation of the Q condition and not built in accord with the plans submitted with the approval offers a very unique and special privilege. It allows the Shapendonks to disregard the zoning requirements that stand in the way of their plans, to build first, and ask for permission later. It also grants them the privilege of significant additional living space that cannot be replicated by any of the 20 other condo units in the building. And they would have unique and special privilege of interrupting the views of hillside owners that the Ordinance is meant to protect.

This is clearly preferential treatment to one household at the expense of hundreds of other area residents.

CRITERIA 4: That the granting of such a 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.

1. The Planning Commission erred in finding that granting the variance will not adversely impact other homeowners.

The Planning Commission disregarded testimony from hillside neighbors and community leaders regarding the adverse impact of this eyesore that encroaches upon their ocean views. The only evidence supporting the Shapendonks' assertions is testimony from a married couple (the Rogos) who are thief personal friends and are real estate agents – but who do not sell in the Mar Vista area and who are not qualified to speak to property values in the neighborhood. Michael Simmons, whose home is in direct line to the loft, contradicted the Rogos stating that the loft was framed in his upstairs window and affected his ocean view and property value. He has lived in his home 12 years.

As the Zoning Administsration Decision states, several members of the Neighborhood Council have already been advised that once this variance is granted, others will be forthcoming. The Mar Vista Community Council PLUM Committee already defeated a proposal by the Morman Church on Centinela Avenue to build a four-story parking structure. There is also concern about the empty Mrs. Gooch's store just down the block and across the street from the Church and closed historic fire station number 62. Councilman Rosendahl has abandoned his plans to erect a 5- or 6-story low income senior citizens' residence on the site of the fire station in favor of a one-story community center incorporating the historic station.

The Mar Vista Community Council PLUM Committee and the Mar Vista Community Council are on record as supporting the Q condition, unequivocally. The PLUM Committee requested a resolution against the loft. They are concerned about further violations of the Ordinance. As the Commissioners themselves noted, no matter how tight the variance is written, it can always be used as precedent for future actions. (See Exhibit 3, Track D, 2:43–2:50 and again at 6:09–6:29.)

CRITERIA 5: That the granting of such variance will not adversely affect any element of the General Plan.

1. The Planning Commission erred in finding that the variance will not adversely affect the General Plan.

The Planning Commission failed to acknowledge the very purpose of the General Plan. They admitted themselves that the variance could be used as a precedent, which would then change the characteristics of the General Plan. We oppose a granting of this variance because it is not in conformance with the intent and purpose of the General Plan, as it states, "the objective of the District Plan is to preserve and enhance the positive characteristics of existing residential neighborhoods by protecting the quality of residential environment and promoting the maintenance and enhancement of the low density character of specific areas."

Moreover, "maintenance of the neighborhood character and density has been a standard objective of the General Plan throughout the City by enhancing and keeping of the positive features characteristic of specific areas. The General Plan aims at attaining the further objective to maintain proper values for residential development."

A variance opens the door to developers who want to take advantage of desirable ocean views. This is the very thing that the Ordinance was designed to prevent, especially with the addition of language that "there will be no variances." We want to keep our one- and two-story homes. Two of the Commissioners believe one variance will open the door to others. The Mar Vista Community Council does not want to see Centinela Avenue become another Westwood Corridor with luxury condos offering city and/or ocean views.

CONCLUSION

This has been a long and contentious dispute. We have shown that the Shapendonks **DID** mislead the LADBS, as well as their neighbors, time and time again.

There is no question that LADBS approved the building permit in error. At least two Commissioners at the appeal hearing mentioned it. Ms. Chang at the Zoning Administration hearing focused on it. It is unfair that the entire community must suffer due to this error.

The loft was not built to conform with the approved Plot Plan. The loft is clearly higher than allowed by an Ordinance with a Q condition that clearly states there shall be no variances as to height.

Pursuant to law, the Planning Commission was prohibited from even considering economic hardship as a rationale for granting the variance. Their consideration of this fact alone, is grounds for reversal.

We strongly protest the inadequate findings of the Planning Commission. What we are asking for is the preservation of our community's way of life and the continuing protection of the Ordinance and its provision that there will be no variances. It is there for just this reason and was voted on by the community to protect us from those who would overbuild.

The Planning Commission Decision is a travesty and offers the skimpiest of rationales for its erratic conclusions. The Planning Commission ignored the zoning laws as well as the testimony of community members who about the adverse impact to their property and home values.

Ms. Chang says in her report that the height was in dispute after they filed the plan. And Ms. Chang quotes numerous LADBS supervisors and inspectors upon whom she based her rulings after repeated phone calls and questions.

We have spent a lot of time and effort going by the book and patiently waiting for justice. This includes the best efforts of the Mar Vista Community Council Property Land Use and Management Committee and the Mar Vista Community Council. We have received assistance from individuals on the MVCC Ad Hoc Fire Station Committee, the Community Emergency Response Team, and the Hilltop Neighborhood Association. This is a community effort. As we mentioned earlier on, at the Planning Commission hearing the Shapendonks had only three people aside from their legal counsel and architect speak in their support of the variance – and only one of those is a Hilltop resident. We had nine concerned community members including the co-chair of both the Mar Vista Community Council PLUM Committee and the Mar Vista Community Council.

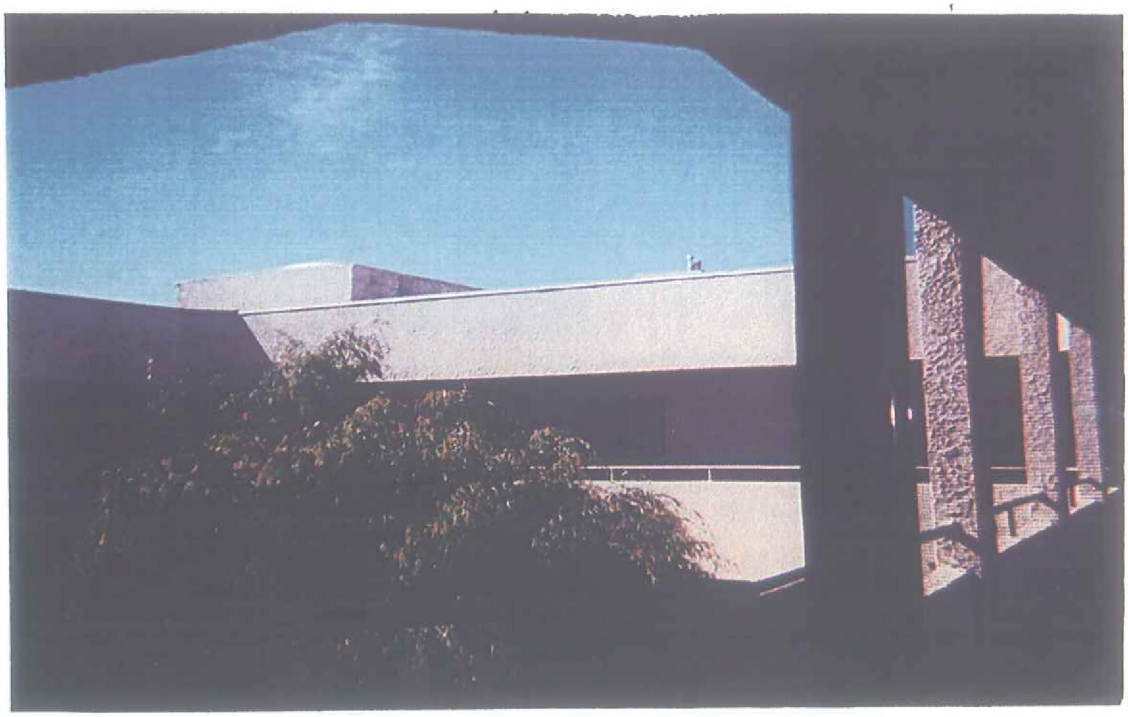
The Planning Commissioners said that Ms. Chang's report denying the variance was excellent and thoroughly followed the letter of the law. They overturned the denial by abusing their personal take on the law and not abiding by. There is a continuous paper trail beginning in July of 2004 when the Shapendonks first breached the common area roof at 3544 Centinela Avenue continuing through today. We spent five years in negotiations with the Shapendonks who hoped to have the statute of limitations expire. We filed the lawsuit just before the statute of limitations ran out. Then the Shapendonks waged a campaign to frighten homeowners with tremendous legal bills during the economic downturn. For years they waged personal attacks and spread rumors about any board member they considered a threat to the loft.

We want to do what is right and we want to protect our neighborhood. A variance, as confirmed by the Planning Commission, would open the door to high rises along Centinela Avenue destroying the views of the one- and two-story homes on the Hillside the Ordinance was passed to protect. We have already defeated a four-story garage at the Mormon Church and Mr. Rosendahl's plan for a five- or six-story low income senior housing project on the very small space now occupied by the historic old Fire Station 62.

In order to grant the variance, all five of the specific criteria noted above must be met. Failure to meet any one of these criteria is fatal and by law, the variance must be denied.

We have established that not a single one of the criteria has been met, and instead, the Planning Commission twisted language, logic and law to craft a decision that flies in the face of the evidence presented to them and is contradicted by the thorough Zoning Administration Decision. For these reasons, the variance must be denied.

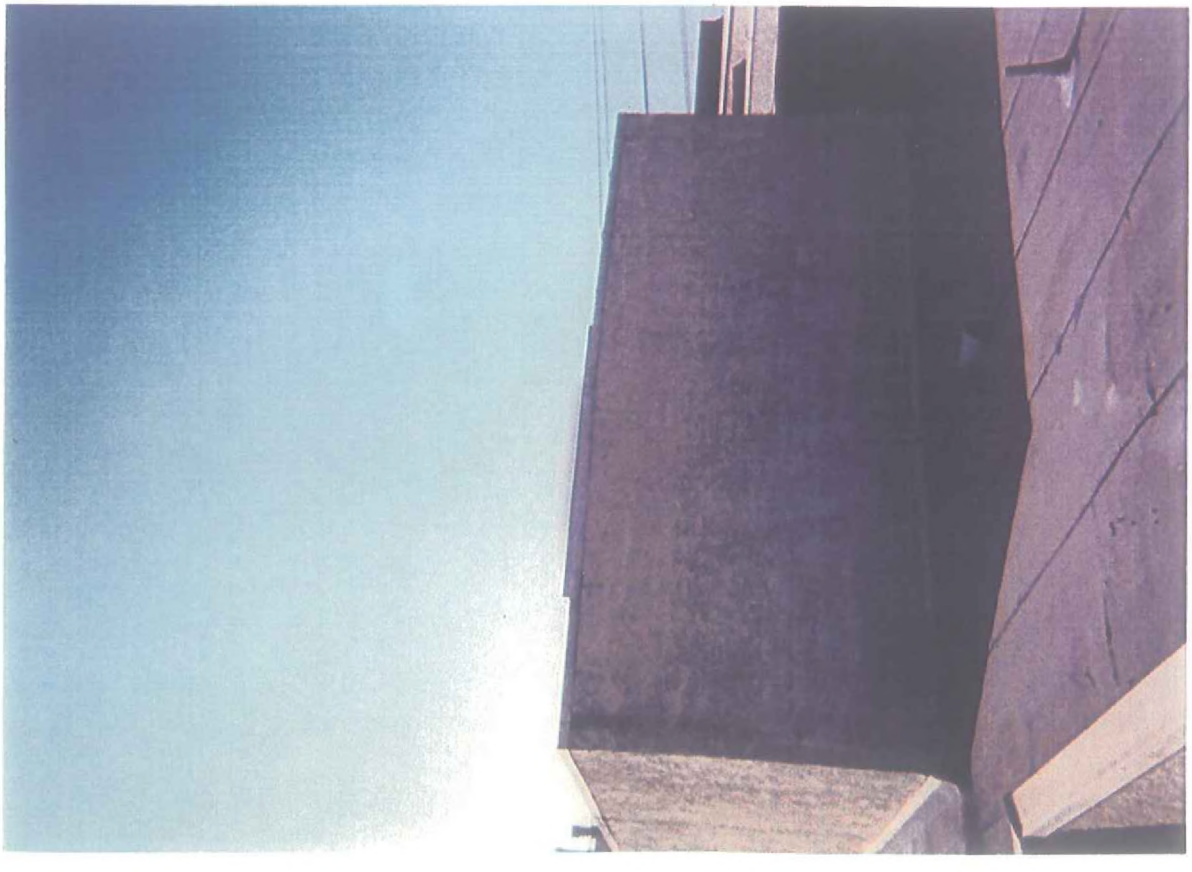
Left Pane, Living Room/Dining Room Window, Unit 307



From Loft Looking Toward Hillside

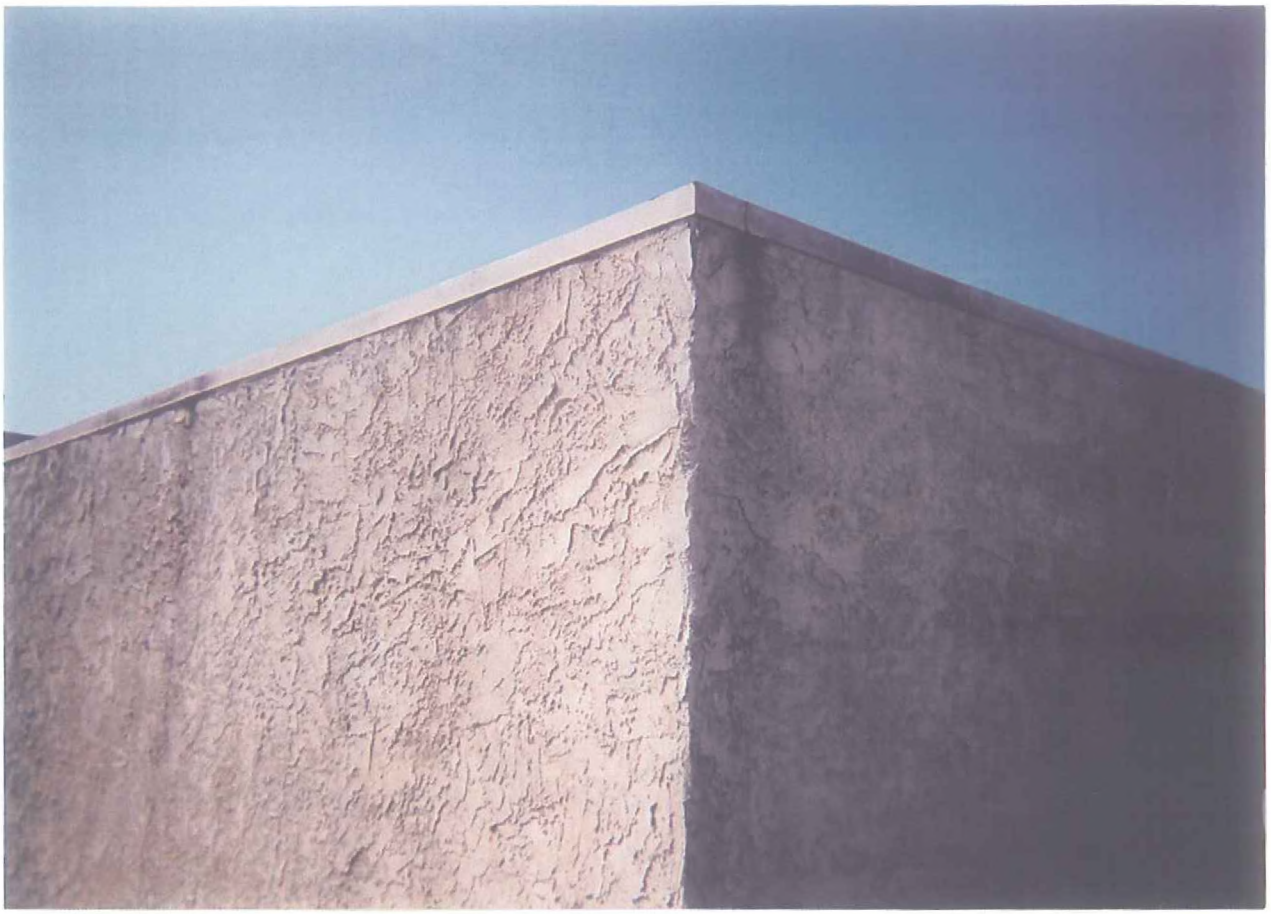
Loft With Lit Domed Skylight from the 4-Foot Side
Side Facing the Hillside is Double the Width, 8-Feet

Homes Behind 3544 Centinela that Have a View of the Loft.
Note Size of Skylight in the Home Directly Behind 3544 Centinela



Loft with Skylight, Parapet in Left Foreground

Condition of Loft



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CASE NO. ZA 2009-3395(ZV)
ZONE VARIANCE
3544 South Centinela Avenue
Palms-Mar Vista-Del Rey Planning Area
Zone : [Q]R3-1
D. M. : 114B153
C. D. : 11
CEQA : ENV 2009-3396-CE
Legal Description: Lot 1, Tract 40133-C

Pursuant to Charter Section 562 and Los Angeles Municipal Code Section 12.27-B, I hereby DENY:

> a Variance from a [Q] Condition established by Ordinance No. 164,475, limiting building height to 33 feet to permit a loft resulting in an increase in height from 46 feet 6 inches to 49 feet in conjunction with the legalization of a loft through the ceiling and roof of an existing condominium building on a lot in the [Q]R3-1 Zone.

FINDINGS OF FACT

After thorough consideration of the statements contained in the application, the plans submitted therewith, the report of the Zoning Analyst thereon, the statements made at the public hearing on October 14, 2010, all of which are by reference made a part hereof, as well as knowledge of the property and surrounding district, I find that the five requirements and prerequisites for granting a variance as enumerated in Section 562 of the City Charter and Section 12.27-B,1 of the Municipal Code have not been established by the following facts:

BACKGROUND

The property is a slightly sloping, rectangular-shaped, interior record lot, consisting of 16,936 square feet, having a frontage of 115.67 feet on the east side of Centinela Avenue, and an even depth of 146.35 feet. The site is developed with a four-story, 21-unit condominium building originally constructed in 1985. There are three residential levels in the building. The ground level is partly subterranean and structured for parking. The property is located within the Palms-Mar Vista-Del Rey Planning Area.

The applicant is requesting a Zone Variance for an existing 27-inch building projection to exceed a 33-foot height limitation as defined by a [Q] condition established on March 26,

1989. The said building projection increases the building height above the roofline from 46.5 feet to 49 feet at the location of the projection for the subject Unit No. 303.

As summarized by the applicant's representative, Mr. James Repking of Cox Castle & Nicholson:

> *"The applicants, Marla Rubin and David Shapendonk, request a variance from the Q-conditions limiting the height of their condominium building located at 3544 South Centinela Avenue, Unit 303, Los Angeles CA 90066, APN 4248-025-073. The property is zoned [Q]R3-1. In an R3-1 zone, building height is limited to 45 feet. (Los Angeles Municipal Code "LAMC" § 12.21.1.) The Q-condition, which was added to the zone after the building was constructed, limits the height of buildings in the area to 33 feet. (Ordinance No. 164,475)."*
>
> *"In 2004, the applicants hired a licensed architect and contractor to construct a loft addition for their home. The Los Angeles Department of Building and Safety ("LADBS") issued the building permit (# 04014-30000-03731) for the loft on May 21, 2004. A copy of the application for a building permit and certificate of occupancy, and a Property Activity Report demonstrating that the Q-condition was cleared by LADBS, are attached as Exhibit 1."*
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> *"Four years after LADBS issued its approval and the loft was constructed, the issue of whether the loft addition violated the Q-conditions was raised. An Order to Comply was issued by LADBS on August 7, 2009, a copy of which is attached as Exhibit 2. On August 31, 2009, the City issued a Notice of Intent to Revoke Permit, attached as Exhibit 3."*
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> *"The loft and skylight were built with LADBS's approval and it has been in use for five years. If the 33-foot limit was strictly applied to this property, it would result in extreme difficulty and hardship for the applicants. First, the loft addition was completed many years ago and has been in continuous use since it was approved by the City. Moreover, it would be prohibitively expensive to remove the construction; the applicants estimate the cost of removal would be extremely significant and the loft cannot exist without the minor rooftop projection. Moreover, removal of the projection would require months of additional construction and would severely impair the value of the condominium."*
>
> *"As the applicants complied with all City requirements prior to constructing the loft, to now require them to remove the addition would cause them unnecessary and unwarranted hardship."*

With regard to the matter of special circumstances, the applicant adds the following:

> *"The City approved the loft addition in 2004, giving the applicants no reason to believe there was an issue regarding compliance with City codes and regulations. The applicants have used the loft for the past five years without incident."*
>
> *"Because the building was constructed in 1983, prior to the enactment of the 33-foot height limit, the building became a legal non-conforming structure which is*

grandfathered under the Zoning Code. (LAMC § 12.23(A).) As the loft is lower than the highest portion of the building, the loft does not expand the pre-existing non-conformity and, therefore, complies with the Zoning Code. (LAMC § 12.23(A)(2).) A photograph demonstrating the loft height is lower than the building parapets is attached as Exhibit 4. Therefore, the loft addition does not violate City codes and is a special circumstance justifying a variance."

With regard to practical difficulties or unnecessary hardships, the applicant adds further:

"Prior to construction of the loft, the applicants enlisted qualified architects and contractors to work with the City in order to obtain the appropriate approvals for the loft. The City cleared the Q-conditions and issued a building permit in May 2004, and the applicants have enjoyed the use of their property ever since. Through no fault of the applicants, the City later discovered and alleged the loft violated the Q-conditions. These special circumstances warrant a variance from the Q-conditions because it would be impractical and unjust to now require the applicants to remove the lawfully constructed loft."

"Moreover, as described above, the loft is grandfathered into the existing building's legal non-conformity with the Q-conditions. The condominium building is 51 feet at its highest point. However, the loft addition is a mere 27 inches above the roof and is 2 feet lower than the highest parapet on the building. Thus, because the loft does not increase the building height, it is grandfathered into the building's existing legal non-conformity with the Q-conditions height restrictions."

The rooftop has an existing parapet wall, exterior air conditioning and heating equipment, and other fixtures such as an enclosed stairwell entrance and chimney structure. The latter of which measurably exceeds the height of the protruding loft addition under consideration in this case. The color and texture of the loft's exterior walls matched the surrounding rooftop structures.

The Zoning Investigator has been informed, however, that the residents located in buildings situated on higher elevations in the surrounding area can see the loft and the roof-top skylight lit up, especially during the night. The Zoning Investigator did not visit the site during late evening hours to determine the extent of glare that the skylight indeed caused, or if there was any adverse visual impact at all.

There is a general concern by several neighbors that an approval of the zone variance will set a disturbing precedent and encourage others in the vicinity to request project proposals that would likewise exceed the existing 33-foot height limit. Several members of the local Neighborhood Council have received an indication that future requests to build higher than the 33-foot height limitation in direct violation of the existing [Q] condition are forthcoming. In particular, development proposals at the Mormon Temple, Mrs. Gooch's, and the old Fire House were specifically mentioned.

The surrounding properties along the east side of Centinela Avenue are zoned [Q]R3-1. Those along the west side are zoned [Q]RD1.5-1. Both sides are characterized by a mixture of one- and two-story multi-family dwellings as well as multi-story apartment

buildings. There is a relatively small commercial area zoned [Q]C1-1VL one-block north along Palms Boulevard, characterized by neighborhood-serving businesses.

Centinela Avenue, adjoining the property to the west, is a Major Highway Class II, with a variable width of 83 to 93 feet and improved with curb, gutter, and sidewalk on both sides.

The alleyway, adjoining the property to the rear, is a through alley and is improved with asphalt pavement and concrete gutter within a variable 15- to 17.5-foot dedication.

Previous zoning related actions on the site/in the area include:

Subject property:

Ordinance No. 164,475 - Effective March 26, 1989, the City Planning Commission approved the following [Q] Condition for the subject property.

"Northeast side of Centinela Avenue between Palms and Venice Boulevards and southwest side of Centinela Avenue between Palms and Venice Boulevards: No portion of any new building or structure associated with any multiple residential use of the subject properties in a residential or a commercial zone and located within 50 feet of a General Plan-designated R1 Zone shall exceed two stories or, 25 feet in height measured from the top of the roof or parapet to the natural surface of the ground vertically below the point of measurement. Any portion of a new building or structure associated with any multiple residential uses in a residential or a commercial zone located more than 50 feet from a General Plan-designated R1 Zone **shall not exceed 33 feet** as measured from the top of the roof or parapet to the natural surface of the ground vertically below the point of measure."

