APPLICATIONS:

APPEAL APPLICATION

Instructions and Checklist

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

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

A. APPELLATE BODY/CASE INFORMATION

1. APPELLATE BODY

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

Regarding Case Number: ZA-2020-2164-ELD-SPR

Project Address: 825-837 Holt Avenue

Final Date to Appeal: 02/24/2021

2. APPELLANT

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

☑ Person, other than the Applicant, Owner or Operator claiming to be aggrieved
Daniel Sidis, owner of adjacent property

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

❒ Representative ❒ Owner ❒ Aggrieved Party
❒ Applicant ❒ Operator

3. APPELLANT INFORMATION

Appellant's Name: Daniel Sidis

Company/Organization:

Mailing Address: 819 S Holt Ave #101

City: Los Angeles State: CA Zip: 90035

Telephone: (310) 877-5187 E-mail: danny@sidisinc.com

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

☑ Self ☐ Other:

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

4. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Joshua Greer

Company: Berger Greer, LLP

Mailing Address: 468 N Camden Dr #278B

City: Beverly Hills State: CA . Zip: 90210

Telephone: (516) 368-5283 E-mail: shuki@bergergreer.com

5. JUSTIFICATION/REASON FOR APPEAL

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

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

If Yes, list the condition number(s) here: 8 a-f

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

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

6. APPLICANT'S AFFIDAVIT

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

Appellant Signature: DocuSigned by: Daniel Sidis A746C26E779E4D5... Date: 2/22/2021

GENERAL APPEAL FILING REQUIREMENTS

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

1. Appeal Documents

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

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

b. Electronic Copy

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

c. Appeal Fee

☐ Original Applicant - A fee equal to 85% of the original application fee, provide a copy of the original application receipt(s) to calculate the fee per LAMC Section 19.01B 1.

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

d. Notice Requirement

☐ Mailing List - All appeals require noticing per the applicable LAMC section(s). Original Applicants must provide noticing per the LAMC

☐ Mailing Fee - The appeal notice mailing fee is paid by the project applicant, payment is made to the City Planning's mailing contractor (BTC), a copy of the receipt must be submitted as proof of payment.

SPECIFIC CASE TYPES - APPEAL FILING INFORMATION

C. DENSITY BONUS / TRANSIT ORIENTED COMMUNITES (TOC)

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

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

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

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

D. WAIVER OF DEDICATION AND OR IMPROVEMENT

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

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

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

E. TENTATIVE TRACT/VESTING

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

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

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

F. BUILDING AND SAFETY DETERMINATION

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

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

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

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

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

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

G. NUISANCE ABATEMENT

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

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

a. Appeal Fee

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

2. Plan Approval/Compliance Review

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

a. Appeal Fee

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

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

NOTES

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

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

This Section for City Planning Staff Use Only		
Base Fee:	Reviewed & Accepted by (DSC Planner):	Date:
Receipt No:	Deemed Complete by (Project Planner):	Date:
☐ Determination authority notified	☐ Original receipt and BTC receipt (if original applicant)	

From: Daniel Sidis
To: whom it may concern

Justification/Reason for Appeal

Case # ZA-2020-2164-ELD-SPR
825-837 Holt Ave

By approving the application, the Zoning Administrator ("ZA") violated the law and abused his discretion. The ZA is acting in a quasi-judicial role, and as such must adhere to the standards of law that govern his decision making. In making the required findings, each must be supported by substantial evidence. In this matter, the record does not contain evidence to support the findings.

In his decision, the ZA abused his discretion specifically by making the following findings:

- The strict application of the land use regulations on the subject property would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the zoning regulations.
- The project's location, size, height, operations and other significant features will be compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood, or the public health, welfare and safety.
- The project provides for an arrangement of uses, buildings, structures, open spaces and other improvements that are compatible with the scale and character of the adjacent properties and surrounding neighborhood.

In addition, I object to the following deviations, as granting the same is an abuse of the ZA's authority and discretion:

a. A maximum of 80 guest rooms in lieu of the otherwise permitted 36 guest rooms pursuant to LAMC Section 12.10-C,4;
b. A maximum Floor Area Ratio (FAR) of 5.06:1 in lieu of the otherwise permitted 3:1 FAR pursuant to LAMC Section 12.21.1;
c. A maximum building height of 58 feet in lieu of the otherwise maximum 45 feet pursuant to LAMC Section 12.21.1.
d. A continuous width of the exterior walls fronting Holt Avenue to exceed 40 feet without a change in plane as otherwise required pursuant to Ordinance No. 167,335.
e. A 10-foot front yard in lieu of the otherwise required 20-foot front yard pursuant to Ordinance No. 167,335.
f. 6-foot side yards in lieu of the otherwise required 8-foot side yards pursuant to Ordinance No. 167,335.