Order to Comply No. CM2009-2 – Effective August 10, 2009, the Department of Building and Safety issued a Substandard Order, Case No. CM2009-2, for the following violation:

"An inspection of the site on July 24, 2009 revealed that the loft addition (11' – 3" x 16' – 6") constructed under the Permit No. 04014-30000-03731 has been occupied without the authorization of a Certificate of Occupancy. In addition, the height of the loft addition exceeded the permitted height limit; which is stated on the plot plan – (NO HIGHER THAN THE EXISTING PARAPET). Further investigation also revealed that a skylight (8'-6" x 4'-6") was installed on the roof without the benefit of the permit, inspections, and approvals.

04014 30000 03731	Bldg-Addition	Intent to Revoke	09/02/2009	ADD LOFT (11.25'X16.5', 185.5 S.F.) to (E) CONDO (3-RD FLR, UNIT #303)
04014 30000 02832	Bldg-Addition	Application Submittal	04/01/2004	Add mezzanine in unit 303, elevate roof height over the proposed mezzanine.
00016 30000 08858	Bldg-Alter/Repair	Permit Finaled	08/03/2001	NONSTRUCTURAL INTERIOR REMODEL: RELOCATE PORTION OF NONBEARING PARTITION BET BED

00016 30000 17055	Bldg-Alter/Repair	Permit Finaled	10/20/2000	change out 1 window and door(same size and location)
05041 20000 00733	Electrical	Permit Finaled	01/14/2005	RELOCATE FIRE ALARM HORN IN UNIT
04041 30000 19503	Electrical	Permit Finaled	12/27/2004	Install new circuits & smoke detectors.

Surrounding properties:

Case Nos. CPC 87-0932 ZC/GPA and 88-0130 HD – On February 15, 1989, the City Council adopted Council-initiated changes of zone and height district for properties located along the northeast and southwest sides of Bundy Drive and Centinela Avenue between National Boulevard and Venice Boulevard. The commercial properties adjacent to the subject property along the southwest side of Centinela Avenue were re-zoned from C1-1VL to [Q]C1-1VL. Any residential use of those properties are limited to the density and Code requirements of the RD1.5 Zone, and any multiple residential use of those properties is limited to 33 feet in height.

Case No. CPC 87-0932(ZC)(GPA) – On March 16, 2007, the Planning and Land Use Management Committee adopted a resolution to restore the zoning of the rear portion of the property located at 3424 to 3428 Centinela Avenue.

The following was received to the file:

In support of the applicant's request:

- The property owners of Unit Nos. 102, 203, and 302 of 3544 Centinela, located on the subject site.
- Judy Felton [a home owner of 3544 Centinela, no unit number is indicated]
- A former owner of Unit No. 101 of 3544 Centinela.

In opposition to the applicant's request:

- The home owners/residents of Unit Nos. 206, 207, 306, 307 of 3544 Centinela, located on the subject site]
- The property owners/residents of
  3222 and 3228 Grand View Blvd
  3428 S. Centinela Ave, #3
  3440 S. Centinela Ave
  3444 S. Centinela Ave, #3
  12304 Dewey St
  12331 Stanwood Dr
  3550 and 3551 Ocean View Ave
  Cara Jaffee [no address indicated]
  Mary Ann Murphy [no address indicated]

Mr. & Mrs. A. N. Shafi [no address indicated]
Wayne J. Boehle and Mary C. Boehle [no address indicated]
Binod and Gyan Prasad [resident on Ocean View [No address]

- A total of 30 names of the property owners/residents in the area were submitted in opposition [No addresses]

The Mar Vista Community Council (MVCC) dated September 22, 2010 states the following:

> *"The Mar Vista Community Council, at its December 8th, 2009 regular Board meeting, considered and deliberated a motion to deny a variance for the project identified above. After listening to public testimony from all concerned parties, and thorough deliberation of the Board on the issue, the Board decided that because of the harshly conflicting statements by both sides of this issue, and because the MVCC had no way of adjudicating between these statements and determining the truth of the matter, the Board should table the motion. A motion to table the issue was made, and the vote was 7 ayes, 4 nays, and one abstention. Thus the motion was tabled, and the MVCC in effect chose not to get involved in the issue."*

At the public hearing, which was conducted by the Zoning Administrator on October 14, 2010, a letter from the Mar Vista Community Council dated October 12, 2010 was submitted stating the following:

> *"The Mar Vista Community Council of Directors, at its regular October 12th meeting, approved the following motion:*
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> *Although the MVCC has chosen not to take a position on ZONE VARIANCE CASE NO ZA2009-3395(ZV) CEQA NO. ENV 2009-3396-CE at 3544 Centinela Avenue, 90066, the Mar Vista Community Council strongly supports the maintenance of Ordinance 164475 and the Q conditions which established height and density limits along Centinela Avenue between Palms and Venice Boulevards."*

PUBLIC HEARING:

The public hearing was conducted on October 14, 2010 in the West Los Angeles Municipal building and was attended by the applicant, the applicant's representatives, residents/property owners of the subject condominium building, in which the subject loft is located and in the surrounding properties and the representatives of the Centinela Crest Homeowners' Association and the Mar Vista Community Council.

The applicant and the applicant's representative stated the following:

- The applicant purchased Unit No. 303 of the subject building in 2000.
- The loft was approved by the Centinela Crest Homeowners' Association.

- Ordinance No. 164,475 became effective in 1989 and a maximum height restriction of 33 feet has been imposed in the ordinance area, in which the subject site is located.
- The building permit for the subject loft was issued in 2004 and the applicable [Q] conditions of Ordinance No. 164,475 including the height limit of 33 feet were cleared for the building permit on May 12, 2004.
- A skylight is shown on the plans submitted for the permits.
- A lawsuit was filed by the Homeowners' Association against the applicant for the subject loft, but was settled on March 10, 2010.
- The existing 21-unit condominium building on-site was constructed in 1985 with a 46.5-foot building height when the maximum permitted height on the subject property was 45 feet. However, the building is 51 feet in height as measured to the top of highest structures on the roof by the current height measurement.
- The subject loft is 27 inches above the highest point of the existing roof [46.5 feet] resulting in a building height of 49 feet.
- The construction of the subject loft was complete and has been in use for five years by the applicant.
- The height limit of 33 feet required by the [Q] conditions became an issue when the applicant was in the process of applying for a Certificate of Occupancy.

Three speakers including a treasurer of the Centinela Crest Homeowners' Association testified in support of the applicant's request stating the following:

- The subject loft is not visible from outside and may increase the property value.
- A majority of the owners in the Homeowners' Association voted for settlement of the lawsuit filed for the subject loft as long as the loft is approved by the city in compliance with the code.
- The loft is minimally visible from the outside just as the other structures on the roof.
- The loft and light emanating from the sky light are visible from Unit No 307, which is diagonally located from the subject loft; but, the glare from the sky light is no more than the glare from windows of other units on site.
- A 6-inch sheet metal can be installed to block the light from the loft.
- The loft was completed in July, 2009 and the demolition of the loft will result in unnecessary hardship on the applicant.

Six speakers including a representative of the Mar Vista Community Council spoke in opposition to the subject application stating the following:

- The applicant cannot apply for a variance for the loft, which is located in the common area of the condominium building and is owned by all condominium owners in the building. The applicant does not have ownership of the common area. The loft is in violation of the CC&R's because the loft is located in a common area.
- The loft was approved by the Homeowners' Association when the applicant was serving as a member of the board resulting in a conflict of interest. In addition, the other owners/residents in the building were misled by the applicant by stating that the loft will be within his unit. The loft projecting into the roof and exceeding the adjacent roof parapet was not clearly explained.

- The loft is clearly visible from units in the building on-site, the easterly neighboring properties and the properties in the hillside located on higher elevation than the subject site.
- The skylight has a dimension of 8 feet by 4 feet resulting in overflow lighting to the neighboring units on site. [Photographs were submitted to the file].
- The loft is not structurally safe and creates maintenance problems on the roof.
- The lawsuit settlement was due to the financial burden to other property owners in the building that may be caused by litigation and was based on information that the loft is not permitted by the [Q] condition to begin with; therefore, will not be permitted by the City.
- The loft was not inspected for a Certificate of Occupancy; therefore, cannot be legally used/occupied. The applicant failed to apply for an inspection of the loft and has illegally occupied the loft without a Certificate of Occupancy.
- The loft will result in an increase in the property value of the applicant's unit, but will result in an increase in the maintenance responsibilities/costs to other owners in the building.
- Granting the applicant's request will set a precedent in the project area.
- The representative of the Mar Vista Community Council clarified that the Community Council voted not to take a position on the subject application as stated on a letter dated October 12, 2010; however, the Community Council strongly supports enforcement of the height limit of 33 feet as required by [Q] conditions.

After testimony was taken, the Zoning Administrator took the case under advisement for two weeks in order to allow the applicant to submit elevation plans of all directions showing the subject loft in relation to the location and the height of other roof structures and roof parapet on the subject property. The following was received:

- On October 28 and December 27, 2010, the applicant submitted elevation plans to the file; however, the plans do not show the subject loft in relation to the height and the location of other structures on the roof.
- On January 28, 2011, the applicant submitted plans showing the southwest elevation and the existing roof plan.
- A letter from the owner of Unit No. 307 in opposition to the subject loft.

MANDATED FINDINGS

In order for a variance to be granted, all five of the legally mandated findings delineated in City Charter Section 562 and Municipal Code Section 12.27 must be made in the affirmative. Following (highlighted) is a delineation of the findings and the application of the relevant facts of the case to same:

1. **The strict application of the provisions of the Zoning Ordinance would not result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the zoning regulations.**

   The subject property is improved with a 21-unit residential condominium building, which was constructed in 1985. There are three residential levels in the building.

The ground level is partly subterranean and is used for parking. The applicant states that the existing building is 51 feet in height as measured to the stairwell and 50 feet to the roof parapet and 49 feet to the subject loft.

On March 26, 1989, Ordinance No. 164,475 became effective limiting a building height on the subject property to a maximum of 33 feet; therefore, the existing building on site became legally permitted non-conforming in terms of height of the building.

The applicant requests a variance to allow a loft with a dimension of 18 feet by 16 feet 6 inches [measured on the roof] with a sky light installed on top of a loft in the applicant's unit resulting in an increase in height from 46 feet 6 inches to 49 feet at the location of the projection in lieu of 33 feet, which is the maximum height permitted by the [Q] condition of Ordinance No. 164,475. The applicant purchased Unit No. 303 in 2000. The building permit No. 04014-3000-03731 was issued for a loft on May 21, 2004. The permit clearance information shows that [Q] conditions were cleared for the building permit in error on May 12, 2004.

On August 7, 2009, an Order to Comply was issued by the Department of Building and Safety for the subject loft. The Order states the following:

> *"An inspection of the site referenced above on July 24, 2009, revealed that the loft addition (11'3" X 16'-6") constructed under the permit # 04014-3000-03731 has been occupied without the authorization of a Certificate of Occupancy. In addition, the height of the loft addition exceeded the permitted height limit; which is stated on the plot plan – (**NO HIGHER THAN EXIST'G. PARAPET**). Further investigation also revealed that a skylight (8'-6" X 4'-6") was installed on the roof without the benefit of the permit, inspections and approval ..."*

On August 31, 2009, the Department of Building and Safety issued a Notice of Intent to revoke the building permit for a loft addition. The authority to revoke a permit is contained in Los Angeles Municipal Code, Section 98.06060(a)2, which reads:

> *"The Department shall have the authority to revoke any permit, slight modification or determination whenever such action was granted in error or in violation of other provisions of the code and conditions are such that the action should not be allowed."*

The applicant states that "... *Four years after LADBS issued its approval and the loft was constructed, the issue of whether the loft addition violated the Q-conditions was raised ... The loft and skylight were built with LADBS's approval and it has been in use for five years. If the 33-foot limit was strictly applied to this property, ... it would be prohibitively expensive to remove the construction ... would cause them unnecessary and unwarranted hardship.*"

It appears that the building permit for the loft was issued in error. In addition, as indicated in the Order to Comply, the loft was not constructed as indicated on the building plans submitted for the building permit. Even though the subject application

is to allow over-in-height structure, elevation plans showing the height of the loft in relation to other structures on the roof were not submitted with the application. The plans submitted for the building permit states "*No higher than exist'ng parapet*" and the applicant states that "*the loft is behind the parapet and cannot be seen from virtually all vantage points in the surrounding area and within the interior courtyard of the condo building*". However, photographs submitted by other residents in the building at the hearing shows that the loft is higher than the existing roof parapet and is clearly visible to other units in the building.

In order to clarify the conflicting statements, the Zoning Administrator requested the applicant submit elevation plans showing the loft in relation to the heights of other structures on the roof. On December 27, 2010, the applicant submitted elevation plans, a roof plan, a site plan and a plot plan attachment submitted for the building permit No. 04014-30000-03731 for the subject loft. The applicant notes on the west elevation that "*Loft is behind this parapet*" indicating that the loft is lower than the height of the existing parapet. The plot plan submitted for the building permit [No. 04014-30000-03731] has a notation stating that "*(NO HIGHER THAN EXIST'G PARAPET)*". Even though the plot plans submitted to the subject file by the applicant appear to be the same plot plan, which was submitted for the building permit, such a notation for "*(NO HIGHER THAN EXIST'G PARAPET)*" has been taken out from the plot plans submitted to the subject file.

The loft was approved by the condo Homeowners' Association when the applicant was a board member of the Association. However, soon after the construction had started, the subject loft became a controversial issue for property owners resulting in a lawsuit filed by the condo Homeowners' Association against the applicant, which was settled due to the financial burden to continue the litigation. Even though the over-in-height issue exceeding the height limit required by [Q] conditions came up in 2007 and 2008 when the loft was presented to the Mar Vista Community Council, the applicant continued to complete the construction and failed to obtain an inspection by the Department of Building and Safety for a Certificate of Occupancy.

Contrary to the applicant's statement, the loft is higher than the existing roof parapet and is clearly visible from other units in the building. The roof plan and the southwest elevation plan submitted by the applicant on January 31, 2011 show that the subject loft is 9 feet 7 inches in height measured to the loft and 10 feet 11 inches measured to the skylight resulting in a total building height of 48 feet 6 inches, which is higher than the adjacent roof parapet.

The applicant contends that strict application of the provisions of the Zoning Ordinance would result in financial burden to the applicant resulting in practical difficulties and hardships. However, in the opinion of the Zoning Administrator, such difficulties and hardships are economic in nature and can be considered to be self-imposed by the applicant. Granting this variance would not only set a precedent in the area, but would also act as a special privilege that is not permitted to other dwelling units on the subject site and properties in the surrounding area.

It is noted that the previous owner of Unit #303 [the applicant's unit] had a loft in the unit that did not breach the roof, such that the loft cannot be seen by any other units in the building.

2. **There are no 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.**

The subject property is a record lot with essentially the same characteristics as other properties in the area. There is nothing that sets the site apart from other nearby sites. The lot size and width of the property are the same or similar to the other properties in the project block and in the surrounding area, a majority of which are improved primarily with single family and multi-family residential buildings. There are seven (7) dwelling units on each floor of the condo building for a total of 21 units on the subject site. However, there is nothing that sets the applicant's unit apart from other units in the building.

3. **Such variance is not 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 such special circumstances and practical difficulties or unnecessary hardships, is denied the property in question.**

The existing development in the vicinity of the project site is generally characterized by single- and multi-family dwellings. The other properties in the project block on both sides of Centinela Avenue between Woodgreen Street and Charnock Road are all improved with single- and multi-family dwellings, a majority of which are one- to two-story structures. The properties behind those dwelling units are zoned for an R1 Zone and are all improved with single-family dwelling units. There are no other units in the condo building or other properties in the [Q]R3-1 Zone in the area that were allowed to add additional building height to a non-conforming building, which already exceeds the height limit of 33 feet required by [Q] condition. Therefore, the applicant is not denied the preservation and enjoyment of a substantial property right or use generally possessed by other properties in the same zone and vicinity.

4. **The granting of such 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.**

While the applicant states that the loft projection cannot be seen from virtually all vantage points in the surrounding area and within the interior courtyard of the condo building, photographs submitted to the file show that the loft and skylight are clearly visible from other dwelling units on the site. The property owners/residents in the area also testified that the subject condo building is clearly visible from properties in the hillside area, which are located in higher elevation than the subject location resulting in adverse impacts on glare and aesthetics. The height of the existing condo building ranges from 46 feet 6 inches measured to the roof parapet to 51 feet to the stairwell as measured by the current height measurement, which is 40 to 55 percent higher than the current height limit of 33 feet.

A majority of other properties on the block are developed with one- or two-story residential structures, but the subject property is improved with a four-story [three levels for dwelling units and one level subterranean parking structure], which is the tallest building on the block. Granting the request will worsen the non-conforming status of the existing building height resulting in intensification of the development that is not compatible with other neighboring properties in the area. Therefore, the granting of such 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.

Several members of the local Neighborhood Council have received an indication that future requests to build higher than the 33-foot height limitation in direct violation of the existing [Q] condition are forthcoming. In particular, development proposals at the Mormon Temple, Mrs. Gooch's, and the old Fire House were specifically mentioned. Granting the request will set a precedent resulting in cumulative impacts to the surrounding area.

5. **The granting of the variance will adversely affect any element of the General Plan.**

The Palms-Mar Vista-Del Rey Community Plan Map designates the property for [Q]R3-1 "Medium Residential" land uses with the corresponding zones of R3 and R3(PV), and height limited to District No. 1. The property is located within the area of the Los Angeles Coastal Transportation Corridor and the West Los Angeles Transportation Improvement and Implementation Specific Plan.

The zone change Ordinance No. 164,475 was enacted with a [Q] condition that limits the building height to a maximum 33 feet in order to protect single-family dwellings for view, glare, privacy and other adverse impacts from the surrounding multi-family or commercial development in the area.

The existing building on site is 40 to 55 percent greater in height than is permitted on the property. Allowing structures that will add additional height to an existing non-conforming building will result in intensification of the development and adverse impacts to the surrounding properties. The zoning code is an implementing tool of the general plan and the subject loft will exceed the maximum height limit required by the code. A variance from the required code is permitted through a discretionary action when the required findings for an approval can be made. The required findings for a variance cannot be made in the affirmative as stated herein; therefore, the subject loft that exceeds the maximum height limited by the [Q] condition will adversely affect any element of the General Plan, which intends to protect single family dwellings and to promote orderly development.

ADDITIONAL MANDATORY FINDINGS

6. The National Flood Insurance Program rate maps, which are a part of the Flood Hazard Management Specific Plan adopted by the City Council by Ordinance No.

172,081, have been reviewed and it has been determined that this project is located in Zone C, areas of minimal flooding.

7. On October 20, 2009, the subject project was issued a Notice of Exemption (Subsection c, Section 2, Article II, City CEQA Guidelines), log reference ENV 2009-3396-CE, for a Categorical Exemption, Class 1, Category 1. Article III, Section 1, City CEQA Guidelines (Sections 15300-15333, State CEQA Guidelines). The potential impacts associated with the subject loft such as aesthetics, light and glare, and incompatible land use are not analyzed and no mitigation measures for such impacts are available or proposed. Therefore, the Notice of Exemption is not adopted herein.

APPEAL PERIOD - EFFECTIVE DATE

The Zoning Administrator's determination in this matter will become effective after MARCH 3, 2011, unless an appeal therefrom is filed with the City Planning Department. It is strongly advised that appeals be filed early during the appeal period and in person so that imperfections/incompleteness may be corrected before the appeal period expires. Any appeal must be filed on the prescribed forms, accompanied by the required fee, a copy of the Zoning Administrator's action, and received and receipted at a public office of the Department of City Planning on or before the above date or the appeal will not be accepted. **Forms are available on-line at http://planning.lacity.org**. Public offices are located at:

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

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

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

SUE CHANG
Associate Zoning Administrator
Direct Telephone No. (213) 978-3304

SC:lmc

cc: Councilmember Bill Rosendahl
Eleventh District
Adjoining Property Owners

WEST LOS ANGELES AREA PLANNING COMMISSION

200 N. Spring Street, Room 272, Los Angeles, California, 90012-4801, (213) 978-1300
www.lacity.org/PLN/index.htm

Determination Mailing Date: JUN 30 2011

Case No. ZA 2009-3395-ZV-1A
CEQA: ENV-2009-3396-CE

Location: 3544 South Centinela Avenue
Council District: 11
Plan Area: Palms-Mar Vista
Zone: [Q]R3-1
D.M.: 114B153
Legal Description: Lot 1, Tract 40133-C

Applicants/appellants: Marla Rubin & David Shapendonk
Representative: James Repking/K. Paradise, Cox Castle & Nicholson, LLP

At its meeting on **June 1, 2011**, the following action was taken by the West Los Angeles Area Planning Commission:

1. **Granted** the appeal.
2. **Overturned** the Zoning Administrator's decision and approved a Variance from a [Q] Condition established by Ordinance No. 164,475, limiting building height to 33 feet to permit a loft resulting in an increase in height from 46 feet 6 inches to 49 feet in conjunction with the legalization of a loft through the ceiling and roof of an existing condominium building on a lot in the [Q]R3-1 Zone.
3. **Adopted** the environmental clearance Categorical Exemption ENV-2009-3396-CE.
4. **Adopted** the attached revised Findings and Conditions of Approval.

This action was taken by the following vote:

Moved: Commissioner Donovan
Seconded: Commissioner Foster
Ayes: Commissioners Lee, Linnick, and Martinez

Vote: **5 - 0**

Effective Date:
Effective upon the mailing of this report.

Appeal Status:
Further appealable to City Council.

Rhonda Ketay

Rhonda Ketay, Commission Executive Assistant
West Los Angeles Area Planning Commission

Effective Date / Appeals: **The Commission's determination on the *Zone Variance* will be final 15 days from the mailing date of this determination unless an appeal is filed to the City Council within that time. All appeals shall be filed on forms provided at the Planning Department's Public Counters at 201 N. Figueroa Street, Fourth Floor, Los Angeles, or at 6262 Van Nuys Boulevard, Suite 251, Van Nuys.**

LAST DAY TO APPEAL JUL 15 2011

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

Attachment(s): Conditions of Approval and revised Findings

cc: Notification List
Sue Chang, Zoning Administrator

213-482-7077 (press 7)

CONDITIONS

[THE WEST LOS ANGELES AREA PLANNING COMMISSION MEETING ON JUNE 1, 2011]

1. All other use, height and area regulations of the Municipal Code and all other applicable government/regulatory agencies shall be strictly complied with in the development and use of the property, except as such regulations are herein specifically varied or required.

2. The use and development of the property shall be in substantial conformance with the plot plan, elevation plans and floor plans submitted with the application and stamp dated December 27, 2010 and January 28, 2011, and marked Exhibit "A".

3. The authorized use shall be conducted at all times with due regard for the character of the surrounding district, and the right is reserved to the Zoning Administrator to impose additional corrective Conditions, if, in the Administrator's opinion, such Conditions are proven necessary for the protection of persons in the neighborhood or occupants of adjacent property.

4. All graffiti on the site shall be removed or painted over to match the color of the surface to which it is applied within 24 hours of its occurrence.

5. A copy of the first page of this grant and all Conditions and/or any subsequent appeal of this grant and its resultant Conditions and/or letters of clarification shall be printed on the building plans submitted to the Zoning Administrator and the Department of Building and Safety for purposes of having a building permit issued.

6. The applicant shall defend, indemnify and hold harmless the City, its agents, officers, or employees from any claim, action, or proceeding against the City or its agents, officers, or employees to attack, set aside, void or annul this approval which action is brought within the applicable limitation period. The City shall promptly notify the applicant of any claim, action, or proceeding and the City shall cooperate fully in the defense. If the City fails to promptly notify the applicant of any claim action or proceeding, or if the City fails to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City.

7. The subject loft for Unit No. 303 shall be limited to the following:

a. The loft shall not exceed approximately 186 square feet of floor area with a dimension of 16 feet 6 inches by 11 feet 3 inches as shown on Exhibit "A".
b. The loft shall not result in cumulative height of 49 feet in height measured to the top of the sky light.
c. The loft shall be setback a minimum of 15 feet and 8 feet from the southerly and westerly edge of the roof, respectively.
d. The sky light on the loft shall not exceed a dimension of 4 feet and 8 feet in size.

8. The skylight shall not illuminate resulting in spillover lighting onto the residences in the building and in the surrounding properties at night. An internal shade or other system shall be installed in order to obscure illumination from the skylight at night. No other shade, fence or similar structures shall be added/installed on the roof in order to obscure lighting from the loft.

9. Under no circumstances shall the grant of this variance be used or relied on as precedent for other projects to exceed the height limits of the Q-condition or other requirements of the Zoning Code.

10. **Within 30 days of effective date of this action**, a covenant acknowledging and agreeing to comply with all the terms and conditions established herein shall be recorded in the County Recorder's Office. The agreement (standard master covenant and agreement form CP-6770) shall run with the land and shall be binding on any subsequent owners, heirs or assigns. The agreement with the conditions attached must be submitted to the Zoning Administrator for approval before being recorded. After recordation, a certified copy bearing the Recorder's number and date shall be provided to the Zoning Administrator for attachment to the subject case file.

FINDINGS

In order for a variance to be granted, all five of the legally mandated findings delineated in City Charter Section 562 must be made in the affirmative. Following (highlighted) is a delineation of the findings and the application of the relevant facts of the case to same:

1. **The strict application of the provisions of the Zoning Ordinance would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the zoning regulations.**

   The subject property is improved with a 21-unit residential condominium building, which was constructed in 1985. There are three residential levels in the building. Various rooftop structures exceed 45-feet in height, including a combined parapet wall and chimney facing Centinela Avenue, a roof access stairwell and an elevator shaft. The three top floor units facing Centinela Avenue have a double height ceiling in the living room, with stepped raised roofline projections.

   On March 26, 1989, Ordinance No. 164,475 became effective, which states "[n]o portion of any new building or structure associated with any multiple residential use of the subject properties in a residential or commercial zone . . . shall exceed two stories or 33 feet as measured from the top of the roof or parapet to the natural surface of the ground vertically below the point of measurement." Therefore, the existing building on site became legally permitted non-conforming in terms of the height of the building.

   On April 29, 2004, the applicants applied to the Department of Building and Safety for a building permit to construct a loft/home office that would entail raising the existing projection on the roof three feet. The Plot Plan submitted with the building permits contains a notation which states, "Raise Roof 3'-0." Ultimately, in response to the wishes of another resident in the building, the additional projection was reduced to 27 inches.

   The Department of Building and Safety Property Activity report for the Property states that the Q-condition was cleared on May 12, 2004, the building permit for the loft was approved on May 21, 2004, and the final inspection of the loft occurred on January 26, 2005. The report contains the notation "OK to Issue C of O."

The evidence in the record demonstrates that the applicants did not mislead the Department of Building and Safety when it issued the permit. Sia Poursabahian, Senior Structural Engineer at the Department of Building and Safety clarified in correspondence dated May 27, 2011 that "I conclude that the applicant DID NOT mislead LADBS in issuing the permit." He also stated, "[a]pplicant has built the loft addition per the approved set of plans by LADBS."

Prior to the construction of the loft, the applicants received approval from the Centinela Crest Homeowner's Association. Selected homeowners within the Association contested the loft twice, with each controversy resolved in a Settlement Agreement.

Four years after the Department of Building and Safety issued the building permits and the loft was constructed, the issue of whether the loft addition violated the Q-conditions was raised. The Department of Building and Safety issued an Order to Comply on August 7, 2009 and a Notice of Intent to Revoke Permit on August 31, 2009. The August 31, 2009 letter directed the applicants to "obtain the appropriate approval from the Department of City Planning for the building over-height-issue." On October 8, 2009, the Department of City Planning instructed the applicants to file for a variance.

The strict application of the 33-foot height limitation would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the zoning regulations. The applicants applied for and received a building permit from the Department of Building and Safety and the loft received a final inspection. The applicants have used the loft since it was constructed in 2005.

The applicants stated that removal of the loft would be prohibitively expensive and they have spent over $250,000 in construction costs, consultant costs, legal fees, and City permit fees. The removal of the loft would require months of additional construction and would severely impair the value of the condominium. This additional construction would adversely affect the applicants and other residents of the condominium building.

As the applicants complied with all City requirements prior to constructing the loft, requiring them now to remove the addition would cause unnecessary and unwarranted hardship. These hardships are not self-imposed because the loft was built in accordance with the approved set of plans and applicants did not mislead the Department of Building and

Safety.

2. **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.**

The existing building is legal non-conforming as to height. Various rooftop structures exceed 45-feet in height, including a combined parapet wall and chimney facing Centinela Avenue, a roof access stairwell and an elevator shaft. The three top floor units facing Centinela Avenue have a double height ceiling in the living room, with stepped raised roofline projections. The loft projection is lower than the tallest structure on the roof.

The parapet wall and chimney facing Centinela Avenue shield the loft projection from the street. The Staff Investigator Report, dated October 8, 2010, states that the loft is "barely noticeable" and "barely visible." While the loft can be seen from some vantage points, the same can be said of other rooftop structures such as the stairwell/elevator shaft.

The Department of Building and Safety issued a building permit for the loft in 2004 and the loft received final inspection in 2005. The applicants did not mislead the Department and the loft was built in accordance with the approved plans. The loft has been occupied by the applicants since it was constructed.

The legal non-conformity of the entire building, the approval of the loft by the Department of Building and Safety and the fact that the loft is minimally visible are special circumstances which support the variance grant. These special circumstances described above do not apply to other properties in the same zone and vicinity.

3. **Such 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 such special circumstances and practical difficulties or unnecessary hardships, is denied the property in question.**

The variance is necessary for the preservation and enjoyment of a substantial property right. The loft has been occupied by the applicants since it was constructed in 2005. The Department of Building and Safety issued a permit for the loft in 2004 and the loft received final inspection in 2005. The applicants did not mislead the Department; the loft was built in accordance with the approved plans.

Removal of the loft would substantially impair the applicant's property rights and create an extreme hardship. The applicants stated that they have spent over $250,000 in construction costs, consultant costs, legal fees, and City permit fees. The removal of the loft would require months of additional construction and would severely impair the value of the condominium. This is an unusual hardship which has not been imposed on other properties in the same zone and vicinity.

Granting the variance would act as a special privilege not afforded to others in the area. The surrounding area is developed with multi-family apartment buildings. On this block Centinela Avenue and just north of the building are three three-story apartment or condo buildings with subterranean garages. One of those buildings has at least three stories and one is stepped higher into the hill. There are also at least eighteen two-story apartment buildings on the block.

The applicants are not requesting that a special privilege be conferred, but are requesting that the city honor the permits it granted seven years ago for construction that has already been permitted and approved.

4. **The granting of such 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 loft projection is not 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 only potential impact from the loft is aesthetics and views. The color and texture of the lofts exterior walls is consistent with surrounding rooftop structures. While the loft can be seen from some vantage points, the same can be said of other rooftop structures. The parapet wall and chimney facing Centinela Avenue buffer the loft projection from the street.

Concerns have been raised regarding nighttime glare from the skylight. A condition is required to install an internal shade or other system which will obscure illumination from the skylight at night.

The Mar Vista Community Council and others raised concerns that the variance could create a precedent for allowing variances for larger projects in the area. However, this variance is granted based on the special circumstances and unusual hardships of this case. This variance

is conditioned that, under no circumstances shall the grant of this variance be used or relied on as precedent for other projects to exceed the height limits of the Q-Condition or other requirements of the Zoning Code.

There are no detrimental impacts to the public welfare or nearby property owners and, as such, the granting of a variance will not negatively affect properties in the vicinity.

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

The Palms-Mar Vista-Del Rey Community Plan Map designates the property for [Q]R3-1 "Medium Residential" land uses with the corresponding zones of R3 and R3(PV), and height limited to District No. 1. [Q] condition requires a maximum height of 33 feet on the project site. The property is located within the area of the Los Angeles Coastal Transportation Corridor and the West Los Angeles Transportation Improvement and Implementation Specific Plan. The application is not affected.

The use of this property is not changed by the loft addition. This loft addition does not increase the density of the building or the community. The Plan does not have any policies which conflict with the loft projection. The plan intends to promote stable residential neighborhoods and public safety. The conditions imposed will ensure that the residential neighborhoods will be protected and preserved in conformance with the intent and purpose of the General Plan. It is noted that the Palms-Mar Vista-Del Rey Community Plan does not specifically address variance.

ADDITIONAL MANDATORY FINDINGS

6. The National Flood Insurance Program rate maps, which are a part of the Flood Hazard Management Specific Plan adopted by the City Council by Ordinance No. 172,081, have been reviewed and it has been determined that the property is located in Zone C, areas of minimal flooding.

7. On October 20, 2009, the project was issued a Notice of Exemption (Article III, Section 3, City CEQA Guidelines), log reference ENV 2009-3396-CE, for a Categorical Exemption, Class 1, Category 1, City CEQA Guidelines, Article VII, Section 1; State EIR Guidelines, Section 15100.

Centinela Ave UNIT # 303 | Permit Application #: 04014 - 30000 - 03731

.dg-Addition
Apartment
Plan Check Submittal

City of Los Angeles - Department of Building and Safety

PLOT PLAN ATTACHMENT

Plan Check #: APC
Initiating Office: WEST LA
Printed on: 05/04/04 12:49:00

PL 115.67'
REAR YARD
6'
22'
37'
8'
WALKWAY ABV.
14'
OPEN COURTYARD
SKYLIGHT
LEAK
DOME
SIDE YARD
ELEV. STAIRWELL
16'
49'
116.55'
PL. 146.96'
PARAPET
PARAPET
UNIT 303
16.5'
16'
SIDE YARD
PL. 146.55'
ADD 11'3"x16'-6" INT. MEZZ. AND RAISE ROOF 3'-0" AREA 16'-6"x 11'0"
18'
(10 HIGHER THAN EXIST'G. PARAPET)
97.67'
12'
6'
8'
FRONT YARD
15'
SIDEWALK
10'
PL. 115.67'
7'
43' To ℄ OF ROAD

(DO NOT DRAW, WRITE, OR PASTE ATTACHMENTS OUTSIDE BORDER)

3544 CENTINELA AVE, L.A.
LOT 1, TRACT 40133 MB, 1045, Pg 62-63
MICHAEL J. KENT, INC. 2801 O.P. BLVD #314
SANTA MONICA, CA 90405

NORTH

COUNCIL DISTRICT: 11

PLOT PLAN ATTACHMENT

APPENDIX B

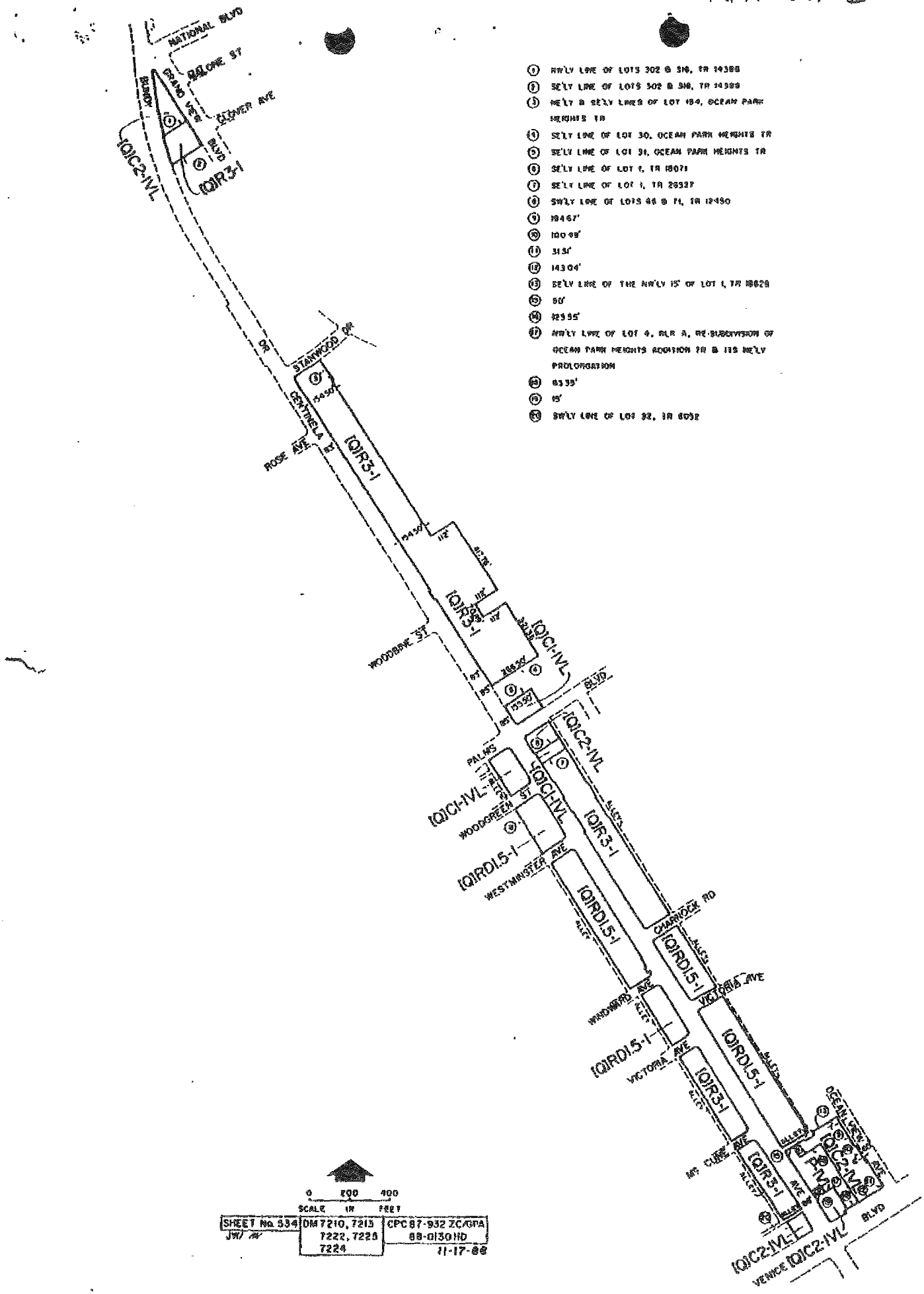
ORDINANCE NO. 164475

An ordinance amending Section 12.04 of the Los Angeles Municipal Code by amending the zoning map.

THE PEOPLE OF THE CITY OF LOS ANGELES DO ORDAIN AS FOLLOWS:

Section 1. Section 12.04 of the Los Angeles Municipal Code is hereby amended by changing the zones and zone boundaries shown upon a portion of the zone map attached thereto and made a part of Article 2, Chapter 1, of the Los Angeles Municipal Code, so that such portion of the zoning map shall be as follows:

APPENDIX B



① NW'LY LINE OF LOTS 302 & 316, TR 14388
② SE'LY LINE OF LOTS 302 & 316, TR 14388
③ NE'LY & SE'LY LINES OF LOT 484, OCEAN PARK HEIGHTS TR
④ SE'LY LINE OF LOT 30, OCEAN PARK HEIGHTS TR
⑤ SE'LY LINE OF LOT 31, OCEAN PARK HEIGHTS TR
⑥ SE'LY LINE OF LOT 1, TR 18071
⑦ SE'LY LINE OF LOT 1, TR 28327
⑧ SW'LY LINE OF LOTS 46 & PT, TR 12480
⑨ 19467'
⑩ 100.99'
⑪ 315'
⑫ 143.04'
⑬ SE'LY LINE OF THE NW'LY 15' OF LOT 1, TR 18628
⑭ 50'
⑮ 123.95'
⑯ NW'LY LINE OF LOT 4, BLK A, RE-SUBDIVISION OF OCEAN PARK HEIGHTS ADDITION TR & ITS NE'LY PROLONGATION
⑰ 63.39'
⑱ 15'
⑲ SW'LY LINE OF LOT 32, TR 6052

Sec. 2. Pursuant to Section 12.32-K of the Los Angeles Municipal Code the following limitations are hereby imposed upon the use of that property shown in Section 1 hereof which is subject to the Permanent "Q" Qualified classification.

1. Covenant. Prior to the issuance of any permits relative to this matter, an agreement concerning all the information contained in these conditions shall be recorded by the property owner in the County Recorder's Office. The agreement shall run with the land and shall be binding on any subsequent owners, heirs or assigns. Further, the agreement must be submitted to the Planning Department for approval before being recorded. After recordation, a certified copy bearing the Recorder's number and date must be given to the City Planning Department for attachment to the subject file.

2. Density and use of commercially zoned properties.

   a. Southwest side of Centinela Avenue, between Woodgreen Avenue and Palms Boulevard: Any residential use of a commercially zoned property shall be limited to the density and Municipal Code regulations of the RD1.5 Zone, except as modified by the conditions of this ordinance.

   b. Southwest side of Centinela Boulevard between Venice Boulevard and McCune Avenue: Any residential use of a commercially zoned property shall be limited to the density and Municipal Code regulations of the R3 Zone, except as modified by the conditions of this ordinance.

   c. Northeast side of Centinela Avenue and Bundy Drive between National Boulevard and Charnock Road: Any residential use of a commercially zoned property shall be limited to the density and Municipal Code regulations of the R3 Zone, except as modified by the conditions of this ordinance.

   d. Northeast side of Centinela Avenue between Victoria Avenue and Venice Boulevard, including subject properties which front on Venice Boulevard: Any residential use of a commercially zoned property shall be limited to the density and Municipal Code regulations of the RD1.5 Zone, except as modified by the conditions of this ordinance.

3. Density of R3 Zone properties located on the northeast side of Centinela Avenue and Bundy Drive: There shall be at least 1,000 square feet of lot area for each dwelling unit.

4. Height.

   a. Northeast side of Centinela Avenue between Palms and Venice Boulevards and southwest side of Centinela Avenue between Palms and Venice Boulevards: No portion of any new building or structure associated with any multiple residential use of the subject properties in a residential or a commercial zone and located within 50 feet of a General Plan-designated R1 Zone shall exceed two stories or 25 feet in height measured from the top of the roof or parapet to the natural surface of the ground vertically below the point of measurement. Any portion of a new building or structure associated with any multiple residential use in a residential or a commercial zone located more than 50 feet from a General Plan-designated R1 Zone shall not exceed 33 feet as measured from the top of the roof or parapet to the natural surface of the ground vertically below the point of measure.

   b. Northeast side of Centinela Avenue north of Palms Boulevard: No portion of any new building or structure associated with any multiple residential use of the subject properties in a residential or a commercial zone and located within 50 feet of a General Plan-designated R1 Zone shall exceed two stories or 33 feet as measured from the top of the roof or parapet to the natural surface of the ground vertically below the point of measurement.

   c. There shall be no exceptions to these height limits (Section 12.21.1).

   d. Any structures on the roof, such as air conditioning units and other equipment shall be fully screened from view of any nearby single family residential properties.

5. Lighting. All lighting shall be directed onto the site and no floodlighting shall be located so as to be seen directly by the adjacent residential areas. This condition shall not preclude the installation of low-level security lighting.

6. Parking - Residential (Guest). Any multiple residential use of the subject property shall provide for resident parking on the subject property as required by Municipal Code Section 12.21-A.4, or any amendment thereto, and guest parking at a ratio of at least ONE-HALF space per dwelling unit in excess of that required by the Municipal Code. Guest parking shall be clearly identified and readily accessible to guests of the project.

   a. Tandem parking may be used only for the spaces which are assigned and designated for a single residential unit.

APPENDIX B

Sec. 3. The City Clerk shall certify to the passage of this ordinance and cause the same to be published in some daily newspaper printed and published in the City of Los Angeles.

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles, at its meeting of FEB 15 1989

ELIAS MARTINEZ, City Clerk,

By Edward W Ashman
Deputy.

Approved FEB 16 1989

Tom Bradley
Mayor.

Approved as to Form and Legality

JAMES K. HAHN, City Attorney,

By
Deputy.

Pursuant to Sec. 97.8 of the City Charter, disapproval of this ordinance recommended for the City Planning Commission

DEC 16 1988

See attached report

Kenneth C Topping
Director of Planning

File No. 88-1474

LAJ 365177 2/24

City Clerk Form 23

DETERMINATION OF THE ZONING "HEIGHT OF A BUILDING OR STRUCTURE"

The City of Los Angeles has many layers of regulation related to the permissible height of buildings and structures. The regulations may depend on the location of a project, the type of project, slope of the lot or proximity to residential zones. This bulletin provides the general approach that should be used in determining the permissible height of a building or structure as well as how to correctly establish what the height of a building or structure is. A complete set of all regulations on this subject is not feasible in one document. A careful review of the regulations must be done once the site and the type of project is known.

I. General Approach to Establishing the Height of a Building or Structure

a. Obtain a topographic map (not a cross-section or building elevation), signed by a licensed Civil Engineer or Licensed Surveyor, with the building or the structure outlined. The use of a topographic map will result in the most accurate determination of the height. An example showing a correct and an incorrect method of establishing height is on page three.

b. Determine the "Grade"or "Adjacent Ground Elevation" which is defined as follows:

Grade (Adjacent Ground Elevation) -- is the lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the building and the property line, or when the property line is more than 5 feet from the building, between the building and a line 5 feet from the building. This definition does not apply to any building or structure located within the Hillside Ordinance area or in Specific Plan areas such as Century City North, Century City South and others.

c. Locate the highest point of elevation of the building or structure (including all roof structures such as chimneys, stairway towers, etc.). See item (e) of Section 2 (Special Provisions) below regarding allowable projections for roof structures such as fireplaces, antennas, etc. Allowable projections need not be included in the height calculation.

d. The vertical distance between the "Grade" and the "highest point of elevation," as described in steps b and c above is the "height of the building or structure." Note that the Zoning Code definition differs from the Building Code definition and each must be applied independently for the corresponding code section under consideration.

II. Special Provisions / Exceptions

Following are some exceptions and special provisions that apply to commonly occurring situations. Since this is not a comprehensive list, consult with a plan check engineer at any of our public information counters for job specific applications.

a. For projects subject to Hillside Ordinance, "Grade" is defined as lower of the natural or finished grade. When a project is located in any special area (e.g., Specific Plan, Pedestrian Overlay District, Community Design Overlay District, etc.), the "Grade" definition, the height limitation, exceptions, etc. (if different from the general Code) must be applied appropriately as required by its applicable ordinance. It is always advisable to review the Specific Plans. Some Specific Plans establish height limits in reference to sea level, curb level, street level, or other points of reference.

b. If grading is (was) done in conjunction with a Subdivision of five acres or more, then the resulting grade would be considered the "Natural Grade" .

c. Retaining walls cannot be used to raise the "Grade" and increase the allowable height of the structure.

d. If the difference between the highest and the lowest grade elevation around the perimeter of the building exceeds 20 vertical feet, then the allowable height may be increased by 12 feet (provided the original height limit is not exceeded at any given "section" or "plumb line" of any part of the building). This exception is not allowed for buildings that are subject to the Hillside Ordinance.

e. Certain roof top features & structures (e.g., antennas, chimneys, stairway towers, elevator tower, etc.) are allowed to exceed the height limit as follows:

... may be erected above the height limit specified in the district in which the property is located if, for each foot such structure exceeds the height limit, an equal setback from the roof perimeter is provided, except that stairways, chimneys and ventilation shafts shall not be required to be set back from the roof perimeter. No portion of any roof structure as provided for above shall exceed the specified height limit by more than five feet, except that where height is limited to seventy-five (75) feet, roof structures for the housing of elevators and stairways shall not exceed twenty (20) feet in height, and where height is limited to thirty (30) feet or forty-five (45) feet, such roof structures for the housing of elevators and stairways shall not exceed ten (10) feet in height. Other than stairways, chimneys or exhaust ducts, these structures shall not be located within five (5) feet of the perimeter of the roof. Note: Refer to Sec. 12.21A17(c)3 of the Code for a different set of exceptions for projects subject to the Hillside Ordinance.

f. Depressed driveways intended for access from the street to a basement garage and secondary side or rear access stairwells are not used to establish the "Grade." This interpretation does not apply to any buildings or structures located within the boundaries of Specific Plans which specifically address height measurement or buildings regulated by the Hillside Ordinance.

g. Architectural projections which cantilever 5 feet or less from an exterior wall of a building are not included as part of definition of the "perimeter of the building" when calculating height.

h. Open rooftop guardrails on apartment buildings are not included in the height of a building when such guardrails are provided around the open space required by code.