Finding 1 - The strict application of the land use regulations on the subject property would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the zoning regulations.

There is no substantial evidence in the record to support this finding, and it was an abuse of discretion for the ZA to make this finding. First, it is important to note that the law is not entirely clear that financial hardship may constitute "unnecessary hardship" at all. Neither *Stolman* nor *Walnut Acres* held that financial hardship would be sufficient to meet the standard, as both did not have to decide that question because they held that the evidence did not support such hardship.

> "City asserts that financial hardship may constitute "unnecessary hardship." Even assuming that this is true, the zoning administrator's determination of the first required finding is erroneous." *Stolman v. City of Los Angeles*, 114 Cal. App. 4th 916, 926, 8 Cal. Rptr. 3d 178, 186 (2003). "As in *Stolman,* we assume that financial hardship may be sufficient for purposes of obtaining a permit under section 14.3.1 to show unnecessary hardship, but find no evidence supporting the claimed financial hardship." *Walnut Acres Neighborhood Assn. v. City of Los Angeles*, 235 Cal. App. 4th 1303, 1315, 185 Cal. Rptr. 3d 871, 879 (2015).

As such, case law is far from clear that financial hardship can suffice at all, and I argue that it does not and cannot be the basis for a finding of unnecessary hardship. Zoning laws are intended to promote the health, safety, welfare, convenience, morals, and prosperity of the community at large and are meant to enhance the general welfare rather than to improve the economic interests of any particular property owner. They are designed to stabilize neighborhoods and preserve the character of the community.

When enacting zoning ordinances, a municipality takes many factors into consideration. The most significant are the density of the population; the site and physical attributes of the land involved; traffic; the fitness of the land for permitted use; the character of the neighborhood in the community; the existing uses and zoning of neighbor property; the effect of the permitted use on land in the surrounding area; any potential decrease in property values; and the gain to the public at large weighed against economic hardships imposed on individual property owners.

In similar cases, using similar legal standards, "unnecessary hardship" has been found when, among other reasons, a lot has unique characteristics, or other specific reasons making the zoning rule inapplicable to a particular lot. (See generally *Walnut Acres* at 1316). It makes logical sense for there to be an exception to the strict application of zoning rules where a particular lot defies the basis for that rule to have been made. If a lot has a particular shape, topography, soil content, or other relevant feature, a strict application of zoning rules may in fact result in an unnecessary hardship. By contrast, pure financial hardships speak to the individual considerations of a particular owner or developer, and therefore do not form a basis for undoing a zoning rule put into place in consideration of an entire community.

Further, the law does not allow a developer to create his own hardship scenario, and then ask for the city to grant him a variance on that basis. Self-created hardships are unquestionably not a valid basis for variances to be granted:

> "Since the facts in the instant case clearly reveal that any hardship suffered by appellants is the result of their own actions … there can be no question that the planning commission acted properly in denying them a variance. *Town of Atherton v. Templeton*, 198 Cal. App. 2d 146, 154, 17 Cal. Rptr. 680, 685 (Ct. App. 1961).

Where a developer seeks out and purchases three adjacent lots with the intent of applying for an eldercare facility that by his own application will require significant variances for feasibility, the law does not allow him to "ask forgiveness rather than permission" by arguing that his financial situation forces the city to grant him deviances from the zoning rules.

Because financial hardship cannot support a basis for a finding of unnecessary hardship, the ZA abused his discretion in relying on it to make the finding he made in this case.

Even if financial hardship is a valid basis for such a finding, in this case the record does not contain substantial evidence to establish it as a valid basis. The decision relies on the applicant's unverified word, and the "TCG study" to conclude that allowing the variances is the only financially viable way to build the facility.