THE PLANNER'S TRAINING SERIES:

The Variance

Governor's Office of Planning and Research
1400 Tenth Street • Sacramento, CA 95814 • 916-445-0613

July 1997

This document is one in a series prepared by the Office of Planning and Research (OPR) on topics of general interest to planners. As with the rest of this series, its primary purpose is to provide both a reference for experienced planners and training materials for new planners, planning commissioners, and zoning board members. Citations are made to pertinent sections of the California statutes and to court decisions in order to provide the reader the opportunity to do additional research on their own. Unless otherwise noted, all statutory references are to the California Government Code.

- What is a Variance?
- Enabling Legislation
- Procedure
  - Public Hearing
  - California Environmental Quality Act
  - Permit Streamlining Act
- Limitations on the Common Variances
- Other Types of Variances
  - Parking Variance
  - Open-Space Variance
  - "Granny" Unit Variance
- Variance Findings
- Conditions of Approval
- Examples
  - Cases Upholding Variance Approvals
  - Cases Overturning Variance Approvals
- Variance Checklist
- Bibliography

WHAT IS A VARIANCE?

Simply put, a variance is a limited exception to the usual requirements of local zoning. As the following discussion will explain, when a city or county is confronted with development on an unusual piece of property, the variance procedure can lend some flexibility to the usual standards of the zoning ordinance. Approval of a variance allows the property owner "to use his property in a manner basically consistent with the established regulations with such minor variations as will place him in parity with other property owners in the same zone" (*Longtin's California Land Use*, 2nd edition).

TOP

ENABLING LEGISLATION

State law specifies the basic rules under which counties and general law cities may consider variance proposals. Charter cities are not subject to these procedures unless they have incorporated them into their municipal ordinance. The following discussion will take a detailed look at the state law relating to variances in counties and general law cities.

The authority to consider variances is as follows:

"Variances from the terms of the zoning ordinances shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification."

"Any variance granted shall be subject to such conditions as will assure 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."

"A variance shall not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property. The provisions of this section shall not apply to conditional use permits." (Section 65906)

Later in this paper, we will take a brief look at three other variance statutes. Section 65906.5 authorizes the grant of a variance from the parking requirements of a zoning ordinance in order to allow parking to occur off-site or for in-lieu fees to be paid. Section 65911 authorizes the granting of variances in open space zones. Section 65852.1 provides that a variance may be approved allowing a second dwelling unit on property zoned for single-family residential use if the occupant is 62 years or older.

TOP

PROCEDURE

Approval of a variance is an administrative act. Unlike a rezoning or an amendment to a general plan, consideration of a variance does not involve the establishment of new codes, regulations, or policies, but rather applies the provisions of the zoning ordinance to a particular circumstance. State law provides that the city council or county board of supervisors may delegate responsibility for considering and deciding variance requests. Commonly, responsibility is delegated to a board of zoning adjustment or a zoning administrator.

Public Hearing

Section 65905 requires the city or county to hold a public hearing on proposed variances. Ten-days advance notice of the hearing must be published in a newspaper of general circulation in the community and mailed directly to the applicant and land owner, as well as to owners of properties located within 300 feet of the site boundaries (Section 65091 provides detailed requirements). Nearby property owners must be provided notice even if their property is located outside the jurisdiction's boundaries (*Scott v. Indian Wells* (1972) 6 Cal.3d 541). The hearing must comply with the open meeting requirements set out in the Ralph M. Brown Open Meeting Act (Section 54950, et seq.).

The notice of hearing must include a description of the proposal and the variance process, the location of the property involved, the identity of the hearing body or administrator, and the date, time, and place of the public hearing (Section 65094). The notice must also specify whether the proposal has been determined to be categorically exempt or if a negative declaration or environmental impact report has been prepared. As much as possible, the hearing notice should be written in plain language and avoid planning jargon.

The purpose of the hearing is for the zoning board or zoning administrator to hear and consider the opinions of the proponent and nearby property owners. At the conclusion of the hearing, the board or administrator will decide whether or not to approve the variance. If the variance is approved, the board or administrator will adopt findings to support their action. Their decision, whether for approval or denial, can be appealed to a higher body (the planning commission, for example) in accordance with the city or county zoning ordinance.

Section 65901 allows the city council or county board of supervisors to specifically authorize its board of zoning adjustment or zoning administrator to decide variance applications without a public hearing. The local zoning ordinance must set out the particular types of variances subject to this rule, as well as the maximum extent of variation from standards which may be allowed. Notwithstanding the cavalier approach of Section 65901, the Office of Planning and Research recommends providing the applicant and neighboring property owners at least the opportunity to request a public hearing on any variance proposal which may affect their property rights. For example, the city may mail notice indicating that no hearing will be held unless specifically requested. This recognizes the due process guarantee of the U.S. Constitution and complies with the holding of the California Supreme Court in *Horn v. County of Ventura* (1979) 24 C.3d 605.

California Environmental Quality Act

Variances are subject to the California Environmental Quality Act (CEQA, Public Resources Code Section 21000, et seq.). Prior to the public hearing on the proposed variance, the city or county must evaluate the proposal to determine whether or not it may have a significant adverse effect on the environment. In most cases, a variance is sufficiently innocuous to be categorically exempt from environmental review (see Section 15305 of the state *CEQA Guidelines*). Where the proposal is not exempt, the city or county must prepare either a negative declaration indicating that the variance is not exempt, but nonetheless will have no significant effect, or an environmental impact report which describes the expected impacts of the proposal and the means to avoid or

lessen those impacts.

Permit Streamlining Act

Variance proceedings are subject to the Permit Streamlining Act (Section 65920, et seq.). Accordingly, a variance proposal for which a negative declaration was adopted or a CEQA exemption used must be acted upon within three months of that action. If an Environmental Impact Report (EIR) was certified for the variance, the application must be acted upon within 6 months of that certification. Further, a variance cannot be disapproved solely to comply with these deadlines.

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LIMITATIONS ON THE COMMON VARIANCES

Pursuant to Section 65906, a variance may be granted when:

(1) there are specific physical circumstances that distinguish the project site from its surroundings; and

(2) these unique circumstances would create an unnecessary hardship for the applicant if the usual zoning standards were imposed.

Variances are limited to those situations where the peculiar physical characteristics of a site make it difficult to develop under standard regulations. A variance is granted in order to bring the disadvantaged property up to the level of use enjoyed by nearby properties in the same zone. For instance, where the steep rear portion of a residential lot makes the site otherwise undevelopable, a variance might be approved to reduce the front yard setback and thereby create sufficient room for a home on the lot. Similarly, a parcel's shape might preclude construction of a garage unless side yard setback requirements are reduced by approval of a variance.

Review of a proposed variance must be limited solely to the physical circumstances of the property. "The standard of hardship with regard to applications for variances relates to the property, not to the person who owns it" (*California Zoning Practice*, Hagman, et al.). Financial hardship, community benefit, or the worthiness of the project are not considerations in determining whether to approve a variance (*Orinda Association v. Board of Supervisors* (1986) 182 Cal.App.3d 1145). As *California Zoning Practice* succinctly explains, "[t]he test of bringing property to parity is based on equality of the property rather than equality of the owners." (emphasis added)

Furthermore, consideration of a variance must focus upon the zoning standard or standards from which an exception is being requested. "[A] variance applicant may not earn immunity from one code provision merely by overcompliance with others. Otherwise, the board charged with reviewing development proposals 'would then be empowered to decide which code provisions to enforce in any given case; that power does not properly repose in any administrative tribunal' (*Broadway, Laguna Assn. v. Board of Permit Appeals* (1967) 66 Cal.2d 767)." (*Orinda Association v. Board of Supervisors*, supra).

Variances are only for use in unusual, individual circumstances. There is no basis for granting a variance if the

circumstances of the project site cannot be distinguished from those on surrounding lots. For example, all things being equal, in a subdivision where lots are uniformly 40 feet wide, there is no basis for allowing one lot to be developed with reduced side yard setbacks.

Conditions must be imposed on a variance when necessary to avoid granting the applicant a special privilege. As will be discussed later, these conditions must be reasonably related to the development being authorized.

A variance does not change the zoning of the project site, so it cannot permit uses other than those already allowed under existing zoning. Section 65906 prohibits the approval of "use variances." Nor is a variance intended to be used in place of design review standards. The law does not intend that every or even one-quarter of the properties on a block be granted the same kind of variance. If development within a particular area is commonly leading to requests for consideration of variances, then the city or county should reassess the standards of the applicable zone and, if necessary, change them.

At the same time, the approval or denial of a variance does not create a precedent for subsequent variance requests. Because each variance is based upon special circumstances relating to the site for which it is proposed, the past grant or denial of variances for other properties in the area does not mandate similar action on the part of the hearing body (*Miller v. Board of Supervisors of Santa Barbara County* (1981) 122 Cal.App.3d 539).

The applicant for a variance bears the burden of proving that special circumstances exist to justify its granting (*PMI Mortgage Ins. Co. v. City of Pacific Grove* (1982) 128 Cal.App.3d 724). The hearing body must not approve a variance unless it can make written findings, supported by substantial evidence in the record, that the variance meets the criteria of Section 65906.

A variance runs with the land. Subsequent owners of the land continue to enjoy the variance. The original land owner cannot transfer the variance to another site, nor can the local agency approve a variance on the condition that it remain owned by a particular person (*Cohn v. County Board of Supervisors* (1955) 135 Cal.App.2d 180).

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OTHER TYPES OF VARIANCES

State law also allows variances to required parking regulations, to open space zoning, and for "granny" units. Each of the following statutes has its own findings requirements, some of which differ from those of Section 65906. In all cases, public notice and hearing must be provided pursuant to Section 65905.

Parking variance (Section 65906.5):

"Notwithstanding section 65906, a variance may be granted from the parking requirements of a zoning ordinance in order that some or all of the required parking spaces be located offsite, including locations in other local jurisdictions, or that in-lieu fees or facilities be provided instead of the required parking spaces, if both the following conditions are met:

(a) The variance will be an incentive to, and a benefit for, the nonresidential development.

(b) The variance will facilitate access to the nonresidential development by patrons of public transit facilities, particularly guideway facilities."

Section 65906.5 authorizes variances to the non-residential (i.e., commercial, industrial, recreational, etc.), on-site parking requirements contained in a local zoning ordinance. Such a variance may authorize locating required parking spaces off site. It may also authorize the landowner to provide in-lieu fees or facilities instead of required parking spaces. It does not authorize reducing the number of required spaces unless in-lieu fees or facilities are provided.

The local agency must adopt findings describing the incentive and benefit being provided to the non-residential use. These findings must also describe how the variance will facilitate access to the development by riders of public transit.

Open-Space variance (Section 65911):

"Variances from the terms of open-space zoning ordinance shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.

"Any variance granted shall be subject to such conditions as will assure 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 the property is situated. This section shall be literally and strictly interpreted and enforced so as to protect the interest of the public in the orderly growth and development of cities and counties and in the preservation and conservation of open-space lands."

This statute is nearly identical to Section 65906 and is subject to basically the same findings requirements. Its purpose is to clarify that variances may be granted to the terms of open-space zoning provided that the provisions of that zoning are not compromised.

"Granny" unit variance (Section 65852.1):

"Notwithstanding section 65906, any city, including a charter city, county, or city and county may issue a zoning variance, special use permit, or conditional use permit for a dwelling unit to be constructed, or which is attached to or detached from, a primary residence on a parcel zoned for a single-family residence, if the dwelling unit is intended for the sole occupancy of one adult or two adult persons who are 62 years of age or over, and the area of floor space of the attached dwelling unit does not exceed 30 percent of the existing living area or the area of the floor space of the detached dwelling unit does not exceed 1200 square feet."

Section 65852.1 allows a variance to be used like a conditional use permit in order to allow construction of an accessory dwelling for elderly residents. Prior to approval of a variance under Section 65852.1 the city or county must find that the resident or residents meet the age criteria, and that the floor area of the proposed unit does not exceed that allowed by the statute. The findings required for a common variance under Section 65906 do not apply.

In contrast to Section 65906, the granny unit statute applies both to charter and general law cities and specifically

authorizes the granting of a "use" variance.

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VARIANCE FINDINGS

When approving a variance, the hearing body must make "findings of fact" to support its action (*Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 C.3d 506). The agency must also make the findings required by the California Environmental Quality Act (CEQA) and by local ordinance, if any.

Findings are important. They explain the hearing body's reasons for approving the proposal before it. The purpose for making findings is to "bridge the analytical gap between the raw evidence and ultimate decision" (Topanga, supra). In the event that the decision is challenged, a court will examine the evidence embodied in the findings to determine whether the hearing body abused its discretion when acting on the variance. An abuse of discretion will be found when the agency did not proceed in a manner prescribed by law, when the decision is not supported by findings, and when the findings are not supported by evidence in the administrative record.

Variance findings must describe the special circumstances that physically differentiate the project site from its neighbors. Further, the findings must specify the "unnecessary hardship" that would result from these circumstances in the event that a variance was not approved.

Defensible findings are based on the pertinent evidence that was available to the decisionmakers. Findings should be more than a mere recitation of statutory requirements; they must provide the factual basis that leads to the conclusion drawn by the approving agency.

In the absence of findings, approval of the variance "would [amount] to the kind of 'special privilege' explicitly prohibited by Government Code section 65906." (*Orinda Association v. Board of Supervisors*, supra) For a detailed discussion of findings requirements, see OPR's publication entitled Bridging the Gap.

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CONDITIONS OF APPROVAL

Section 65906 requires that the variance be subjected to those conditions of approval necessary to ensure that it will not be a grant of special privilege. The conditions are meant to maintain parity between the variance site and surrounding properties. For example, if an increase in fence height is requested due to a steeply sloping rear yard, the approved height might be required to be low enough so that neighbors' views would not be obstructed and the increased height would not be noticeable.

The conditions which may be placed on a variance are limited by Section 65909. It requires that dedications of

land must be "reasonably related" to the use of the property for which the variance is granted. In addition, a performance bond cannot be required for the installation of public improvements that are not reasonably related to the property use. Limitations on impact fees are described in the Mitigation Fee Act (Section 66000, et seq.).

Generally, the conditions applied to the variance must have an "essential nexus" to some legitimate public need or burden created as a result of the variance approval (*Nollan v. California Coastal Commission* (1987) 97 L.Ed2nd 677). Furthermore, there must be a "rough proportionality" between the extent of the condition and the particular demand or impact of the project.(*Dolan v. City of Tigard* (1994) 129 L.Ed2nd 304). For instance, if a variance is granted allowing a back yard fence to be built two feet higher than usual, there are probably no grounds to impose a condition requiring the landowner to contribute to a road improvement fund. However, it would be proper to regulate the design of the fence. The burden of proof to justify proposed exactions rests with the city or county (*Dolan*, supra).

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EXAMPLES

The following court cases illustrate when it may be proper to grant a variance and when it may not be. These cases are illustrations only and should not be used as the sole basis for granting or denying a variance.

Cases Upholding Variance Approvals

Special Circumstances

Special circumstances supported approval of a variance from off-street parking requirements for an apartment building when the building was to be located near three public parking garages and many of the tenants would not own cars (*Siller v. Board of Supervisors* (1962) 58 C.2d 479).

A variance reducing the amount of required off-street parking was justified when the landowner would otherwise have had to partially demolish a building and fill a portion of the bay below high tide line in order to meet the parking standard (*Zakessian v. City of Sausalito* (1972) 28 Cal.App.3d 794).

Distinction of the Site From its Surroundings

A court upheld issuance of a variance allowing expansion of a hotel without satisfying a requirement that 80% of its accommodations consist of detached cottages (*Miller v. Board of Supervisors of Santa Barbara County* (1981) 122 Cal.App.3d 539). The court held that the hotel in question could be distinguished from the other hotels in its zone because of landscaping and design features that dated from before zoning was enacted.

Cases Overturning Variance Approvals

Special Circumstances

Subsoil conditions that would increase the cost of building a high-rise and reduce its anticipated income, but which were common to similar high-rise structures, were not "special circumstances" sufficient to support the grant of a variance (*Broadway, Laguna, Etc. Assn. v. Board of Permit Appeals* (1967) 66 C.2d 767). The court reversed the city's approval.

Where a showing could not be made that special circumstances existed sufficient to distinguish the subject property from its neighbors, the city was not required to issue a variance (*PMI Mortgage Ins. Co. v. City of Pacific Grove* (1981) 128 Cal.App.3d 724).

Desirable project design, community benefit, and the alleged superiority of the proposed design to development under existing zoning regulations were irrelevant for purposes of judging whether or not to grant a variance (*Orinda Assn. v. Board of Supervisors* (1986) 182 Cal.App.3d 1145). The court held that a building height variance could not be granted, regardless of the alleged benefits of the project, absent a finding detailing the special circumstances that justified its issuance.

Distinction of the Site From its Surroundings

A variance allowing a 96-space mobilehome park on 28 acres in a mountainous area that was zoned for single residences on 1-acre minimum lots was overturned because the county's findings only described the subject property and not the conditions which distinguished it from surrounding properties (Topanga Assn. for a Scenic Community v. County of Los Angeles 91974) 11 C.3d 506).

Unnecessary Hardship

Self-induced hardship is not grounds for variance approval. Voluntary sale of an adjoining parcel of land leaving a remainder parcel that was too small for the intended purpose was not an "unnecessary hardship" for purposes of granting a variance (Town of Atherton v. Templeton (1961) 198 Cal.App.2d 146.

Procedure/Public Notice

A property owner's failure to receive notification of a zone change was not sufficient basis for later granting a variance from the new zone's floor area ratio standards (Cow Hollow Improvement Club v. Board of Permit Appeals (1966) 245 Cal.App.2d 160). The variance approval was overturned by the court.

A hearing notice which notified neighbors of a variance for a proposed garage "to provide shelter and security for vehicles now parked on [the] driveway" was insufficient to apprise them of the potential impacts on their property rights of the actual consideration of a two-story dwelling and garage unit (Drum v. Fresno County Department of Public Works (1983) 144 Cal.App.3d 777). The inaccurate project description failed to meet statutory and Constitutional due process notice requirements.

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APPENDIX

Variance Checklist

If a variance is to be approved, all of the following questions must be answered affirmatively.

1. Are there special circumstances applicable to the proposal site which distinguish it from nearby properties with the same zoning?

If yes, check at least one of the following to identify the circumstances:

size
shape
topography
location
surroundings

2. Do the above circumstances create an "unnecessary hardship" unique to the involved property which would deprive it of privileges enjoyed by nearby properties with the same zoning?

If yes, explain.

3. Is the use for which the variance is proposed already allowed in that zone?

If yes, cite the applicable code.

4. Are the proposed conditions of approval related to and proportional to the impacts caused by the use proposed by the variance?

If yes, explain.

5. Do the proposed conditions of approval ensure that the variance will not be a grant of special privilege?

If yes, explain.

6. Have findings been drafted which specify the facts supporting approval of the variance on the basis of each of the above items?

TOP

BIBLIOGRAPHY

For more information about variances, we recommend the following references.

Bridging the Gap: Using Findings in Local Land Use Decisions, by Robert Cervantes, second edition (Governor's Office of Planning and Research), 1989. This booklet outlines the principles of findings in detail.

California Land Use and Planning Law, by Daniel J. Curtin Jr., 1996 edition (Solano Press, Point Arena, CA), revised annually. A look at the planning, zoning, subdivision, and environmental quality laws, including variances, as interpreted by numerous court cases.

California Zoning Practice, by Donald Hagman, et al., April 1996 Supplement by John K. Chapin (Continuing Education of the Bar, Berkeley, CA), 1969. This text reviews state zoning law in detail.

Longtin's California Land Use, 2nd edition, by James Longtin, 1996 Supplement (Local Government Publications, Malibu, CA), 1988. This reference text on planning and land use law contains an excellent discussion of the variance, legal considerations, and limits on exactions.

"Variances and the Zoning Board," by Frederick H. Bair, Jr., Planning, July 1984, pp. 20

TOP

1 July 2004

Request for a special meeting of the Centinela Crest Homeowners' Association

The nature of the business is the construction in Unit 303, the improper meeting notice for the June 10 informational meeting so that it did not constitute a special meeting of the Centinela Crest Homeowners' Association, and the improper vote without a meeting, which requires that 21 out of 29 units must return a ballot.

Signed,

Judith S. Deutsch #307

Adriana Strallberg #207

I didn't get written notice of the meeting. I came home from work and people were in the courtyard.

I remember Judy asked if the addition would be visible from any of the units or from the front of the building. We were told by David that nobody would be able to see anything.

Dorma Leyva
#107
July 1, 2004

During the Informational meeting on June 10, 2004, the homeowners present were told by David and his architect that the addition to his unit would not be visible from the street or from any of our units (unit 307 was mentioned in particular). Also, I did not recieve a written notice to the meeting on June 10, 2004. I was only told about it verbally.

When the board was first told about plans for a loft to be built in unit #303, it was said that specific plans, such as the roof being removed and raised, should not be put into the minutes. It was decided that homeowner would ask for specific building plans if they so desired.

Adriana Stalberg
Unit #207
July 1, 2004

Judith S. Deutsch
3544 Centinela Avenue
Los Angeles, California 90066

2 July 2004

Mr. Jason Jerome
President
Centinela Crest Homeowners' Association
3544 Centinela Avenue
Los Angeles, California 90066

Dear Jason,

As you know, I am one of a number of Centinela Crest Homeowners who are concerned with the way the June 10, 2004, meeting was called to discuss David Shapendonk's construction in Unit 303, misrepresentation of the extent of the visibility of the addition during the meeting, and the vote that was taken by ballot without a meeting days later.

Judith Felton in Unit 301 called me on Saturday, June 5, 2004, to express concern that David Shapendonk was not simply adding an internal loft to his unit, but was planning to raise the roof on his end of the building. This was the first time I had heard of the intrusion into the actual structure of the building. I had previously received a note from David, left on my doorstep, saying that he was adding a loft to his unit and that if I wanted to see the plans, I could ask him for them. No mention was made that he would be adding a superstructure to the top of the building. No mention was made of this in the minutes to the Centinela Crest Homeowners' Association (CCHOA) Board meeting that approved the construction. Adriana Stralberg mentions in her enclosed letter, "it was said that specific plans, such as the roof being removed and raised, should not be put into the minutes." Since the minutes are distributed to all homeowners, I wonder why these details were excluded.

Judith Felton called you to request a special meeting of the homeowners to discuss the loft construction. The next thing I heard from her was that David would call a meeting and a petition would not be necessary. David, Treasurer and Board Member of CCHOA, did not provide all residents with notification of the meeting. This is in violation of our Bylaws, which states that all homeowners must be given a minimum of 10 days' notice. I also understand, from Christine Stolarz, who is a non-resident owner living in Redondo Beach, that she did not receive any information on the construction or a notice of the meeting. I can have her put this in writing if you need it. She told me, and you confirmed, that she called you last night upset about the structure. All non-resident owners should have received notification that David was putting in a loft and information on its construction.

Per our telephone conversation last evening, at your request enclosed please find letters from Adriana Stralberg and Donna Leyva documenting that 1) they did not receive written notice of a special homeowner's meeting or any other meeting before it took place on June 10, 2004, and 2) they both heard David Shapendonk at the meeting tell us, in response to a direct question from me, that we would not see the addition to his Unit 303 from any of the units in the building or from the front of the building. Adriana and I specifically heard the contractor say the same thing. Also, at the conclusion of the meeting, Adriana and I, along with other homeowners, went up to the third floor and repeated the question about seeing the addition from my Unit 307, anywhere else in the building, or from the front of the building and again received the answer that it would not be visible. I will ask Upadi Yuliatmo for a letter confirming that he, too, heard the assurance. In addition to being on the third floor with us, Upadi went to the roof with David. This will give you four assurances, which constitutes 33% of the homeowners present at the meeting. If you need more, please let me know. Last night, I was able to contact Patrice Springer, and Kenton Chin—neither of whom received notices to the meeting.

Jason, I realize that you had your infant son with you and were not present during the entire meeting. If this was supposed to be a special meeting of the CCHOA, why weren't homeowners properly informed and why weren't minutes taken so we could refer back to them? Adriana, who is Secretary, was present at the meeting. At the conclusion of the meeting, Upadi and I were asked to retroactively sign a petition requesting a special CCHOA meeting, which we did. Upadi will corroborate that we signed it. David or Adriana probably have it. Unfortunately, the meeting would be invalid because of improper notification to homeowners.

The members of CCHOA are not professional contractors and need guidance when reviewing floor plans and/or models of a proposed construction. David specifically provided his contractor to answer questions about the construction. When a professional assured me, and others, that we would not see the construction from any of the units or the front of the building, we believed the professional. When I came home on June 30, 2004, and saw the construction sticking up, significantly, over the roofline, I went down to the garage, where David was talking to another homeowner, and reminded him that he and the contractor told us that the construction would not be visible on the roofline. David's answer was that he and the contractor had "not realized" that it would be visible. You told me last night that anyone looking at the plans would have to be aware that the construction would show above the roofline. This is not consistent with David's claim that he and his contractor had "not realized" that it would be visible.

When the homeowners decided to vote on the construction, they had incorrect information, provided by David and the contractor, as to the extent of the intrusion on the structure of the building. Also, in order to ask homeowners to vote outside of a CCHOA meeting, all homeowners must agree to the vote. When they return their ballots, they are saying "yes" to vote outside of a meeting. The ballots can be "yes" or "no" ballots, but all ballots must be returned for the vote to be legal. This did not happen. Christine

Stolarz, for one, did not return her ballot. Despite the fact that the ballots were not due until June 27 (per Adriana) and all ballots were not collected (per Adriana), David began work on his unit.

I brought the problem of misrepresentation to David's attention on June 30, 2004, three days after the ballot due date (April 27). It is an unhappy coincidence, that the framing above the roof occurred after the date that the ballots were due. Homeowners have told me that they voted "for" David's construction because they were assured that it would not be visible from the other units or the street. In fact, when I handed my ballot to David, I told him that I was sure the construction would be approved, because the biggest homeowner concern had been that we would see the construction above the roofline and the homeowners had received his assurance that this would not happen.

I had previously told both David and his fiancée, Marla, that they should wait for the ballot to be completed before beginning construction. It is unfortunate that he chose to begin prematurely, and that the assurances that were given the homeowners were not correct.

Therefore, I am requesting a special meeting of the CCHOA. Enclosed is a Request for a Special Meeting signed by 5% of our homeowners as required by the Bylaws.

Thank you for your assistance.

Sincerely,

Judy Deutsch

Judith S. Deutsch
Unit 307

Jason Jerome

From: upadi yuliatmo [upadi@yahoo.com]
Sent: Sunday, July 04, 2004 12:19 AM
To: jason.jerome@verizon.net
Subject: request for special HOA meeting

Mr. Jason Jerome

President
Centinela Crest HOA
3544 Centinela Ave
Los Angeles CA 9004

Dear Jason,

As one of the owners at 3544 Centinela Ave,
I am asking you as HOA president to have special homeowner meeting in relation to the expansion of unit 303.

Based on my discussions with other owners and my own observation, I think we have problems with procedure, misrepresentation and misinterpretation to the design and construction of unit 303 expansion.

This meeting is very important to avoid bigger problems technically and socially as a community.

Thank you

Sincerely

Upadi Yuliatmo
Unit 206

Centinela Crest Board Of Directors

Memo

To: Centinela Crest Homeowners Association Members

From: Jason Jerome, President (#104)

CC: Carol Solis, Vice- President (#103)

Date: July 4, 2004

Re: Special Homeowners Meeting

The Board has scheduled a special homeowners meeting in the courtyard for Saturday, July 24th at 9:00 AM. The meeting has been requested in writing by Judy Deutsch (#307), Adriana Stralberg (#207) and Upadi Yuliatmo (#206) to further discuss the installation of the loft in unit #303.

If your unit is not going to be represented at this meeting, please inform me in writing no later than Saturday, July 14th.

Happy 4th of July,

Jason Jerome

Kathleen Neumeyer 4936 Carpenter Avenue Valley Village CA 91607 818 509-8498 kmneumeyer@sbcglobal.net

August 4, 2004

Jason Jerome, President
Centinela Crest Homeowners Association Board of Directors
3544 South Centinela Avenue
Los Angeles, CA 90066

To the Members of the Board of Directors:

I have been the owner of Unit 105 at 3544 South Centinela Avenue, Los Angeles, CA 90066 since June 6, 2003. I do not occupy my unit, and although I notified the board at the time of purchase, as well as secretary Adriana Stralberg, secretary, and David Shapendonk, who was president of the board at that time, that I would like board minutes and notices sent to my Valley Village address or e-mailed to me, nothing has been mailed or e-mailed to me. Some months ago, I notified Jason Jerome that I had never received any notification by mail or by e-mail of any board actions, and the situation did not change.

I learned of the proposed modifications to Unit 303 through a copy of minutes and a notice dated May 28, 2004 which was left at the door of my unit and given to me by my son, who occupies the unit. This notification said, in the past tense, that the board had unanimously approved the installation of a loft in 303. The notice did not mention any modification of the building's roof line or any change to the exterior of the building.

Because I had no objection to a modification within Mr. Shapendonk's unit, I took no action.

I received no notice of any meeting when plans were displayed, and I did not receive a ballot to vote on the modification, nor was I contacted about a vote. I learned through my son that a special meeting would be held on July 24 and I gave my son my proxy to vote at the meeting. He attended the meeting, but no vote was taken.

It was only after the July 24 meeting that I became aware that the roof of the building had been modified. The CC&R's specifically provide, in Article VII, Section 5, that no owner shall be permitted to alter or modify the roof, among other areas. I do not believe that the board of directors had the authority to allow this modification.

At the July 30 board meeting, which I attended, an owner, who is an architect, expressed concern that the construction may pose hazards to the structural integrity of the building during an earthquake.

I am not opposed to construction of a loft within the confines of Mr. Shapendonk's unit. I am opposed to modification of the roof line without further reassurance that this construction is not compromising the structural integrity of the building.

I urge the board to retain the services of a qualified expert, perhaps a structural engineer, to make an independent assessment of the risk to the building. What could be the harm of getting a second opinion in addition to the structural engineer engaged by Mr. Shapendonk?

It might also be wise to get an opinion from a real estate professional about the effect of this modification to the roof line to the value of the building.

I believe that the members of the board and Mr. Shapendonk acted in good faith, but just because construction has already begun is no reason that it could not be halted if there was a danger to the building's structural integrity or a financial loss to the owners because of it.

At the meeting it was stated that it would cost $40,000 to take the loft down and restore Mr. Shapendonk's unit to its previous condition. That is less than $2,000 for each homeowner, which might be a small price to pay compared to structural damage from an earthquake, caused by construction we authorized.

Yours truly,

Kathleen Neumeyer

cc: David Shapendonk
3544 South Centinela Avenue
Los Angeles, CA 90066

Don Heikus
Neldon, Inc.
8225 Manitoba Street #15
Playa Del Rey, CA 90293

Marc H. Goldsmith, Esq.
Van Etten, Suzumoto & Becket LLP
1620 26th Street
Suite 6000 North
Santa Monica, CA 90404

From: Jfelt278@aol.com (Jfelt278@aol.com)
To: jsdeutsch@verizon.net;
Date: Mon, September 8, 2008 10:10:18 PM
Cc: adrianastralberg@yahoo.com; jbeaumont@rgblawyers.com;
Subject: Re: Unit 303

I agree with Judy Deutsch that we, as a Board, have a duty to the building to persue this issue with David and Marla. Allowing those two to get away with an illegal addition would be a mistake. However distasteful, it seems to me that we have no other choice.

Jeff, originally I thought I had to resign due to a variety of health issues that suddenly surfaced, but Judy suggested I try switching roles with Adriana and see how that worked. .It has and the Board is intact.

Best Wishes,

Judi

PARTIAL LIST OF HOMEOWNERS AND COMMUNITY MEMBERS WHO HAVE WRITTEN TO DENY THE LOFT HEIGHT VARIANCE

Halstein Stralberg

Adriana Mackavoy

Michael Mackavoy

Judith Deutsch

Kathleen Neumeyer

Christine Davis

Donna and Glen Egstrom

Mary Ann Sherritt and husband

Joyce Simmons and husband

Liz Weaver

Nadine Gallagos

Sharon Collins

Alpern

Steve Wallace

Upadi Yuliatmo

Irene Sukwandi

Christine Stolarz

Julie Kirschner

Victor Deutsch

McHugh

Boehle

Murphy

Julia Trusty and husband

Marlene and Kent Alves

Duwas

Gary Shull

Evy Nelson

Jean Gottlieb

Ingrid and Wolf

Wayne Burklund

September 25, 2010

Office of Zoning Administration
200 N. Spring Street, 7th Floor
Los Angeles, CA 90012

Case No. ZA 2009 - 3395 (zv) Zone Variance CEQA No. Env 2009 - 3396 - CE

Dear Zoning Administrator:

The City of Los Angeles Department of Building and Safety has issued a **Notice of Intent to Revoke Permit 04014 - 30000 - 03731** for a loft addition in Unit #303 at 3544 Centinela Avenue. In addition, the Property/Land Use Management Committee of the Mar Vista Community Council recommends **denial of a variance**.

Owners of Unit #303 at 3544 Centinela Avenue are requesting a variance to add a loft topped by a large, convex skylight to their third floor condominium bringing the building height to 49 feet--**16 feet over the 33-foot height limit** established by ordinance 164,475 in 1989. The ordinance provides that:

1) Northeast side of Centinela Avenue between Palms and Venice Boulevards has **a height limit of 33 feet.**

2) "There shall be **no exceptions to these height limits**."

3) Lighting has to be directed **onto the site**.

4) Any structures on the roof shall be **fully screened from view of any nearby single family residence.**

I am **opposed** to granting Unit #303 at 3544 Centinela Avenue, Los Angeles, CA 90066 a variance for a loft because it would violate the aforementioned ordinance provisions and set a precedent for future variances, changing the character of the Mar Vista Community it is designed to protect. There is a provision for **no exemptions**.

The loft and skylight can be clearly seen from the hillside above and behind the Unit and negatively impacts my enjoyment of the ocean view. Our neighbors worked hard to achieve the ordinance. Building a loft in violation of the ordinance, then seeking a variance as a "done thing" is dishonest and not acceptable. I request the loft be removed. **No exceptions means no exceptions.**

Please deny the variance and uphold the ordinance.

Sincerely,

Kent and Marlene Alves

Judith Sharon Deutsch
3544 Centinela Avenue, Condo 307
Los Angeles, California 90066

September 25, 2010

Office of Zoning Administration
200 North Spring Street, 7th Floor
Los Angeles, California 90012

Case No. AZ 2009-3395(ZV)
Zone Variance
CEQA No. Env 2009-3396-CE

Dear Zoning Administrator:

Victor H. Deutsch and Judith S. Deutsch are trustees of the Judith S. Deutsch Family Trust which holds ownership of Condominium 307 at 3544 Centinela Avenue, Los Angeles, California 90066 (Centinela Crest). Ms. Deutsch has lived in the Unit since it was built 24 years ago in 1986. In 1989 City Ordinance 164-475 was passed with a "Q" condition limiting all future construction to 33 feet in height. Centinela Crest was grandfathered at 45 feet in height, or 3.5 stories including the half-subterranean garage. At the time Centinela Crest was built, the height restriction was 45 feet, according to Mr. Sarlo, the developer. He told Ms. Deutsch that he made cathedral ceilings on the front street units instead of lofts or an additional floor because the zoning law would not allow more than three stories plus the garage in 1986.

When Marla Rubin and David Shapendonk added a loft to Unit 303, they violated both Ordinance 164-475 AND the zoning law that was in effect when the building was built in 1989. Centinela Crest is now four floors and the garage. The loft has an eight-foot ceiling—the height of a full room. Furthermore, Ordinance 164-475 clearly states under article 4a that the "Northeast side of Centinela Avenue between Palms and Venice Boulevards and southwest side of Centinela between Palms and Venice Boulevards...Any portion of a new building or structure associated with any multiple residential use in a residential or a commercial zone located more than 50 feet from a General Plan-designated R1 Zone shall not exceed 33 feet as measured FROM THE TOP

OF THE ROOF or parapet to the natural surface of the ground vertically below the point of measure..." And under article 4c that "THERE SHALL BE NO EXCEPTIONS TO THESE HEIGHT LIMITS (Section 12.21.1). The loft is over three feet above the top of the roof or parapet, and according to the LADBS the skylight was not included in the permit request. Furthermore the loft is not, as required by article 4d, screened from view from my dining room, kitchen, and library (second bedroom) windows. And in violation of article 5, the large, convex skylight acts as a beacon and is visible in the evenings from all three rooms.

Because the condos under Unit 303 were not built to withstand the additional stress, the loft is not attached to additional weight-bearing supports, and we have been told by Fire Department staff assigned to the Community Emergency Response Team that the skylight would pop off and shatter four floors below during an earthquake, we are concerned that the loft is not safe. Many of the one-story homes in Mar Vista were damaged in the quake, despite inspections by and permits from LADBS. My Unit received FEMA funds and I do not have a loft sitting on my living and dining room ceilings, blocking my exit if it comes down. And it is going to vibrate at a different decibel from the existing walls.

The Centinela corridor between National and Venice Boulevards is attractive to developers who wish to replace one- and two-story residences and commercial buildings with six stories or more. The Mormon Temple would like to replace its one-level parking lot with a four-story lot. Allowing a variance for Unit 303 would set a precedent for variances and higher and larger buildings. This would defeat the purpose of the Ordinance, threaten residents' ocean views, and compromise the character of our Hilltop community.

The Los Angeles Department of Building and Safety has sent Unit 303 a Notice of Intent to Revoke Permit 04014-30000-03731. The Permit violates the 33-foot height ordinance AND the 45-foot zoning restriction in effect when the building was built. At 49 feet, it should never have been built. The Property/Land Use Management Committee of the Mar Vista Community Council voted to recommend that the Permit be revoked.

Both Victor Deutsch and Judith Deutsch support the LADBS Notice of Intent and the PLUM recommendation to REVOKE THE PERMIT AND REMOVE THE LOFT FROM UNIT 303. While it is not strictly related to the articles of the Ordinance, not only did the owners of Unit 303 hide the dimensions of their loft and the fact that they were

going through the common area roof of a three-story, 21-unit building for their sole benefit, but they deliberately manipulated the Centinela Crest Homeowners' Association Board of Directors in an illegal manner to achieve their personal goals, violating numerous provisions of the CC&Rs much like they ignored the City Ordinance limiting the height of the building. Mr. Shapendonk was a member of the CCHOA Board of Directors at the time—a glaring conflict of interest.

In an e-mail dated October 9, 2009 Ms. Rubin and Mr. Shapendonk wrote to CCHOA Board members Judith Deutsch and Adriana Stralberg: "We are asking each of you to sign the settlement agreement and a letter indicating that you will no longer challenge any of the city's actions to resolve the situation. As an added incentive for your support, Marla and I will donate $3,000, as a good will gesture, to the association's reserve fund when you sign the settlement agreement and the support letters as individual home owners of Centinela Crest." "We look forward to your response before October 14th to avoid having the CCHOA incur additional litigation expenses." The settlement agreement and letters were never signed. All three Board members—Adriana, Judith, and Boris Sturman considered the offer unethical. In February 2010 the new board, which included Adriana (Judith did not run for a fifth term), approved a settlement agreement that included $7,000 from Marla and David and no letters from residents waiving their right to petition LADBS and the Office of Zoning Administration to revoke the loft permit.

Thank you for your consideration. We feel strongly, along with many condominium unit owners and single residences above and adjoining 3544 Centinela Avenue, that Ms. Rubin and Mr. Shapendonk should not be allowed to keep a loft built flagrantly in violation of both City and Condominium laws in the belief that once built, it cannot be taken away.

Sincerely,

Judith S. Deutsch

Judith S. Deutsch

Victor H. Deutsch

From: Julia Trusty (juliatrusty@gmail.com)
To: JDEUTSCH@ucla.edu;
Date: Wed, September 29, 2010 1:59:05 PM
Cc:
Subject: Case No. ZA 2009 - 3395 (zv) Zone Variance CEQA No. Env 2009 - 3396 - CE

Judy:

This is to inform you that I have faxed my version of the sample letter you provided in reference to the above.

I changed it to read as follows: "We are **opposed** to granting Unit #303 at 3544 Centinela Avenue, Los Angeles, CA 90066 a variance for a loft because it would violate the aforementioned ordinance provisions. Most importantly, though, we are **opposed** because it would set a precedent for future variances, changing the character of the Mar Vista Community it is designed to protect. There is a provision for **no exemptions**."

In addition, my husband and I would like to thank you for taking interest / action to preserve the character of Mar Vista.

I grew up in the house in which we currently live, having purchased it from our family a few years ago. We happen to love living in Mar Vista, in our little house, which we acknowledge is in need of a "face lift" at the very least. We had filed permits, a couple of years ago, to rebuild but the recent economic changes set us back quite a bit so we will wait patiently. Meanwhile, because we are at the very corner of Stanwood Dr. and Bundy, we do enjoy the unobstructed view. On a clear day we can see so much--the ocean, the planes taking off, the sunsets and on the Fourth of July and New Year's Eve we are able to see the fireworks from all the surrounding communities to the west of us.

Thank you again,

Julia

Julia Ferrufino Trusty
FERRUFINO INTERIORS
3959 Sepulveda Boulevard
Culver City, CA 90230
www.ferrufino.com

Simmons

3550 Ocean View Ave.
Los Angeles, CA 90066
310-398-1827
Joyce.simmons@gmail.com

September 30, 2010

Office of Zoning Administration
200 N. Spring Street, 7th Floor
Los Angeles, CA 90012

Re: Case No. ZA 2009-3395(ZV) Zone Variance
CEQA No. ENV 2009-3396-CE

Dear Zoning Administrator:

We would like to express our objection to the requested zone variance. The structure which was put atop the building directly in our view is in violation of the height limits for our residential area. The structure has a large round skylight which is lit up at night and is directly in our view. We had no idea when the structure was being built that it violated the zoning restrictions in our area. We were never given an opportunity to voice our objections prior to it being built. We were never informed that a building permit was requested or granted.

The height limitation is very important in keeping our residential neighborhood as it is. We do not want to have a precedent set by allowing this zone variance.

Thank you for your time.

Very truly yours,

Joyce and Michael Simmons

October 7, 2010

Office of Zoning Administration
200 N. Spring Street, 7th Floor
Los Angeles, CA 90012

Case No. ZA 2009 - 3395 (zv) Zone Variance CEQA No. Env 2009 - 3396 - CE

Dear Zoning Administrator:

The City of Los Angeles Department of Building and Safety has issued a Notice of Intent to Revoke Permit 04014 - 30000 - 03731 for a loft addition in Unit #303 at 3544 Centinela Avenue. In addition, the Property/Land Use Management Committee of the Mar Vista Community Council recommends denial of a variance.

Owners of Unit #303 at 3544 Centinela Avenue are requesting a variance to add a loft topped by a large, convex skylight to their third floor condominium bringing the building height to 49 feet--16 feet over the 33-foot height limit established by ordinance 164,475 in 1989. The ordinance provides that:

1) Northeast side of Centinela Avenue between Palms and Venice Boulevards has a height limit of 33 feet.

2) "There shall be no exceptions to these height limits."

3) Lighting has to be directed onto the site.

4) Any structures on the roof shall be fully screened from view of any nearby single family residence.

We are opposed to granting Unit #303 at 3544 Centinela Avenue, Los Angeles, CA 90066 a variance for a loft because it would violate ordinance 164,475 provisions and set a precedent for future variances, changing the character of the Mar Vista Community it is designed to protect. There is a provision for no exemptions.

The loft and skylight can be clearly seen from the hillside homes above and behind the Unit and negatively impacts their ocean view. Our neighbors worked hard to achieve the ordinance. Building a loft in violation of the ordinance, then seeking a variance is dishonest and not acceptable.

3544 Centinela Avenue is a community property, owned by more than 21 individuals. The owners of Unit #303 do not have the right to alter the building's roof, obtain building permits, or request a variance without legal authorization from each and every owner. The previous permit granted to the owners of Unit #303 to alter the roof was a result of

misrepresentation of ownership of the building to LADBS building officials and fellow homeowners. Original blueprints illustrating the front elevation height of 3544 Centinela Avenue before construction of the loft in Unit #303 were also concealed from LADBS planning officials during the permit application process.

We request the loft be removed. Please deny the variance and uphold the ordinance.

Sincerely,

Adriana and Michael Mackavoy
3544 Centinela Avenue #207

Hi, Tony,

Since Wednesday's meeting is the first I had heard of the problem, I don't really have many thoughts other than I don't want variances exceeding the height limit to apply in regard to structures on Centinela Ave. I myself will not be able to attend the hearing as I am tied up at that hour on Thursdays.

If you have suggestions, it might be a good idea to be in touch with Judith Deutsch (the one who was discussing the battle in our FS meeting): jsdeutsch1@yahoo.com<mailto:jsdeutsch1@yahoo.com>

Hope you're staying cool!
Evy
<mailto:jsdeutsch1@yahoo.com>

10/8/2010 10:56 AM

From: Swanger, Rachel (swanger@rand.org)
To: jsdeutsch1@yahoo.com;
Date: Fri, October 8, 2010 1:42:15 PM
Cc: swanger@rand.org;
Subject: RE: Letter to Office of Zoning Administration

Hi Judy,

Thanks for touching base. I have not yet had the chance to write, but will try to do so this weekend. My boss is in the hospital and the Assistant Dean who does student affairs just quit so I'm training her replacements. It's not chaos, but pretty close.

Glad to hear that there's not much support for the Shapendonks--what a name! It's really important that we win this one as there's a house for sale across the street and so it's very possible there will be a new apartment building going up....

Best,
Rachel

From: Donna Egstrom (degstrom@ca.rr.com)
To: jsdeutsch1@yahoo.com;
Date: Wed, May 11, 2011 6:01:42 PM
Cc:
Subject: Letter to Planning Commission

Donna Egstrom
3440 Centinela Avenue
Los Angeles, CA 90066-1813
310-391-8933 Fax: 310-915-1954
E-mail: degstrom@ca.rr.com

11 May 2011

West Los Angeles Planning Commission
200 North Spring Street, Room 272
Los Angeles, CA 90012

Case No.: ZA-2009-3395-ZV-1A Property at 3544 S. Centinela Avenue

My husband, Glen H. Egstrom, and I strongly support the findings and rulings of Ms. Chang in her thorough study of all materials resulting in her denial of the variance for the Shapendonks' loft. The Ordinance clearly states there will be no variances, the zoning is for 33' and their loft is now at 48'. We have lived and owned apartments on Centinela Avenue for 50 years. We supported the Ordinance, along with all our neighbors, when it was passed. If they are allowed a variance it will serve as permission for others to ignore theordinance and illegally build higher.

Mr. Shapendonk used fraudulent methods to get approval for the loft while serving as a board member of Centinela Crest Homeowner's Association resulting in a law suit against him for fraud plus other matters related to the loft. Because of the excessive cost to the Association the suit was dropped and the matter turned over to the City to enforce the Ordinance. The City of Los Angeles Department of Building and Safety revoked the loft permit.

Ms. Chang stated that the Shapendonks did not meet any of the five requirements for a variance. Please uphold her ruling. No one should be rewarded for knowingly breaking the law.

Very truly yours,

Donna and Glen H. Egstrom

Judith Sharon Deutsch
3544 Centinela Avenue, Condo 307
Los Angeles, California 90066
310-390-3016 Evenings
310-670-2870 ext. 106 Daytime
jdeutsch@ucla.edu

May 11, 2011

West Los Angeles Planning Commission
200 North Spring Street, Room 272
Los Angeles, CA 90012

Re: Case No.: ZA-2009-3395-ZV-1A

Dear Members of the Planning Commission:

We agree with and strongly support the findings and rulings of Ms. Sue Chang in her denial of a variance for the loft at Centinela Crest Condominiums, 3544 Centinela Avenue, Condo 303, Los Angeles, CA 90066.

The [Q] Condition established by Ordinance No. 164,475 clearly states there will be no variances and that building height is limited to 33 feet. As a result of the illegal loft, the Centinela Crest building is now at 49 feet. Moreover, the loft and skylight block views from the hillside and create a lit domed beacon eight feet by four feet at night. The loft was built because Mr. Shapendonk (who was on the building's homeowners' association board at the time – clearly a conflict of interest) illegally packed the board with unelected friends and held a closed meeting to "approve" his loft. He also tampered with the minutes to the meeting to prevent homeowners from learning the extent of his loft, which broke through the roof of a 3.5-story, 21 unit building. All of this is well documented.

The ordinance was created to protect the neighborhood from just this kind of situation, and allowing a variance will open the door for higher buildings along Centinela Avenue. The neighborhood has already successfully contested a four-story parking structure at the Mormon Church on Centinela Avenue and Councilman Rosendahl's plan for a six-story senior housing center to replace historic Fire Station 62 across the street from the Church. The old Mrs. Gooches building is still vacant, and we are certain investors are waiting to see what happens with the Shapendonks' appeal hearing.