In taking the applicant's word for it, the ZA made several improper assumptions. For example, the applicant asserted that all of the on-site amenities that the facility is proposed to have are necessary for the quality of life of its residents. That assertion is copied almost verbatim in the ZA's decision, despite there being no actual support for the proposition. The ZA revealingly states that the proposed project *"seeks to provide significant "quality-of-life" amenities rather than minimally-equipped facilities."* (p. 25 of 46). Clearly the ZA acknowledges that these are not necessary amenities, but rather ones done with the intent of allegedly improving the qualify of life of its residents. The same is true regarding the need for increased common areas and wide hallways. The need for those items in the facility is stated without support by the applicant, and repeated as fact by the ZA.

The ZA further intertwined the needs for these amenities and facilities with the financial costs of building and maintaining a project. The TCG study is as noteworthy for what it did examine, as for what it left out. The TCG study explicitly calculated land costs into its total project cost. **This inclusion alone makes the ZA's reliance on it an abuse of discretion.** There is no reason that the applicant is entitled to variances because of his cost in acquiring the land. That is not the law with regard to unnecessary hardships, it is not a valid reason to grant variances, and it shocks the conscience to learn that the community would have to tolerate a building that was allowed merely because the applicant paid above-market price for the land and then asked the city to make it financially viable for him.

This point cannot be emphasized enough. The zoning rules were in clear effect before the applicant purchased any of the lots at issue here. He is clearly sophisticated enough to know what variances he would need and what size project he would like to build. He obviously knew that he would have to ask for these variances from the code, and planned accordingly. It is a

complete abuse of discretion for the ZA to find that he gets to build his not-to-code facility simply because he put himself in a financial hole by purchasing the lots at an unreasonable rate.

The decision also recounts how investors and lendors "typically" require a certain return on cost equal to the market cap rate plus a spread, which "typically" is 150 basis points. (p.26 of 46). The decision then crunches the numbers, and concludes that the variances requested are "necessary" to build a financially viable project, and further that "without the requested… deviations, the project could not be built." (p.27 of 46). The ZA abused his discretion because what lenders "typically" do does not equate to what is "necessary" for the financial viability of the project. The standard for "unnecessary hardship" is not "I'll be forced to work extra hard to secure financing" or "the typical lender may be concerned with my numbers", the standard is that the strict application of the rules *would* result in unnecessary hardship. Further, the argument laid out above, about how financial hardship is not a valid basis for unnecessary hardship, comes into even more focus here. With this conclusion, the ZA is finding "unnecessary hardship" based on the applicant's inability to maintain a certain level of financial comfort and security. Making this the standard is a far cry from the law, and thus a clear abuse of discretion.

Finally, the decision states that the entire administrative board and staff is necessary for the facility. Putting aside the ZA's decision to parrot the applicant's statements on these points, and despite the record being entirely bereft of any support for such statements, the ZA ignored information actually in the record which demonstrates that the entire administrative board was *not* necessary. The same applicant, developer, and nearly-identical proposed project is being sought in Eagle Rock, and another one is already open elsewhere in Los Angeles. There is no reason why some of these administrative positions could not suffice for more than one location, yet the applicant has stated that his facility is only financially viable if a full administrative staff is on location at each building.

The disconnect between the applicant, the TCG study, and the city highlights this last issue. The information as analyzed in the TCG study calculated operating expenses as an assumed number, thereby coming to the conclusion it did. But if the specific facts of this developer, fully flushed out for the ZA in the record, demonstrate that such an administration is not needed at this particular location, that puts all of the financial conclusions into question. The TCG study was an all-or-nothing study, only analyzing full compliance with the zoning rules, or all the variances. What about a middle ground? If that would be financially viable, then granting all the variances is clearly an abuse of discretion.

Lastly, the ZA conflated the other findings, specifically those about the citywide demand for services for the aging population, into the question of unnecessary hardship. The unnecessary hardship analysis asks whether the project can be feasibly built according to the code, or whether it requires deviations. The analysis does not allow for the consideration of the city's needs or of the Housing Element's goals. The decision states: *"the strict application of the land use regulations on the subject property would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the zoning regulations and inconsistent with the City's objective to promote and facilitate needed housing and services for the elderly."* (p.27 of 46). And then again: *In addition, the relief requested is necessary to serve a city- and area-wide demand for assisted living and memory care facilities for an aging population. Without such deviations, the zoning regulations restricting the building envelope would make the construction of the Eldercare Facility on the subject property impractical and infeasible.* (p.29 of 46).