Centinela Crest Homeowners' Association, which owns the building at 3544 Centinela Avenue, sued the Shapendonks for fraud among other things related to the loft. The suit was exceedingly expensive and the Homeowners' Association decided to drop the suit and ask the City for help. The City of Los Angeles Department of Building and Safety revoked the loft permit.

Ms. Chang states that the Shapendonks did not meet any of the five requirements for a variance. Please uphold her ruling.

While this letter represents the personal opinions of the signees below, Judith Deutsch is an experienced member of the Hilltop community where the condo building is located. She is the past president of Centinela Crest Homeowners' Association, recently elected president of the Hilltop Neighborhood Association, a Community Emergency Response Team member, and a Neighborhood Block Captain. She is a founding member of the Ad Hoc Historic Fire Station 62 Committee of the Mar Vista Community Council (to convert the abandoned fire station into a community center), and a 26-year resident and the sole remaining original owner of a Centinela Crest condominium.

Thank you.

Sincerely,

Judith S. Deutsch Victor H. Deutsch Ailsa L. Deutsch

Enclosures

From: Julie Jameson (juliej@telkomsa.net)
To: Planning@lacity.org;
Date: Fri, May 20, 2011 2:01:50 AM
Cc: jsdeutsch1@yahoo.com;
Subject: ZA 2009-3395 (ZV)

City of Los Angeles, California
Office of Zoning Administration
Attention: Sue Chang
20 May, 2011

Re: Zone variance at 3544 S. Centinela Ave

I am the owner of Unit # 306 located on the subject site. I am currently residing out of the country, so am unable to respond appropriately via mail. Please note, for the record, that I am fully supportive of Sue Chang's decision on ruling against a variance on the Shapendonk loft.

Yours Sincerely,
Julie Jameson

Simmons

3550 Ocean View Ave.
Los Angeles, CA 90066
310-398-1827
Joyce.simmons@gmail.com

May 23, 2011

West Los Angeles Planning Commission
200 North Spring Street, Room 272
Los Angeles, CA 90012

Re: Case Number ZA-2009-3395-ZV-1A

This letter is to state our objection to the unlawful loft addition to the building directly in front of our home at, 3544 Centinela Ave., Condo Unit 303 Los Angeles, CA 90066. We had no notification about a variance procedure and thus could not weigh in our objections to the structure that was built directly in our view. The skylight that is lit at night is very distracting to our view.

We agree with the ruling by Ms. Sue Chang that denies a variance for the loft.

Thank you for your consideration.

Very truly yours,

Michael and Joyce Simmons

From: wburklund@aol.com (wburklund@aol.com)
To: DShapendonk@imax.com;
Date: Thu, September 30, 2010 11:58:03 AM
Cc: Kate.Anderson@mto.com;
Subject: Re: Email for distribution to Hilltop members

Hi David,

Thanks for your email on the Zoning Admin. Hearing. It is not necessary to send your suggested message to our Hilltop Neighbor's members, since it is very well known to our members that HNA never supports nor opposes any controversial issues, political candidates, ballot propositions, business ventures, etc. We do inform our members of news items of general interest to our community, various meeting notices, crime reports, and even missing pet notices. I tried to be clear that the message was not an HNA opinion on the subject, but was "from one of our Hilltop Neighbors". Many of our members are naturally concerned with preserving whatever view they may have from their homes, so they are always interested in anything that could possibly obstruct that view, such as a variance request for an increased height of residential construction. Therefore the subject Hearing was considered as being of general interest to our members, since granted variances tend to encourage additional requests for similar variances, and I'm sure that you can understand where that might lead. If you would like me to send a message to our HNA members, it must show your name, address, phone and email address. However, I would suspect that more messages on this subject could possibly have more negative than positive effect for your cause. By the way, I did not find your e-address in our HNA address list, but can add it if you wish. This list is kept very secure, and only known by my backup and myself. Also, I have no record of your 2010 HNA dues payment, so I am attaching the sign-up form, should you wish to do so.

Sincerely,

Wayne B.

-----Original Message-----
From: David Shapendonk <DShapendonk@imax.com>
To: wburklund@aol.com <wburklund@aol.com>
Cc: Anderson, Kate <Kate.Anderson@mto.com>
Sent: Wed, Sep 29, 2010 3:00 pm
Subject: FW: Email for distribution to Hilltop members

Hi Wayne,

My name is David Shapendonk and my wife and I are members of the Hilltop Association. After receiving your email sent on behalf of Judy Deutsch, I spoke with Kate Anderson, who informed us that the Hilltop Board did not approve the email Judy sent and has not taken a position either way regarding our variance request. We would greatly appreciate it if you send an email to the Hilltop members stipulating that. We have included the message Kate conveyed to us in green font below. My wife and I are looking to put this multi-year dispute behind us, and want to be good neighbors in our community, so if you or anyone else has any questions regarding this variance I would be happy to answer them. I believe that I can alleviate any concerns that neighbors may have. I am including my home phone number ((310- 737-1008) and email address (shappy@speakeasy.net) for your personal reference. You can also call me at my work number (310) 255-5637 if you would like to discuss this matter further.

Please send an email that includes only the sentence below in green font, without my name attached.

"With regard to the email sent on behalf of Judy Deutsch on September 28, 2010, the Hilltop board has not taken a position on this variance request, and the email was not sent to the board prior to being distributed to the list and was not something the Hilltop board had approved."

Thank you so much for your assistance in this matter.

Yours truly,

David Shapendonk

Mar Vista Community Council

Regular Meeting of the Board of Directors
December 8, 2009 at 7:00 PM
Mar Vista Recreation Center Auditorium
11430 Woodbine Street, Mar Vista, CA 90066
www.marvista.org

Final Agenda

The audience is requested to fill out a "Speaker Card" to address the Board on any item of the Agenda prior to the Board taking action on an item. Comments from the public on Agenda items will be heard only when the respective item is being considered. Comments from the public on other matters not appearing on the Agenda that are within the Board's subject matter jurisdiction will be heard during the public comment period. Public comment is limited to two minutes per speaker, unless waived by the presiding officer of the Board. Mar Vista Community Council meetings will follow Rosenburg's Rules of Order, the latest edition. For more information, please visit the MVCC web site.

Call to Order and Welcome – Albert Olson, Chair (2 min.)
Presentation of the Flag and Pledge of Allegiance – Bill Scheding
Approval of Minutes (public comment permitted) (2 min)
Public Comment & Announcements - (limit: 2 minutes per speaker)
Erica Kenner, Property/Harvesting Coordinator for FOOD FORWARD
Elected Officials and City Department Reports (max 2 min. each)
Department of Neighborhood Empowerment - Deanna Stevenson, West Area Project Coordinator
Mar Vista Recreation Center – Director, Laura.Island@lacity.org
CD 11 - Bill Rosendahl, rep. by Len.Nguyen@lacity.org , Field Deputy
CD 5 – Paul Koretz, rep. by Jay.Greenstein@lacity.org , Field Deputy
US 36 – Congresswoman Jane Harman, rep. by Jessica.Duboff@mail.house.gov , Field Representative
CA Senate 28 – Jenny Oropeza represented by Primitivo.Castro@sen.ca.gov , Field Deputy
CA Assembly 47 – Karen Bass represented by Marco.Meneghin@asm.ca.gov Field Representative
CA Assembly 53 – Ted Lieu, represented by Jennifer.Zivkovic@asm.ca.gov , Field Deputy
2nd Dist. L. A. County Board Super.– Mark Ridley Thomas, rep. by Karly.Katona@bos.lacounty.gov,
Mayor of Los Angeles – Antonio Villaraigosa rep. by Jennifer.Badger@lacity.org , Westside Representative

Officers and Liaison Reports
Chair, Albert Olson
First Vice Chair, Sharon Commins
Second Vice Chair, Bill Koontz
Secretary, Laura Bodensteiner
Treasurer, Christopher McKinnon

Director for Animal Welfare – Lola McKnight
DWP MOU – Chuck Ray
LADOT MOU – Albert Olson, Bill Pope (alternate)
Bi Monthly CD 11/LADOT Traffic Meeting Sub Committee - Linda Guagliano,
LANCC Delegate Report – Marilyn Marble
Mayor's Budget Planning – Sharon Commins, Marilyn Marble
Old Business - Action items (Public comment permitted)
Committee reports - Action items included with public comment permitted
1) **Executive & Finance Committee** – Albert Olson, Chair
a. **Presentation of new website design:** to Board and initiation of 30-day review period by the Board and stakeholders. The website will be submitted for approval at the following Board meeting, per MVCC Standing Rule I-4.

b. Funding Motion: To approve allocation of up to $200/month for MVCC 5ft. x 8 ft. storage space. This funding motion must meet all City of LA DONE-Empower LA funding guidelines and will be paid monthly until the Board terminates the allocation.

2) **Community Outreach Committee** – Rob Kadota & Stephen Boskin, Co-Chairs

3) **Education, Arts and Culture** – Babak Nahid & Kate Anderson, Co-Chairs

4) **Election & Bylaws Committee** – Bob Fitzpatrick & Marilyn Marble, Co- Chairs

a. Administrative Motion: *To approve the Election Procedures formulated by the City Clerk's office.*

5) **Green Committee** – Laura Bodensteiner & Sherri Akers, Co-Chairs

6) **Historic FS 62 Ad Hoc Committee** – Sharon Commins & Rachel Swanger, Co-Chairs

7) **Neighborhood Traffic Management Committee** – Bill Pope, Chair

8) **PLUM Committee** – Sharon Commins & Steve Wallace, Co-Chairs

a. Policy Motion: *The Mar Vista Community Council supports SCR 56, State Senator Jenny Oropeza's bill which requests the County of Los Angeles to undertake a comprehensive update of the Marina Del Rey local coastal program prior to any further approvals of coastal development permits*

b. Policy Motion: *The Mar Vista Community Council finds: A CEQA analysis is imperative prior to passing any Accessory Dwelling Unit ("ADU"), ordinance relative to implementing AB 1866. The MVCC requests the Los Angeles Department of Planning undertake the necessary analysis to gather data on environmental impacts of this ordinance and evaluate them. The MVCC further requests the interim ADU guidelines current minimum lot size of 7,500 sq ft be raised to 10,000 sq ft, and asks that the public comment period on this proposed ordinance be extended 90 days from December 15, 2009 to March 15, 2010.*

c. Policy Motion: *The Mar Vista Community Council recommends denial of ZA-2009-3395-ZV ENV ENV-2009-3396-CE, 3544 S Centinela Ave 90066: variance from a Q condition established by ORD. 164475 limiting the building height to 33 feet for a loft projection at the roof which increased the height from 46.5 feet to 49 feet.*

d. Policy Motion: *The Mar Vista Community Council strongly recommends:*

1. *The Bundy Village land use determination should wait until the adoption of the West L.A. Community Plan, which is currently being revised.*
2. *The project should include a significant open space, in the form of a large plaza a sports field, or other substantial green areas and open to the public for their enjoyment.*
3. *The estimates of traffic generated by Bundy Village should use realistic and proper metrics appropriate to the community in which the project will be built.*

e. Policy Motion: *The Mar Vista Community Council opposes the proposed tract change at Exposition/Sepulveda/Pico (currently owned by Casden Developers), because:*

1) The excessive, size, height, density and scope of this project lies entirely outside the character of this region, and would therefore disrupt if not destroy the character of all adjacent neighborhoods

2) There is no finalized and accurate documentation of the traffic and environmental impacts of this project

3) There remains insufficient guaranteed transit-oriented development within this project that is consistent with a commercial development adjacent to a rail station.

4) There are serious and insufficiently-addressed health concerns regarding a freeway-adjacent housing development, such as the increased risk of asthma and cancer of any future residents

5) There are inadequate residential amenities for a project of this scope and size, including insufficient land/playing field/open space for a development of this size and of this many people

6) The Property in question, zoned M2, represents a significant portion of M2-zoned space in the region, and there is no documented location for any replacement industrial zoning

7) This project contributes to Westside traffic congestion, rather than help solve it, by insufficiently using the land for parking and accommodations for bus, rail, and bicycle commuters, who would benefit from an adjacent Westside Regional Transportation Center at this site

9) **Recreation Open Space Enhancement Committee** – Tom Ponton & Jerry Hornof, Co- Chairs

10) **Safety and Security Committee** report – Bill Koontz & Rob Kadota, Co-Chairs

11) **Santa Monica Airport Committee** – Bill Scheding & Bill Koontz, Co- Chairs

12) **Transportation & Infrastructure Committee report** - Ken Alpern & Chuck Ray, Co-Chairs

a. **Policy Motion:** Scattergood-Olympic Line 1 Project

Whereas *the stakeholders of Mar Vista Community Council have expressed extreme concern about the routing of the proposed Scattergood-Olympic Line 1 high-voltage power line project, specifically the extensive routing of the project along two of Mar Vista's residential streets, Inglewood Blvd. and Armacost Ave., and*

Whereas *both overhead and underground high-voltage transmission lines generate magnetic fields, and*

Whereas *the California Code of Regulations, Title 5, Section 14010 (c) has established setbacks between overhead high-voltage power lines and school property line, and*

Whereas, *the California Department of Education (CDE) has established setback guidelines between the "usable, unrestricted portions" of any California school site and underground transmission lines of:*

1. *25 feet for 50-133 kV line (interpreted by CDE up to <200 kV).*
2. *37.5 feet for 220-230 kV line.*
3. *87.5 feet for 500-550 kV line.*

And ***Whereas*** *the above setbacks target 2 milligauss as the maximum magnetic field contribution from power lines not to be exceeded, and*

Whereas *the Los Angeles Unified School District (LAUSD) has adopted the above setbacks between underground transmission lines and school property lines, and*

Whereas, *the Los Angeles Department of Water and Power (LADWP) adheres to LAUSD setback at LAUSD schools, and*

Whereas *children spend more time on their residential properties than on school properties, and*

Whereas *12 of 15 world epidemiological studies (see Appendix A.) have identified increased occurrences of childhood leukemia ranging from 43% to 353% in children living in environments with a daily time-weighted average magnetic field exposure of 3 milligauss or greater, and*

Whereas *other power utility projects in California, such as Pacific Gas and Electric's JEFFERSON-MARTIN 230 KV TRANSMISSION PROJECT (see Appendix B), in recognition of the health and safety concerns of ElectroMagnetic Fields exposure, have instituted EMF mitigation plans as part of their Transmission Line project, and*

Whereas *we recognize;*

1. *The unique character of the residential street of Inglewood Blvd., whose sidewalks are the main pedestrian walkways for the daily trips of Mar Vista Elementary students to and from their classrooms;*
2. *That homes on these streets are full of young children who make full use of play areas in front yards and walk and play on the sidewalks on a daily basis;*
3. *That the width of these streets is at some points as small as 33 feet;*
4. *That because of pre-existing underground installations on the streets the power line will not be placed down the center of the street, thus placing it even closer to some residences,*

Therefore *the Mar Vista Community Council demands that all underground power lines installed in MVCC territory must remain at least* ***Thirty-seven and one-half (37.5) feet*** *from the property lines of all residential properties,* ***or that distance required for the line's magnetic field to drop to 2 milligauss or less, which ever distance is greater.***

Furthermore,

Whereas *LADWP cannot guarantee that the electrical surge which will occur when one or more of the cable(s) in the 230,000 Volt circuit eventually fails, due to the thermal expansion and contraction from daily load fluctuations, will not cause an explosion and/or fire to occur in an adjacent crude oil and/or natural gas pipelines,*

Therefore *the MVCC insists that LADWP not place high-voltage transmission lines any residential street where such hazardous material pipelines exist, regardless of Right of Way width.*
Furthermore,
Whereas *the Mar Vista Hill section of Inglewood Boulevard has already experienced several property and infrastructure damaging ground slippages, and*
Whereas *LADWP cannot guarantee that additional ground movement will not be caused on the Mar Vista Hill section of Inglewood Boulevard by the trenching, placement, or operation of the proposed line,*
Therefore *the MVCC must insist that LADWP not place high-voltage transmission lines on the Mar Vista Hill section of Inglewood Boulevard.*

b. Policy Motion: *Development of the Bundy Village and Medical Park project will add massive amounts of traffic to Bundy Dr.-Centinela Ave., resulting in the Bundy Dr./Olympic Blvd. intersection being over-allocated by 34%, and the Centinela Ave./National Blvd. intersection being over-allocated by 24%.*

This will cause north-south traffic to divert from Bundy Dr.-Centinela Ave to the Mar Vista residential Collector streets of Grand View Blvd., Inglewood Blvd., and McLaughlin Ave. via either Palms, Venice and/or Washington Blvds to reach Barrington Avenue, and divert to Beethoven Street and Rose Avenue via either Palms, Venice and/or Washington Blvds., to reach 23rd St. as an alternate route to avoid the over-allocated intersections on Bundy Dr.-Centinela Ave.

Furthermore, development of this project will add massive amounts of additional traffic to Olympic and Pico Blvds and to the I-10, resulting in over-allocations ranging from 10% to as much as 59%. This will cause significant amounts of east-west traffic to divert to Ocean Park and National Boulevards, which will in turn cause significant amounts of traffic to divert from those highways to the residential Collector streets of Rose Ave., Palms Blvd., and possibly Charnock Rd.

Therefore the Mar Vista Community Council requests that the Bundy Village and Medical Park project be required to allocate the funds necessary to implement the Neighborhood Traffic Management Plan currently being generated by the Mar Vista Community Council in conjunction with the Los Angeles Department of Transportation and the Councilmember from Council district 11, the goal of which is to fulfill Policy 4.1 of the Los Angeles General Plan, Transportation element, which is to "Seek to eliminate or minimize the intrusion of traffic generated by new regional or local development into residential neighborhoods while preserving an adequate collector street system."

Furthermore, the MVCC requests that the LADOT base its recommendations for the MVCC NTM plan on the increased traffic counts (Over 20,000 additional car trips per day, as acknowledged by the developer and LADOT in the DEIR for the project) which will result from this development when it is completed.

Implementation of the agreed upon NTM Plan shall be completed prior to project occupancy of the Bundy Village and Medical Park.

c. Policy Motion: ***Whereas*** *the Los Angeles Department of Water and Power (LADWP) has experienced recent notable deterioration of its infrastructure with numerous power outages due to electrical transformer failures and several broken water mains; and*
Whereas *the LADWP has increased rates both absolutely and per unit of service; and*
Whereas *the department has failed to make good on the promised use(s) of past rate increase funds; and*
Whereas *there has been unexplained favoritism for LADWP equity, control and employee interests,*
The Mar Vista Community Council (MVCC) supports the implementation of a Ratepayer Advocate position, consisting of independent staff, reporting directly to the City Council, the City Controller and the Office of the Mayor. Further the MVCC urges that the Neighborhood Councils through their DWP NC MOU Oversight Committee be allowed to review and comment on the choice of the Ratepayer Advocate.

13) Web Development Committee – Babak Nahid , Chair

Zone Director Reports
New Business - Action items (Public comment permitted)
Grievances – Secretary

Any grievances received since the last meeting of the MVCC Board of Directors will be presented to the board for their consideration for possible referral to the MVCC Grievance Committee for further review and consideration.

Future agenda items

Adjournment (9:30 PM)

*Translators, sign language interpreters, assistive listening devices for the hard of hearing and/or other auxiliary aids/services are available upon request. To ensure the availability of services, please make your request at least three (3) working days before the date. If you have any questions regarding this notice, please call (213) 485-1360.

Appendix A

Table I. Summary Data from 15 Case-Control Studies of Magnetic Fields and Childhood Leukemia (mG = milligauss)

First Author (Year Published)	Country	No. Cases >3 mG	No. Cases Total	No. Controls >3 mG	No. Controls Total	Odds Ratio (Ω_{XY}) (95% Limits)
Coghill (1996)	England	1	56	0	56	∞
Dockerty (1998)	NZ	3	87	0	82	∞
Feychting (1993)	Sweden[b]	6	38	22	554	4.53 (1.72, 12.0)
Kabuto (2003)	Japan	11	312	13	603	1.66 (0.73, 3.75)
Linet (1997)	US[a]	42	638	28	620	1.49 (0.91, 2.44)
London (1991)	US[a]	17	162	10	143	1.56 (0.69, 3.53)
McBride (1999)	Canada[a]	14	297	11	329	1.43 (0.64, 3.20)
Michaelis (1998)	Germany	6	176	6	414	2.40 (0.76, 7.55)
Olsen (1993)	Denmark[b]	3	833	3	1,666	2.00 (0.40, 9.95)
Savitz (1988)	US[a]	3	36	5	198	3.51 (0.80,15.4)
Schüz (2001)	Germany	4	514	5	1,301	2.03 (0.54, 7.60)
Tomenius (1986)	Sweden	3	153	9	698	1.53 (0.41, 5.72)
Tynes (1997)	Norway[b]	0	148	31	2,004	0
UKCCS (1999)	UK[c]	5	1,057	3	1,053	1.66 (0.40, 6.98)
Verkasalo (1993)	Finland[b]	1	32	5	320	2.03 (0.23, 18.0)
Totals		118	4,525	149	10,017	1.70[d] (1.30, 2.24)

[a]120v 60 Hz systems, coded W = 1 (others are 220v 50 Hz, coded W = 0, except Japan, which is a mix of 100v 50 and 60 Hz systems); high-background (H = 1) studies are those in 120v systems (North America) plus Japan and Feychting (the latter was restricted to high-prevalence area).
[b]Calculated fields (others are direct measurement).
[c]Comparison of >4 mG vs. ≤2 mG, excluding 16 cases and 20 controls at 2–4 mG.
[d]Maximum-likelihood estimate of common odds ratio ($P = 0.0001$; homogeneity $P = 0.30$). Same numbers are obtained from the Mantel-Haenszel method.

Source: **"Leukemia Attributable to Residential Magnetic Fields; Results from Analysis Allowing for Study Biases" – Sander Greenland and Leeka Kheifets, Society of Risk Analysis, Vol. 26, No. 2, 2006**

Appendix B

Final Transmission EMF Management Plan Jefferson-Martin 230 KV Transmission Project.
January 6. 2005
(see PDF attachment)

RGB

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FILE COPY

File No. 4462

340-6698 July 11, 2007

Via Fax (760) ~~568-2611~~ & U.S. Mail

James C. Turney, Esq.
BEST BEST & KRIEGER
74-760 Highway 111, Suite 200
Indian Wells, CA 92210

RE: CENTINELA CREST HOMEOWNERS ASSOCIATION
– Your Clients: Marla Rubin and David Shapendonk

Dear Mr. Turney:

Please be advised that this law firm serves as legal counsel to Centinela Crest Homeowners Association ("Association"). Please direct all correspondence to our Woodland Hills office.

We are in receipt of your April 20, 2007 letter, in which you refer to the agreement between your clients and the Association dated August 12, 2004 ("Agreement"), claiming that the Agreement prevents the Association from disputing your clients' construction of a loft in and around his unit in the Association.

Your contention is plainly invalid. A contract is only valid where the parties entering therein are acting with capacity, or with a sound mind and of a contracting age. Here, to your clients' detriment, the Board of Directors, acting on behalf of the Association, entered into the Agreement through an improper vote of the Board. That is, the vote of the members of the Board of Directors on whether to enter into the Agreement with your client was invalid. At the time of the vote, the Board consisted of five (5) members, in violation of the Bylaws. Article IV, Section 1 of the Bylaws clearly restricts the number of members to three (3) persons. By violating the limit on the number of directors, the Board of Directors had no authority to execute the vote authorizing the Board to enter into the Agreement with your client, David Shapendonk, or to enter into same. In other words, should the proper number

of directors have been elected, it is unclear what the vote would have been regarding the execution of the Agreement and whether such a vote would have been sufficient to authorize same.

Further, your client usurped his position as Treasurer on the Board of Directors to manipulate and intimidate other Board members into executing the Agreement. Your client put undue pressure upon the other members of the Board to support the construction of his loft and improperly instructed the secretary of the Board to fail to include certain information in the minutes of the Board meeting in an unlawful attempt to conceal the facts of his construction from the members. As such, the Association was "of unsound mind" in that the Board was unable to resist fraud or undue influence caused by your client. (*Civil Code* Section 40(a).)

In other words, the Board of Directors did not have the capacity necessary to enter into the Agreement with your client. Not only was the Board of Directors manipulated by your clients such that it had no choice but to execute the Agreement, but also the Board was not of the proper composition to enter into any type of contract with any party. Further, your clients gave incomplete information to the Board and the members, upon which they relied in executing the Agreement. Namely, your clients informed the Board of Directors and hand-picked members of the Association that the loft at issue would not extend past the boundaries of their unit but that if it did, the extension would be insubstantial. Instead, the loft has extended onto the Association's common area roof, in blatant violation of the Association's Declaration of Covenants, Conditions and Restrictions ("CC&Rs"), namely Article VII, Section 4 thereof.

Finally, proper notice was not given to all of the members in accordance with Article III, Section 5 of the Bylaws prior to the meeting at which the Board was to determine whether to execute the Agreement. As such, the Board meeting and all actions held thereat were improper and invalid. Proper notice, which was delivered by your clients, was also not properly given for an emergency membership meeting, requested by the homeowners, in violation of Article III, Sections 4 and 5 of the Bylaws. As such, the actions taken at the emergency membership meeting are also improper and invalid.

Consequently, your clients must show that the contract is not voided through rescission by the Association. Your clients' inappropriate and deceptive behavior has led to this result.

In addition, the Agreement is voided for lack of capacity because the Association did not seek or have the approval of at least a majority of the owners prior to entering into the Agreement with your clients. While your clients caused the Agreement to be prepared and to be executed by the Association, the Agreement was executed in violation of Article IV, Section 2(a) of the Bylaws, which required the Association to seek the written consent of a majority of the total voting power of the Association before entering into the Agreement with your client, as it imposes maintenance obligations upon your clients for portions of the common area for over one (1) year. Without the vote of the entire membership, at least a majority of which must have agreed to the execution of the Agreement, the Association did not have the capacity to contract.

By hand-picking the homeowners who received notice of the membership meeting at which the vote on your clients' loft plans and grant of exclusive use of the common area would occur, your clients violated *Corporations Code* Section 7511(a), which requires written notice of a meeting to be given to "each member who, on the record date for notice of the meeting, is entitled to vote thereat." Accordingly, the vote itself is challengeable. Please be advised that several members have submitted complaints to the Board of Directors regarding your clients' loft installation and the vote thereof. Upon review of all of the complaints, it appears that the homeowners intend to challenge the vote that granted your clients the authorization to proceed with the loft construction.

Accordingly, demand is hereby made that your clients immediately accept responsibility for their improper assumption of exclusive use of the Association's roof for their loft and that your clients expressly indemnify the Association and immediately pay "reasonable compensation" therefor. Further, in accordance with Paragraph 9 of the Agreement, your clients are required to pay for the Association's costs, including attorney's fees, in rescinding the Agreement. Paragraph 9 requires your clients to "indemnify, defend and hold harmless" the Association "[i]f any claim is asserted by any person or entity," including the Association "concerning or related to the right or authority of the Board of Directors to enter into this Agreement."

Assuming, arguendo, that the agreement is valid, which it is not, your clients will be compelled to pay any and all costs and claims resulting from the improper vote.

The Association believes it is acting reasonably, given that it is not demanding that your clients remove the loft in its entirety, as it is legally obligated to do. Should your clients comply with the demands herein, the Association will permit your clients to retain the loft, provided they expressly indemnify the Association and pay "reasonable compensation" for their exclusive use of portions of the common area roof. This "reasonable compensation" will provide the Board with the protections necessary to justify the manner in which it resolved this dispute. However, should your clients continue to challenge the Association's demands, the Association will have no option but to demand the full removal of the loft.

Your clients have caused themselves to be subject to significant liability, not only by legitimate claims from the Association, but also from the members themselves.

Please ensure that your clients comply with their legal obligations.

Very truly yours,

RAPKIN GITLIN & BEAUMONT

JEFFREY A. BEAUMONT, ESQ.
CHRISTINA C. GASPAR, ESQ.

JAB/ccg/jt
cc: Board of Directors

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File No. 4462

August 31, 2007

FINAL DEMAND

Via Fax (760) 340-6698 & U.S. Mail

James C. Turney, Esq.
BEST BEST & KRIEGER
74-760 Highway 111, Suite 200
Indian Wells, CA 92210

RE: CENTINELA CREST HOMEOWNERS ASSOCIATION
– Your Clients: Marla Rubin and David Shapendonk

Dear Mr. Turney:

As you are aware, this law firm serves as legal counsel to Centinela Crest Homeowners Association ("Association"). This letter serves to follow up our letter to you of July 11, 2007, a copy of which we have enclosed for your convenience. To date, we have not received any type of response from you.

Accordingly, this letter serves as a **final demand** for your clients to comply with the Association's demand to accept full responsibility for the improper assumption of exclusive use of the Association's roof for their loft, to expressly indemnify the Association for all matters related to your clients' loft, and to pay "reasonable compensation" to the Association for the right to exclusive use of the roof area.

Please be advised that the Board of Directors would like to meet with your clients to determine whether they are in compliance with the governing documents and to determine the amount of "reasonable compensation" required for their exclusive use of the roof areas. The hearing shall be held on September 26, 2007 at 6:30 p.m. at Unit 207 of the Association.

At the hearing, the Board of Directors will address your clients' assumption of the exclusive use of the roof area for their loft, and reasonable compensation,

KERN COUNTY
4800 CALIFORNIA AVENUE
TOWER B-210
BAKERSFIELD, CA 93309
TELEPHONE: (661) 377-1929
FACSIMILE: (661) 377-1848

ORANGE COUNTY
333 CITY BOULEVARD WEST
17TH FLOOR
ORANGE, CA 92868
TELEPHONE: (714) 937-3060
FACSIMILE: (714) 938-3255

INLAND EMPIRE
8608 UTICA AVENUE
SUITE 100
RANCHO CUCAMONGA, CA 91730
TELEPHONE: (909) 373-8272
FACSIMILE: (909) 373-8241

CENTRAL COAST
1241 JOHNSON AVENUE
NO. 341
SAN LUIS OBISPO, CA 93401
TELEPHONE: (866) 788-9998
FACSIMILE: (818) 884-1087

which may cause your clients to be disciplined. Your clients have the right to attend the meeting and to address the Board of Directors thereat.

Should the Board of Directors determine that your clients are in violation of the governing documents and should the Board decide to impose discipline upon your clients, including a monetary penalty against your clients, the Association shall have the right to initiate formal collection action against your clients should they fail to comply therewith.

Please advise if you and your clients will attend the September 26, 2007 hearing.

Thank you.

Very truly yours,

RAPKIN GITLIN & BEAUMONT

JEFFREY A. BEAUMONT, ESQ.
CHRISTINA C. GASPAR, ESQ.

JAB/ccg
cc: Board of Directors

F:\WP\A - D\Centinela Crest HOA - #4462\2007 Correspondence\L-Turney for Shapendonk 070831 re final demand.wpd

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File No. 4462

October 1, 2007

Via Fax (760) 340-6698 & U.S. Mail

James C. Turney, Esq.
Vincent R. Whittaker, Esq.
BEST BEST & KRIEGER
74-760 Highway 111, Suite 200
Indian Wells, CA 92210

RE: CENTINELA CREST HOMEOWNERS ASSOCIATION
– Your Clients: Maria Rubin and David Shapendonk

Dear Messrs. Turney & Whittaker:

The purpose of this letter is to inquire if your clients remain interested in attending an Internal Dispute Resolution meeting, and to let you know that after discussion with my client, and reviewing my calendar, the best date for such meeting appears to be October 22, 2007 at 6:30 p.m. in Unit 207 of the Association. Please advise if you and your clients can attend such meeting. Please know, however, that the Association has instructed me to move forward formally to resolve this matter if a hearing doesn't take place by the end of October.

As discussed in the final demand letter, the Board would like to meet with your clients to determine whether they are in compliance with the governing documents and to determine the amount of "reasonable compensation" required for their exclusive use of the roof areas.

Furthermore, and in the meantime, please contact me to discuss if your client remains interested in settlement of this matter, short of moving forward with a hearing and, if necessary, formal action by the Association. Regardless, I look forward to meeting with you and working together to resolve this matter.

F:\WP\A - D\Centinela Crest HOA - #4462\2007 Correspondence\L-Turney & Whittaker for Shapendonk 071001 re IDR meeting.wpd

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4900 CALIFORNIA AVENUE
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333 CITY BOULEVARD WEST
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NO. 341
SAN LUIS OBISPO, CA 93401
TELEPHONE: (866) 788-9998
FACSIMILE: (818) 884-1087

Thank you.

Very truly yours,

RAPKIN GITLIN & BEAUMONT

JEFFREY A. BEAUMONT, ESQ.

JAB:cb
cc: Board of Directors

F:\WP\A - D\Centinela Crest HOA - #4462\2007 Correspondence\L-Turney & Whittaker for Shapendonk 071001 re IDR meeting.wpd

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is made and entered into as of December 12, 2009 ("Effective Date"), by and between David Shapendonk and Marla Rubin (hereinafter collectively referred to as "Owners"), on one hand; and the Centinela Crest Homeowners Association, a California corporation ("CCHOA"), on the other hand. Owners, and CCHOA are sometimes hereinafter individually referred to as a "Party" and/or collectively referred to as the "Parties," regarding the following facts:

RECITALS

A. Owners are the owners of that certain real property commonly known as 3544 S. Centinela Avenue, Unit 303, Los Angeles, California (the "Premises").

B. CCHOA is the homeowners association governing the condominium complex in which the Premises is located pursuant to that Declaration of Covenants, Conditions and Restrictions of Centinela Crest Condominium recorded with the Los Angeles County Recorder's Office as Instrument Number 85 1402099 (the "CC&Rs")

C. On or about August 12, 2004, the Parties entered into that certain Agreement recorded with the Los Angeles County Recorder's Office as Instrument Number 04 2194934 (the "Settlement Agreement"), regarding the construction of a loft within the Premises, a true and correct copy of which is attached hereto as Exhibit "A" and by this reference incorporated herein. Further to the Settlement Agreement, Owners proceeded to have the subject loft constructed within the Premises. CCHOA contends that the Settlement Agreement is null and void and/or that Owners breached same.

D. On or about December 19, 2008, CCHOA instituted an action against Owners entitled Centinela Crest Homeowners Association v. David Shapendonk, et al., Los Angeles County Superior Court Case No. SC101070 (the "Action"), whereby CCHOA sought damages, injunctive and declaratory relief from Owners regarding the construction of the subject loft, alleging, inter alia, that the Settlement Agreement was procured by fraud or other wrongful conduct of Owners. CCHOA also complained to the Los Angeles City Council and the City of Los Angeles Department of Building and Safety ("LADBS") that the subject loft was in violation of applicable building and zoning codes and constituted a threat to public health and safety. On or about August 7, 2009, Owners received an Order to Comply from the LADBS demanding that Owners discontinue use of the subject loft and apply to have the loft approved as-built by the LADBS.

E. The Parties desire to settle the Action as well as any and all disputes or potential disputes, claims or potential claims, each of the Parties hereto have, had, or may in the future have arising out of any of the Parties' actions with respect to the Action on the terms and conditions set forth in this Agreement, together with such other documents as may be necessary to effectuate the Agreement, rather than incur the costs of litigation and the uncertainties associated therewith.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated by this reference as though fully set forth at length herein.

2. Stipulated Settlement. Contemporaneously with the mutual exchange of documents and other consideration as provided for herein, (i) the Parties shall execute and deliver a counterpart copy of this Agreement to the other, through their respective attorneys of record in the Action; (ii) Owners shall pay to CCHOA the total and final sum of Seven Thousand Dollars ($7,000.00) (the "Settlement Payment") in exchange for the releases and other consideration provided for herein, with an initial installment of Three Thousand Dollars ($3,000.00) payable concurrently with the Parties' execution of this Agreement, followed by four monthly installments of One Thousand Dollars ($1,000.00) due and payable beginning no later that February 15, 2010, with each subsequent installment due and payable no later than the 15th of each month thereafter until paid in full; and (iii) immediately upon receipt of the full Settlement Payment, CCHOA shall cause to be filed a Request for Dismissal of the Action, with prejudice. Additionally, CCHOA shall immediately and forever cease all efforts to have action taken against the subject loft and shall inform the City of Los Angeles via letter, with a copy to Owners, that the legal action against Owners concerning the construction of the subject loft has been resolved to the CCHOA's satisfaction.

3. Effective Date of Release. None of the releases hereinafter set forth in Paragraphs 4 and 5 shall be effective as to any Party until the full performance required from such Party has been made.

4. Mutual Release. The Parties, for themselves and each of their predecessors-in-interest, spouses, relatives, subsidiaries, affiliates, representatives, agents, partners, co-owners, joint venturers, employees and attorneys, past and present, successors, assigns, heirs, executors, administrators and transferees, hereby release any and all causes of action, claims, demands, damages, expenditures, costs, attorney fees, liens, obligations and liability of any type or nature, whether known or unknown, suspected or unsuspected, which the Parties may now have or claim to have, or have at any time heretofore had by reason of the matters set forth herein and the Action. However, the Parties hereby acknowledge and agree that this Agreement and the releases identified herein shall not extend to any claims relating to insufficient or non-payment of funds, non-performance of any obligations hereunder, or any other matter not otherwise arising from or related to the Action.

5. Waiver of Civil Code §1542. The Parties hereby acknowledge that they understand the meaning of Section 1542 of the Civil Code of the State of California, which provides as follows:

> **"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."**

With respect to the matters set forth herein and subject to the terms of this Agreement, the Parties expressly waive and relinquish any right or benefit which they now have, or may in the future have, under Section 1542 of the Civil Code of the State of California, or under any other state, federal or local statute, code, ordinance or law similar to Section 1542 of the Civil Code arising out of or relating to the Action. In connection with such waiver and relinquishment, the Parties acknowledge that it is aware that attorneys or agents may hereafter discover claims or facts in addition to or different from those which the Parties now know or believe to exist with respect to such matters, but it is the Parties' intention to hereby fully, finally and forever settle and release all of the released matters, disputes and differences, known or unknown, suspected or unsuspected, which do exist, or may exist, or heretofore have existed arising out of or relating to the Action. In furtherance of such intention, the releases herein given shall be and remain in effect as full and complete releases notwithstanding the discovery or existence of any such additional or different claims or facts arising out of or relating to the Action.

6. Settlement of Disputed Claims. The Parties hereby acknowledge that this Agreement affects the settlement of disputed claims and should not be construed as an admission of liability on the part of any Party hereto. No Party is admitting the sufficiency of any claim, allegation, assertion, contention or position of any other Party, nor the sufficiency of any defense to any such claim, allegation, assertion, contention or position. The Parties have entered into this Agreement in good faith and with the desire to forever settle and resolve their claims.

7. Entire Agreement, Modifications and Waiver. This Agreement constitutes the entire agreement between the Parties, along with the prior Settlement Agreement except to the extent to which the prior Settlement Agreement is otherwise modified by this Agreement, with respect to such terms as are included herein and the Parties acknowledge that they have not executed this instrument in reliance on any promise or representation or warranty not contained herein. This Agreement supersedes and replaces all prior settlement negotiations and/or proposed settlements. This Agreement may not be contradicted by evidence of any prior or contemporaneous oral or written agreement, except the prior Settlement Agreement which the Parties hereby agree and ratify as binding on each other, especially Paragraphs 5 through 9 of the prior Settlement Agreement, except to the extent to which the prior Settlement Agreement (other than Paragraphs 5 through 9) is otherwise modified by this Agreement. No alteration, supplement, modification or amendment of this Agreement or the prior Settlement Agreement shall be binding unless executed in writing by all of the Parties hereto. No waiver of any of the provisions of this Agreement or the prior Settlement Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

8. Applicable Law, Jurisdiction and Venue. This Agreement shall be deemed to have been entered into and shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of California. Pursuant to Evidence Code §1123, this Agreement is enforceable, binding and admissible in a court of law. The Los Angeles County Superior Court, Santa Monica Courthouse, shall have jurisdiction over the Parties as to the matters presented herein.

9. Jointly Drafted. It is agreed between the Parties that this Agreement was jointly negotiated and jointly drafted by the Parties and that it shall not be interpreted or construed in favor or against any Party on the ground that said Party drafted the Agreement. It is also agreed and represented by the Parties that this Agreement was the result of extended negotiations between the Parties and their respective counsel and that each of the Parties were of equal or relatively equal bargaining power. In no way whatsoever shall it be deemed that this Agreement is a contract of adhesion, is unreasonable or unconscionable, or that any Party entered into this Agreement under duress. The language of this Agreement shall be construed as a whole according to its fair and logical meaning and not strictly for or against any of the Parties.

10. Section Headings, Gender and Syntax. The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the construction or interpretation of this Agreement. Whenever in this Agreement the context so requires, the masculine or feminine or neuter gender and the singular and plural number shall be deemed to refer and include the other.

11. Independent Legal Counsel. The Parties hereby acknowledge that they have had the opportunity to retain independent legal counsel of their own choice throughout all of the negotiations which preceded the execution of this Agreement and that each Party has executed this Agreement with the consent and on the advice of such independent legal counsel.

12. Additional Documents. To the extent that it is necessary or appropriate to prepare and execute any additional documents in order to effectuate this Agreement, the Parties agree to do so in a timely manner.

13. No Assignment of Claim. The Parties hereby represent and warrant to each of the other Parties that no claims they might have, or do have, and which are otherwise referenced and released by this Agreement have been assigned or transferred to any person, corporation or other entity, either voluntarily or involuntarily, and that there are no lawsuits pending between the Parties. The Parties hereby agree that they will indemnify and hold each of the other Parties harmless from any loss, including attorney fees and costs incurred, which may result from breach of any term or condition of this Agreement.

14. Binding on Successors. This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, assigns, executors and administrators.

15. No Third Party Rights. Except as otherwise expressly set forth herein, nothing contained in this Agreement is intended to confer any right or benefit upon any person or entity other than the Parties hereto and their successors.

16. Severability. If any provision of this Agreement is held invalid or unenforceable, in whole or in part, by any court of final jurisdiction, it is the intent of the Parties that all other provisions of this Agreement be construed to remain fully valid, enforceable and binding on the parties in all respects as if such invalid or unenforceable provision were omitted. Any court of final jurisdiction will have the authority to modify or replace the invalid or unenforceable term or

provision with a valid and enforceable term or provision that most accurately represents the intention of the Parties.

17. Attorney Fees. Each of the Parties shall bear their own respective attorney fees, costs and expenses regarding the Action, including those incurred in the preparation of this Agreement. If any legal or administrative action or any arbitration or other proceeding is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing Party or Parties shall be entitled to recover reasonable attorney fees and other costs and expenses incurred in that action or proceeding in addition to any other relief to which it or they may be entitled.

18. Counterparts and Fax or Electronic Transmission. This Agreement may be executed in counterpart and exchanged by facsimile or electronic delivery, and all original or facsimile or electronic counterparts, when taken together, shall be valid as one instrument as though signed in original on a single page.

19. Authorization. The undersigned members of the current CCHOA Board of Directors hereby represent and warrant that they are legally authorized and entitled to enter into this Agreement on behalf of the CCHOA; that they are legally authorized and entitled to settle and to release every claim herein released and to give a valid, full and final acquittance therefor on behalf of the CCHOA.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the Effective Date hereunder. The undersigned hereby warrant that they are legally authorized and entitled to settle and to release every claim herein released and to give a valid, full and final acquittance therefor.

DATED: January ___, 2009	**CENTINELA CREST HOMEOWNERS ASSOCIATION**
	By:_____
	Name:_____, Director
	By:_____
	Name:_____, Director
	By:_____
	Name:_____, Director
	By:_____
	Name:_____, Director
(SIGNATURES CONTINUED ON NEXT PAGE)	

DATED: January ___, 2010	By:_____ **DAVID SHAPENDONK**
DATED: January ___, 2010	By:_____ **MARLA RUBIN**

APPROVED AS TO FORM: **BEST BEST & KRIEGER LLP**

By:_____
ROMAN M. WHITTAKER
Attorney for DAVID SHAPENDONK and
MARLA RUBIN

APPROVED AS TO FORM: **RAPKIN GITLIN & BEAUMONT**

By:_____
JEFFREY A. BEAUMONT
Attorney for CENTINELA CREST
HOMEOWNERS ASSOCIATION

EXHIBIT "A"

This page is part of your document - DO NOT DISCARD

04 2194934

RECORDED/FILED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA

11:01 AM AUG 25 2004

TITLE(S) :

LEAD SHEET

FEE

FEE $28 WW
DAF $ 2
C-20 8

D.T.T

CODE
20

CODE
19

CODE
9____

Assessor's Identification Number (AIN)
To be completed by Examiner OR Title Company in black ink. Number of AIN's Shown

THIS FORM NOT TO BE DUPLICATED

2

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO

Marc H Goldsmith, Esq
Van Etten, Suzumoto & Becket LLP
1620 26th Street
Suite 6000 North
Santa Monica, CA 90404

04 2194934

AGREEMENT

This Agreement is entered into by and between DAVID SHAPENDONK ("Owner") and CENTINELA CREST HOMEOWNERS ASSOCIATION ("Association") as of August 12, 2004 with reference to the following facts.

A Association is composed of owners of condominium units at a condominium complex commonly referred to as Centinela Crest Condominium ("Complex") Association is governed in part by the Declaration of Covenants, Conditions and Restrictions of Centinela Crest Condominium ("CC&Rs") recorded with the Los Angeles County Recorder on November 26, 1985 as Instrument No 85-1402099.

B Owner is a member of the Association by virtue of its ownership of a condominium unit at the Complex located at Unit #303, 3544 South Centinela Avenue, Los Angeles, CA 90066 (the "Unit"), the legal description of which is described in Exhibit "A" hereto

C Owner submitted a proposal for those alterations described in Exhibit "B" attached hereto (the "Alterations") in a meeting with the Association's Board of Directors (the "Board") together with Owner's architect, complete plans and a scale model of the Alterations, prior to Owner's commencement of any construction

D The CC&Rs provide in Article VIII that

"[T]he [B]oard shall appoint all of the members of the Architectural Committee "

E. The Board has never appointed an independent Architectural Committee but, instead, the Board has always served in the capacity of the Architectural Committee itself.

F The CC&Rs provide in Article VII, Section 4 that

"No owner shall make or cause to be made structural alterations or modifications to the interior of his unit or installations located therein without the prior written consent of the Architectural Committee "

The CC&Rs also provide in Article VII, Section 12 that

"Nothing shall be done in any unit or in, on, or to the Common Area which will impair the structural integrity of any building or which would structurally change any building within the project without the prior written consent of the Architectural Committee Nothing shall be altered or constructed in or removed from the Common Area, except upon the prior written consent of the Architectural Committee."

And, the CC&Rs provide in Article VII, Section 15 that

"The Common Area is and shall always be subject to easements for minor encroachments thereon of the units."

G The Board, acting in the capacity of the Architectural Committee, deliberated and after due consideration of the Owner's proposal, the Board approved the Alterations, subject to certain conditions Furthermore, in its deliberations, the Board was unable to conclude whether the Alterations created any encroachment of the Common Area However, the Board determined that if any encroachment of the Common Area resulted it would be minor in character and, therefore, subject to the easement of Article VII, Section 15

H. The CC&Rs provide in Article VII, Section 5 that

"The Board, or its duly appointed agent, including the Manager, if any, shall have the exclusive right to decorate, repair, maintain and alter or modify the exterior walls, balconies, railings, exterior door surfaces, roof, and all installations and improvements in the Common Area, and no owner of a condominium shall be permitted to do, or have done, any such work "

I During the course of its deliberations and approval of the Alterations, the Board interpreted Article VII, Section 5 to mean that no such modifications by an owner were permitted without the authority of the Board, and the Board authorized and appointed the Owner as its agent to alter the Common Area in accordance with the plans proposed in connection with the Board's approval of the Alterations.