By improperly considering the needs of the aging population, the ZA looked outside the scope of the law, and distorted the considerations required for each of the required findings.

Because the ZA abused his discretion, the finding is improper.

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

<u>Finding 5 –</u> "The project provides for an arrangement of uses, buildings, structures, open spaces and other improvements that are compatible with the scale and character of the adjacent properties and surrounding neighborhood."

(I have combined these two findings into one analysis, as their contents contain significant overlapping bases, and my objections are similar to both. For clarity's sake, I am challenging each of them as an abuse of discretion, and believe both were found incorrectly)

In reaching the findings related to the project's envelope and its effect on the adjacent properties and the neighborhood, the ZA abused his discretion in several ways. First, he listed all of the properties around the project and their heights, and ignored the glaringly obvious: all of the properties were of the same use: multi-family homes for traditional, residential families. By contrast, an eldercare facility is a different use and function, and functions differently than a multi-family residential unit in several ways. It does not have the same hours. It has significantly more deliveries. It has dozens of people arriving in the morning for work and leaving in the evening, making it analogous to a commercial establishment.

Second, there is not a single five story building anywhere in the vicinity. The only place such buildings exist are on the large thoroughfares of La Cienega Blvd, Robertson Blvd, and Olympic Blvd. By contrast, this proposal is smack in the middle of an entirely residential street. The proposal would be significantly larger than any other building near it, yet the ZA somehow concluded that it would be in character with the neighborhood.

Third, the fact that the proposal is on three lots is entirely absent from the ZA's decision. This fact played a large role in the stated opposition to the project, yet the ZA ignores it. When you talk about a front façade of a building spanning three lots, you are already talking about changing the character of the entire block. More than it being a story higher than the others, or less setback from the sidewalk, making what is now spaces between lots into continuous building blocks light in all directions, affects visibility, and is an affront to the nature and character of the street. As is laid out several times in the record, this detail is of high concern to adjoining property owners throughout the neighborhood. It was an abuse of discretion for the ZA to not consider it.

Fourth, the purported ways in which the project incorporated an effort to minimize the project's mass border strain credulity. The ZA states two, the existence of underground levels and the rear of the building broken up into two masses. The underground levels do not represent any effort to minimize the project's envelope, they represent how the applicant is seeking to push the boundaries in every conceivable direction. None of the other buildings on the block have a second subterranean level, yet this proposal seeks to go further down than appropriate just as it seeks to go further up, sideways and forward than appropriate. The rear masses, and the split between them, are not viewable from the three most crucial directions- the front of the property

and the north and south sides. The ZA's conclusion that the massive incongruities with the neighborhood are offset by these "efforts" is an abuse of discretion.

Fifth, 834 S. Sherbourne Drive, to the immediate west of the property, has a garden full of plants grown on her property, and these plants will be blocked from sunlight and all light significantly. Note that the decision purports to address this by stating, "The applicant has submitted a shade/shadow analysis of the project which shows that the proposed building would not have an impact on the eastern and western adjoining buildings." (p. 32 of 46). However, the finding is "will not adversely affect or further degrade adjoining properties". By ignoring the difference between the word "properties" and "buildings", the ZA completely ignores the damage to the adjacent yard and garden. Conflating the two words is an affront to the neighboring property owner who is going to suffer a concrete and particular injury, and it is an abuse of discretion. **Because the ZA abused his discretion, these findings are improper.**

In reality, the following statements are true:

- The strict application of the land use regulations on the subject property would NOT result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the zoning regulations.
- The project's location, size, height, operations and other significant features will NOT be compatible with and WILL adversely affect or further degrade adjacent properties, the surrounding neighborhood, or the public health, welfare and safety.
- The project DOES NOT provide for an arrangement of uses, buildings, structures, open spaces and other improvements that are compatible with the scale and character of the adjacent properties and surrounding neighborhood.

As the owner of the property to the immediate north of the proposal, I stand to lose a tremendous amount of money if this project is allowed to proceed. Allowing variances to the height, side setbacks, front setbacks, and density will make my building significantly less desirable. My land value will go down, my rental income will disappear, and my retirement income will be decimated. Under no circumstances should the city allow these variances to be granted.

Accordingly, I submit that the Zoning Administrator violated the law and abused his discretion. His findings should be nullified, and his decision should be reversed.

Sincerely,

Daniel Sidis

Daniel Sidis