J Following the approval of the Alterations granted by the Board, the Board submitted the Alterations to the vote of the members by means of action by written ballot More than a majority of the total voting power of the membership approved the Alterations

K After the vote of the membership Owner commenced construction After commencing construction of the approved Alterations, Owner revised the plans moderately by reducing the overall height of the Alterations by approximately six inches (the "Revision") and Owner has continued construction of the Alterations as modified by the Revision and is presently nearing completion of construction (Unless the context indicates otherwise, hereinafter the term "Alterations" shall include the Revision)

L. After Owner had commenced construction, some homeowners began questioning whether the approval of the Board and the membership was inadequate or improper for one reason or another Among other things, the Board, after consulting with legal counsel, considered whether the approval of the membership was procedurally valid, and whether the Alterations required, under the

California Court of Appeal decision in *Posey v Leavitt*, 229 Cal App 3d 1236 (1991), the approval of all of the members However, after consultation with the Association's attorney and in the exercise of its business judgment, the Board determined that (i) there is a possibility that *Posey v Leavitt* may not apply to the Alterations, and (ii) even if *Posey v Leavitt* did apply or even if the approval of the members was procedurally defective and these defects were not curable, it was unlikely that a California court would award the Association mandatory injunctive relief requiring Owner to remove the Alterations given a balancing of equities, the fact that Owner has nearly completed the Alterations, that the Board and the members had acted in good faith, and that Owner had relied, in good faith, on the apparent approval of the Board and the members in constructing the Alterations

M Under California law, in the absence of any language to the contrary in the Association's governing documents, no Association homeowner is entitled to a view Moreover, in the judgment of the Association and Owner, the Alterations do not obstruct the view of any residents of the Association

N Based upon the foregoing, the Board has determined that this Agreement is in the best interests of the Association and all of its members, and the Board and the Owner hereby desire to enter into this Agreement and the terms and conditions set forth in this Agreement

THE PARTIES AGREE

1 The Board, acting in its role as the board of directors for the Association and in its capacity as the Architectural Committee, hereby confirms, ratifies, and approves the Alterations and the Revision, as planned and as constructed to date. Any material modification of the approved Alterations and Revision will require further approval in accordance with the CC&Rs

2 The Board hereby confirms, ratifies and appoints Owner as its duly appointed agent for purposes of exercising the exclusive right to decorate, repair, maintain and alter the roof and improvements in the Common Area but only to the extent necessary or convenient to construct the Alterations including the Revision

3. Owner warrants and represents that all construction of the Alterations, and all future use of the Unit, has been and will continue to be in accordance with applicable building codes, zoning provisions and other applicable law Prior to the sale of the Unit to a third party, Owner shall assign to the Association all of its right, title and interest in and to any service or manufacturer's warranty obtained in connection with the construction of the Alterations.

4 Owner shall repair any and all components of the Common Area damaged in connection with the construction of the Alterations or, at the Association's option, reimburse the Association for the cost of any such repairs Alternatively, the Association may, in its reasonable business judgment, use reasonable efforts to obtain relief under any service or manufacturer's warranty applicable to the Alterations before effecting the repair of any damage caused by the Alterations and seeking reimbursement from Owner for the costs of such repair

5 To the extent that the Alterations are the cause of any damage or destruction to the Common Area, any Unit within the Complex or the contents thereof as a result of design or construction defects, then, consistent with Article VII, Section 9 of the Association's CC&Rs, Owner shall be responsible to reimburse the Association for the costs to repair such damage or destruction

6 To the extent that the Alterations cause the Association to have to maintain, repair or replace Common Area components beyond that which it would otherwise be required to do, then Owner shall reimburse the Association for the amount of such additional costs

7 In the event that the premiums for insurance maintained by the Association increase as a result of the Alterations, Owner shall reimburse the Association for the amount of any such additional insurance expense attributable to the Alterations Owner shall pay the foregoing insurance expense increase, if any, at least ten (10) days prior to the due date of the insurance premium

8. In the event that the real property taxes imposed on the Association increase as a result of the Alterations, Owner shall reimburse the Association for the amount of any such additional real property tax liability attributable to the Alterations. Owner shall pay the foregoing real property tax increase, if any, at least ten (10) days prior to delinquency of the property tax liability

9 The parties acknowledge that the authority granted to Owner by the Board is subject to, and limited by, the CC&Rs The Board makes no representation or warranty concerning its authority to enter into this Agreement If any claim is asserted by any person or entity concerning or related to the right or authority of the Board of Directors to enter into this Agreement, Owner shall indemnify, defend and hold harmless the Association, its members, directors and officers in connection therewith Owner shall at all times maintain comprehensive general liability coverage, including contractual liability coverage, in the amount of at least $100,000

10 With the exception of the obligations imposed under this Agreement, Owner on the one hand and Association on the other hand, for themselves, their respective officers, directors, members, managers, partners, agents, employees, attorneys, successors and assigns hereby release and discharge each other, and their respective officers, directors, shareholders, members, agents, employees, attorneys, heirs, successors and assigns, individually and collectively, of and from any and all possible debts, claims, rights, demands, actions, obligations, liabilities, and causes of action of any and every kind, nature and character whatsoever, whether known or unknown, asserted or unasserted, which either party does or may now have, or may in the future have against one another arising out of or relating to the Alterations ("Mutual Release"). The parties each understand and agree that, excepting the obligations imposed under this Agreement, this Mutual Release extends to all claims of every nature and kind whatsoever, known or unknown, suspected or unsuspected, and each party hereby waives all rights under California Civil Code section 1542, which reads as follows

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM MAY HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR " (California Civil Code § 1542)

11. Nothing herein shall be construed to modify or alter the obligations of Owner pursuant to the CC&Rs

12. Owner may restore the Unit to its original condition at any time upon notifying the Board of Directors in writing of its intent to do so and upon written receipt of approval from the Architectural Committee, if one exists, or from the Board of Directors, in the absence of any such Committee, and otherwise subject to all applicable building codes and zoning laws, as well as the provisions of the CC&Rs

13 If any action is brought as a result of the breach of any provision of this Agreement or to enforce any provision, the prevailing party shall be entitled to recover reasonable attorney's fees and costs incurred

14 This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

15 This Agreement shall be binding upon and inure to the benefit of each of the parties successors and assigns, and shall run with the land

Dated 08/20/2004

DAVID SHAPENDONK

Dated. 08/20/2004

CENTINELA CREST HOMEOWNERS ASSOCIATION

By

Its President

04 2194934

State of California)
)
County of Los Angeles)

On 27th of August 2004 before me, Kayoko Shishido, personally appeared David Shapendonk ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and ~~official~~ seal

Signature _____

KAYOKO SHISHIDO
Commission # 1357921
Notary Public - California
Los Angeles County
My Comm Expires May 24, 2006

State of California)
)
County of Los Angeles)

On 27th of August 2004 before me, Kayoko Shishido, personally appeared Jacqual Donald Jerome ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument

WITNESS my hand and official seal

Signature _____

KAYOKO SHISHIDO
Commission # 1357921
Notary Public - California
Los Angeles County
My Comm Expires May 24, 2006

04 2194934

EXHIBIT "A"

The Unit is that certain real property in the City of Los Angeles, County of Los Angeles, State of California described as Unit 303 of Lot 1 of Tract No 40133 as per Map thereof recorded in Book 1045, pages 62 to 63, inclusive of Maps, in the Office of the County Recorder of Los Angeles County California

04 2194934

EXHIBIT "B"

The Alterations are as follows

Owner has modified common property within the Centinela Crest Home Owners Association for the purposes of installing a loft and raising the building's roof line between 2' to 3' over his living room/dining room to accommodate the loft. In addition, Owner has modified internal room dimensions within his unit, added/changed plumbing, added/changed venting conduits, added/changed electrical fixtures and lighting, added/change drywall and insulation, and added a skylight in the loft

From: Judith Deutsch (jsdeutsch1@yahoo.com)
To: sue.chang@LACity.org; Sia.Poursabahian@lacity.org; Whitney.Blumenfeld@lacity.org; terry.kaufmann-macias@lacity.org; rhonda.ketay@LACity.org;
Date: Mon, July 11, 2011 11:23:52 AM
Cc: degstrom@ca.rr.com; adrianastralberg@yahoo.com; upadi@yahoo.com; robinaroy@aol.com; vicd9553@yahoo.com; smcommins@msn.com; joyce.simmons@gmail.com; masherritt@msn.com;
Subject: [No Subject]

Dear City Officials:

On page F-2 of the West Los Angeles Area Planning Commission's ruling on ZA-2009-3395-ZV-1A, there is a reference to a May 27, 2011, e-mail from LADBS Office Manager Sia Poursabahian stating that the Shapendonks did not mislead LADBS when the permit was issued for the loft at 3544 S. Centinela Avenue, Condo 303, Los Angeles, CA 90066.

This e-mail was written AFTER an exhaustive review of seven years of material and documentation concerning this case, which resulted in a denial of the variance by the Zoning Administrator. I first learned about the existence of Mr. Poursabahian's e-mail at the June 1, 2011, Planning Commission appeal hearing five days after the e-mail was issued.

Despite numerous requests, I have not been able to obtain a copy of the e-mail. Community members opposing the loft were not given any opportunity to review the communication prior to the hearing, or to present evidence that contradicts it, or to inquire why -- after years of contention -- this e-mail was suddenly produced, or to inquire what would have motivated Mr. Poursabahian to take it upon himself to write the e-mail at this precise moment.

He did not handle the granting of the permit in 2004.

The whole timing of this, and the motivation behind it, raises many questions. Apparently, there are a string of e-mails, since Mr. Poursabahian, Zoning Administrator Sue Chang, and at least one Planning Commissioner, Mr. Thomas Donovan, saw it. Mr. Donovan is not the President, nor the Vice President, of the Planning Commission, and we do not even know if all of the commissioners saw it. No one else mentioned it at the appeal hearing. Mr. Poursabahian, in a July 6, 2011, e-mail to me, states that he did not send it to Mr. Donovan, who placed heavy emphasis for the appeal on the e-mail. And someone had to request it of Mr. Poursabahian. We are entitled to see the entire string of communications.

We request an extension of time in which to file our appeal so that we can obtain the May 27, 2011, communication as well as any other communications that may be relevant. Mr. Poursabahian directed me to contact LADBS' Custodian of Records at (213) 482-6765 to ask for copies of the communication records for 3544 Centinela Avenue. I left a message on Wednesday, July 6, 2011, on a recording that said they would get back to me within 24 hours. I later called Rhonda Ketay, Planning Commission Executive Assistant, who called to tell me she has not been able to find the document(s). She was going to continue looking. Ms. Chang sent her copy to the Planning Commission records office.

Our appeal is due on Friday, July 15, 2011.

I still do not have the documents(s).

Sincerely,

Judith Deutsch
Office: 310-670-2870 ext. 106.
E-mail: jdeutsch@ucla.edu

From: Sue Chang (sue.chang@lac.. .org)
To: jsdeutsch1@yahoo.com;
Date: Mon, July 11, 2011 11:48:45 AM
Cc: rhonda.ketay@lacity.org; terry.kaufmann-macias@lacity.org; whitney.blumenfeld@lacity.org;
Subject: Fwd: 3544 Centinela Ave , ZA 2009-3395-ZV-1A

Hope this is the one you are looking for.

Sue

---------- Forwarded message ----------
From: **Siavosh (Sia) Poursabahian** <sia.poursabahian@lacity.org>
Date: Fri, May 27, 2011 at 2:18 PM
Subject: 3544 Centinela Ave , ZA 2009-3395-ZV-1A
To: Sue Chang <sue.chang@lacity.org>
Cc: len nguyen <len.nguyen@lacity.org>

Hi Sue,

I thought I share my input with you before the June 1st hearing in front of APC.

Based on the following information, I conclude that the applicant **DID NOT** mislead LADBS in issuing the permit# 04014-30000-03731:

> The loft addition was permitted under permit# 04014-30000-03731 on 5/21/2004.
> Applicant obtained the City Planning sign off for Q-Condition on 5/12/2004.
> The approved set of plans by LADBS shows the skylight (dome shape) above the loft roof.
> The plans shows that the highest point of the new loft roof will be at 18' 0" above the unit# 303 floor.
> The plans show the roof of the loft is higher than the adjacent parapet, but LADBS staff added a note of *"No higher than existing parapet"* on the plot plan of the permit# 04014-30000-03731.

Note: Applicant can provide a survey showing that the height of the loft is not higher than 18' 0" above the unit# 303 finished floor.

> Applicant has built the loft addition per the approved set of plans by LADBS.

With regard to applicability of Nonconforming height (Section 12.23A.2) vs. Q-Condition:

> Q-Condition, Ordinance# 164475, states *"No portion of any **new** building or structure...shall exceed two stories or 33 feet as measured..."*
> The nonconforming Section 12.23A.2 states "A building, nonconforming only as to height regulations, may not be added or enlarged in any manner, **unless** the addition or enlargements **conform to all current regulations of the zone and other applicable current land use regulations**, provided..."

The question is whether the existing three-story building is nonconforming with respect to 33 feet per Q-Conditions **or** 45 feet which is the current height limit for the Height District 1 (the property is zoned [Q] R3-1).

The fact that the Q-Condition states "No portion of **new** building or structure...", one can conclude that the Q-Condition is **only** applicable to new buildings or new structures and not to addition(s) and an addition shall only comply with the nonconforming Section 12.23A.2, unless determination has been made by the City Planning that the Q-Condition height of 33 feet establishes the "**current regulations of the zone and other applicable current land use regulations" for** nonconforming height.

If you agree that the loft addition does not have to comply with the Q-Condition, since it is not a "new building", then the next question is what the non-conforming height is for the existing building. Is it 45 feet or the height to the top of the adjacent parapet?

Per 'Height" definition, the height is measured to "highest point of the roof, structure, or the parapet wall, whichever is highest". One can conclude that since the exiting highest point of the parapet is higher than 45 feet allowed by Height District 1, then the existing height of the parapet shall be allowed to be used as the established nonconforming height for the existing 3-story building.

If you agree that the height of the parapet is the established nonconforming height for the existing building, then we need to only compare the height of the roof of the as-built loft to the height of the parapet. In this case, the loft is only exceeding the adjacent parapet height by 10 inches per the survey done by a licensed surveyor hired by the owner of the unit# 303.

Based on the above information, I conclude that the loft addition exceeds the allowable zoning height (Section 12.23A.2) by only 10 inches and considering the fact that the applicant followed the approved set of plans by LADBS and the loft has already been built, I think there may be enough justifications for the City Planning to approve the loft to exceed the established nonconforming height by 10 inches.

Please let me know if I can be of further assistance.

Thank you

--
Sia Poursabahian, MSCE, ECE, SE
Office: (310) 575-8122
Fax: (310) 575-8184

eutsch

David Shapendonk
t: RE: Loft

David,

anks so much for your note. I want to be a good neighbor, too, and as
know, I am very concerned about the visibility of the loft from the
ilding and the street. I am very sorry that the actual structure is
r more visible than you and the contractor thought it would be. My
ncern is that in changing the visual look of the building through
ructural changes, we are opening a can of worms for anyone who wants
change the roofline, the side of their unit, enclose their balcony,
. It sets a precedent whether the homeowners vote to let others do
or not, and becomes a legal question for future changes to the
ructure of the building. Furthermore, you mentioned to me that no one
se can build a structure similar to yours because the other condos on
top floor, front are of different size. So if Units 301 and 302
e to add lofts, we would have numerous different tops on the front of
building. That means that any subsequent structures up there
uldn't conform to yours.

emember that when Miles changed a window to a patio door we were all
r him for altering the outside of the building. You were very active
this. We even discussed that he could not change his door color
ause the building's outside needed to remain consistent with other
ts. And we engaged an attorney. Well, your loft is far more
rusive than Miles' patio door, which can't be seen from the outside
the building. This is my personal concern, and also the concern of
y of our homeowners. While we were assured that the structure would
be visible, I, for one, was willing to see you expand your living
ce. I'm your friend, and Marla's, so I was willing to vote to breach
roof, something I would never have voted to allow anyone else to do.
, David, this was with the understanding that it would not show, so
t we wouldn't have a future problem with others making changes to the
of the building.

ncouraged a number of other homeowners to support you on that first
e (people called me and stopped me in the courtyard and the garage to
my opinion and voice their concerns), and I assured them that you
mised we would not see the structure from the front or the back of
building. I did mention to you when I gave you my ballot, that my
concern had been that we would be able to see the structure from my
or or elsewhere. I specifically said that since the structure would
been seen, I was happy to vote for it. I specifically asked about
s in the informational get together we had, and both you and the
tractor told me, in the presence of numerous homeowners, that it
ld not be seen. This was before you started work on the loft.

ld, I don't think a six-inch drop in the height of the structure is
g to make enough of a difference in the visual portion of the
ucture. Upadi says that the structure is about eight-foot tall.
without the question of visibility, it is much higher than we were
it would be. How did this happen?! Also, has anyone checked with
e Farm insurance to find out if the extra height changes our policy?
ere a 3.5-floor building and I think your addition will make us a
-floor building.

ay, I don't consider this, on my part, as anything to do with our
ndship. I am thrilled that you and Marla are married
NGRATULATIONS!!) and I'm looking forward to walking with Marla in the
ings, etc., when you move back in. But the height of the loft is a
lem and I don't know what to do to make everyone happy, me included.

st mentioned the problem to Jason, he said the whole thing was
nal problem between you and me (it is not--it is a homeowners'
em, and I did vote to approve it before we discovered the mistake
ight) and insisted that I submit letters verifying that you and
contractor did assure us that the loft would not be seen. This
that I had to call some of the people at the meeting to get the
d letters. I got the letters, so now Jason's mad at me for calling
people, and he apparently brought Adriana to tears over her letter.
, these are things people in the building aren't going to forget.
one thing to disagree on a building structure and for you and the
actor to have been misinformed on the height. It would have seemed
open and above board if you had put the details in the minutes to
original Board meeting for everyone to see, or if you had sent
one an explanation of the proposed structure and discussed it with
at a properly scheduled meeting. The homeowners will have to
le what they want to do about it. It is another thing to bully
e over the disagreement. We have had building disagreements
e, we've even impeached two presidents, but we still remained
ds in the building. This whole thing is being badly managed, and I
ze you are not here to help set it right. And even if I did think
ix-inch drop is sufficient, at this point enough people have been
ated that I can't intercede for you with them.

really don't know what to tell you to do for the upcoming board
ng. I wish I could be of more help. I want you to have your loft,
don't want it to show above the roofline, front and back.

a great party. Sorry I will be trucking out-of-state visitors
d that weekend!

Original Message-----
David Shapendonk [mailto:dshapendonk@imax.com]
Thursday, July 08, 2004 1:02 PM
udith Deutsch
ct: Loft

Judy,

e been in consultations with Michael Kent, my architect and
ler,
w we can lower loft structure as outlined on the building plans
tted to the board and the home owners. It was our original hope to
the structure by a full foot, but we can only lower it by six
s,
wise we would be in violation of city building codes on the loft
t. We've already begun to modify the structure to this height this
but I had to wait until Michael Kent had completed his run through
uilding department before presenting it to you. I apologize for

, but I wanted to be sure the change was in code.

and I want to be good neighbors to everyone at Centinela Crest,

ially you, since you have proven to be a good friend in the
We
have not forgotten that you were the one who introduced us to each

ease let me know what you think of this change and whether it
s your personal concerns. I know you cannot speak on behalf of

home owners, but I would like to reach agreement on something that
e presented at the upcoming board meeting.

rs sincerely,

avid Shapendonk

From: Adriana Mackavoy (adrianastralberg@yahoo.com)
To: jsdeutsch1@yahoo.com;
Date: Wed, May 18, 2011 7:16:19 PM
Cc:
Subject: Re: Mardelle

Hi Judy,

Thanks so much for offering us the tickets for Saturday night! That is something we would have loved to do, but unfortunately we have plans already. Thanks again though!

I'm glad you'll be at Mardelle's service. Her relatives are supposed to arrive in town tomorrow.

About the hearing, should I just send my same letter from last time? Apparently Marla is trying to bully people into writing letters on their behalf. They are truly unbelievable!

Take care,
Adriana

Sent from my iPhone

On May 18, 2011, at 12:38 PM, Judith Deutsch <jsdeutsch1@yahoo.com> wrote:

> Hi, Adriana,
>
> I will be there.
>
> Also, I have two extra tickets to "The Madness of Herakles" at the J. Paul Getty Museum in Malibu for Saturday night. They are for the 8:00 p.m. play, but the Museum opens at 6:30 p.m. if you would like to go through it.
>
> Let me know if you can come. It would just be the three of us--you, me, and Michael.
>
> Best,
>
> Judy
>
> ---
>
> **From:** Adriana Stralberg <adrianastralberg@yahoo.com>
> **To:** Judith Deutsch <jsdeutsch1@yahoo.com>; upadi yuliatmo <upadi@yahoo.com>; Miles <milesla@roadrunner.com>; David Shapendonk <shappy@speakeasy.net>; christinemdavis@hotmail.com; quin@surfcity.net; Boris Sturman (CityView LA) <bsturman@cityview.com>
> **Sent:** Tue, May 17, 2011 7:47:53 PM
> **Subject:** Mardelle

Hi Everyone,

You may have heard already, but there will be a memorial service for Mardelle this Saturday at noon at Culver City Methodist Church.

Take care,
Adriana

From: Adriana Mackavoy (adrianas..lberg@yahoo.com)
To: jsdeutsch1@yahoo.com;
Date: Thu, May 19, 2011 3:30:43 PM
Cc:
Subject: Re: Question

Hi Judy,

They truly are unbelievable. The person who told me this does not want in any way to be involved which is why they were so upset about being asked to write a letter. I wasn't even supposed to mention the conversation, so I'm quite sure they won't write a letter. I wouldn't mind mentioning in my letter that a homeowner approached me and said that the Shapendonks said that homeowners need to write letters supporting them because it would cost the Association a lot of money if the Shapendonks had to take down their loft.
Can you believe they're saying this? (sadly, you probably can believe it)!!!!!!

What do you think about me adding this? Do I send all the copies to the same place?

Thanks,
Adriana

Sent from my iPhone

From: David Shapendonk (shappy@speakeasy.net)
To: adrianastralberg@yahoo.com; jsdeutsch@verizon.net;
Date: Fri, October 9, 2009 6:52:16 PM
Cc:
Subject: Loft Update and Settlement Offer

Dear Adriana and Judy,

Marla and I want to pass along the following news to you. We have been working with the city to resolve their permit concerns with our loft and have a couple of solutions in the works. Whether the issue is resolved through the granting of a supplemental permit or through a variance hearing, please know that LADBS has stated that our existing permit will not be revoked while these processes are in the works. In the meantime, the city has asked that we work to resolve our internal CCHOA disputes, as they do not wish to become a tool that either side uses to pursue any civil action. Marla and I concur with that sentiment.

We also want to make you aware of some other facts:

1. We have reviewed the comments and concerns that you have voiced with LADBS, Health, and local elected officials, and we have met with LADBS and the Planning Department to resolve them. LADBS has determined that there are no structural issues with the loft. The August 31, 2009 notice of intent to revoke the permit is based solely on a height issue. Both the building itself and the loft exceed the current height restrictions which were adopted in 1989, but both are grandfathered in under the Zoning Code. Because the loft is lower than the highest portion of the building, the loft does not expand the existing non-conformity. The Planning Department has determined that the condo is not a new building and the loft is not a separate structure, and therefore, the height of the loft is grandfathered in as part of the overall building.
2. Patty from unit 101 has passed along that she was denied supplemental home owners insurance because of the on-going legal disputes within the building. Whether action is brought by individuals or by the CCHOA makes no difference. If there is action before the city or courts, it affects a home owner's ability to get insurance.
3. On-going civil actions will also drive down home values, as potential buyers will be worried about special assessments and will want a discount on the purchase price to cover it.

We hope to announce at the October 20th meeting that we have reached a settlement with the CCHOA board. We would also like to tell the home owners at that time that we have reached an agreement to settle this dispute with the two of you. As we have met your primary demand to bring our loft into compliance, we seek your support to bring these various disputes to an end. Hence, we are asking each of you to sign the settlement agreement and a letter indicating that you will no longer challenge any of the city's actions to resolve the situation.

As an added incentive for your support, Marla and I will donate $3,000, as a good will gesture, to the association's reserve fund when you sign the settlement agreement and the support letters as individual home owners of Centinela Crest. We will make these communications public to Bill Rosendahl's office, LADBS , LA Dept. of Health, the CCHOA board and CCHOA members. As you aptly stated in your October communications to home owners, the current board "has the responsibility to meet the requirements of the Building and Safety regarding disposition of the loft." We as a community need to show our CCHOA board that we support their efforts to facilitate a settlement.

We think these letters will also go a long way toward disproving the notion that this issue is some personal vendetta against us or our home. Remember these agreements revolve around just the two of you. If you know of other home owners who have issues, please ask them to contact us and we'll work with them, the city, and the CCHOA board to resolve any concerns, but at this time, we are just focusing on your concerns.

We look forward to your response before October 14th to avoid having the CCHOA incur additional litigation expenses. If you have any questions please do not hesitate to contact us.

Cheers,

David and Marla