

Beachwood Canyon Neighborhood Association

BeachwoodCanyon.org info@beachwoodcanyon.org 323-462-1514

APPEAL

TO: L.A. Central Area Planning Commission

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CASE Number ZA 2007-2504(ZAD)

1. How we are aggrieved

As representatives of homeowners in Hollywoodland, Beachwood Canyon Neighborhood Association is appealing the above referenced determination by the Zoning Administrator (ZA) for relief from applicable sections of the City of Los Angeles Municipal Code, specifically the Hillside Ordinance, including section 12.21 and any others pertaining to retaining walls. This relief is sought under the provisions of section 12.24 of the same ordinance. The unprecedented approval is a direct assault upon all homeowners who cherish the remaining character of Hollywoodland. Neither the request for relief nor the rationale provided in the ZA determination satisfactorily meets the **threshold requirement** for the granting of said relief.

Further, in so far as the ZA determination relies upon a finding of Mitigated Negative Declaration No. ENV 2007-2505-MND we believe that there is a CEQA violation, and that the MND recommendations are also in error.

Further, in so far as ZA states that the “grant also requires the applicant to obtain approval of the project plans from the chair of the Hollywoodland Design Review Board...” (DRB), we suggest that this decision is premature, and therefore, in error. Proper procedure would dictate DRB review and approval first, ZA following the guidance of the DRB second. Any prior DRB approval for the project is a) expired and b) absent the retaining walls in question.

2. Errors in the decision

The California Court of Appeals has held in Committee to Save Hollywoodland, et al. v. City of Los Angeles (2008) that

A zoning variance, and by analogy a specific plan exception, must be “grounded in conditions peculiar to the particular lot as distinguished from other property” in the specific plan area. (Zakessian v. City of

Sausalito (1972) 28 Cal.App.3d 794, 799-800, 105 Cal.Rptr. 105 (Zakessian.) Unnecessary hardship therefore occurs where the natural condition or topography of the land places the landowner at a disadvantage vis-à-vis other landowners in the area, such as peculiarities of the size, shape or grade of the parcel. (Id. at p. 800, 105 Cal.Rptr. 105.) Zakessian also discerned in the hardship requirement an additional finding that the hardship be substantial, and that the exception sought must be in harmony with the intent of the zoning laws. (Id. at p. 801, 105 Cal.Rptr. 105.)

...Further, the special circumstances pertaining to the property must be such that the property is distinct in character from comparable nearby properties...

...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.”

While not technically a variance, by statutory construction the ZA action has the same effect, as is evidenced by the ZA’s own delineated threshold which is virtually the same as that cited above by the Court of Appeals. The standard which the ZA must apply in exercising his discretion to approve the relief sought in this case is that there are:

- a. conditions **peculiar to the particular lot** as distinguished from other properties in the area;
- b. that failure to provide the relief results in an unnecessary hardship occurring where the natural condition or topography of the land places the landowner at a **disadvantage vis-à-vis other landowners in the area**, such as peculiarities of the size, shape or grade of the parcel: and that
- c. such hardship must be **substantial**; and that
- d. the strict application of the the statutory intent of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification;
- e. further, that the relief granted does 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”;
- f. that the property is **distinct in character** from others in the area;
- g. the relief must be in harmony with the intent of the zoning laws.

The ZA decision states in its final section that:

The topography, shape and configuration of the site are unique; the requested retaining walls are intended to stabilize the hillside in order to provide a flat 15-foot rear yard setback between the dwelling and the ascending slope, to provide guest parking spaces as required by the Specific Plan, and to provide pedestrian and emergency access, via an exterior stairway to the building pad and dwelling.

This conclusion is false and in error on several accounts.

1. The topography, shape and configuration of the site are unique. All hillside lots are “unique.” The threshold is whether this property is *so distinct* in character as to warrant a special circumstance. It is not. Similar topography can be found throughout Hollywoodland , including at 6231 Rodgerton Drive, 3315 Durand, 6311 Heather, 3314-20 Lugano Place, to name only a few.

All 3 (in actuality, 4) of the retaining walls in question are conditioned by the nature of hillside building, and the circumstances here are not, as the ZA erroneously concludes unique, or **peculiar to the particular lot**. On the contrary, **they are the norm. What is unique** is the ZA weighing in with a solution which has not been properly vetted by the DRB and Planning Dept. The ZA action is in error and abuses his discretion.

2. Wall #1 serves to provide a 15 foot deep flat back yard. In the hillside community of Hollywoodland, 15 foot deep flat back yards are a rarity, and when they occur they do so because of the natural topography, not because of man-made re-sculpting of the natural terrain. Far more common are terraced hillsides or natural slopes. The justification of a 15 foot deep flat yard amounts to granting a **special privilege not enjoyed by others on like topography**. It strains to meet a threshold that depriving the owner of this land use meets a **substantial hardship**.

3. Wall #2 for required Parking. As the parking requirements in question result from a combination of hillside ordinance mandates, the size of the home, and the Hollywoodland Specific Plan (HSP), the ZA exceeds his authority by removing the question from the more appropriate body to weigh and balance the competing issues, which is the Hollywoodland Design Review Board. Several other options are available, including:

- a) a variance from the parking requirements;
- b) scaling down of the house to lower the number of off street parking spaces needed;
- c) redesign of the property to achieve the results another way, including the building of a driveway;

- d) an exception from the HSP parking requirements

The difficulty of satisfying parking requirements in Hollywoodland and in hillside communities, consistent with code, is the **norm for designing in the area, far from unique, not particular to this lot. Relief from the statutory intent of one ordinance in the form of** allowing this additional retaining wall, in order to satisfy the requirements of another portion of the municipal code amounts to cherry-picking one unprecedented solution from many, providing a **special privilege not enjoyed by others on like topography.**

4. Wall #3 for pedestrian access.

Since access requirements in question result from the inherent nature of building on all upslope lots in the hills, the ZA exceeds his authority by removing the question from the more appropriate body to weigh and balance the design issues, which is the Hollywoodland Design Review Board. Several other options are available. Access to upslope lots has been achieved under like circumstances variously by but not limited to:

- a) hillside stairs which climb to a house set on the ridge of the land from a garage at street level, with no significant retaining walls carving away any of the hillside. **This solution can be seen on an almost identical lot measuring 8,823 sq ft with a recently built 2,378 sq ft home at 6231 Rodgerton Drive,** and at 6311 Heather, built in the 1920's;
- b) to bring the house to street level;
- c) building a driveway to an upper flat pad;
- d) stair access built into the house structure itself, where the house becomes or tightly masks any retaining wall.

All of these alternative solutions are common in the area to varying degrees. The approved relief is, to our knowledge unprecedented. **The ZA exceeds his authority and abuses his discretion in accepting a solution so inconsistent with the solutions that all other homeowners have had to grapple with in like circumstances.** It is the general community which is thus disadvantaged.

The difficulty of siting, including access in Hollywoodland and in hillside communities which are consistent with code are the norm for designing in the area, **far from unique, not particular to this lot,** and as such allowing an additional retaining wall in violation of the code limits amounts to cherry-picking one of many solutions which provides a **special privilege not enjoyed by others on like topography, and in the process blunts the very purpose of the original code.**

5. CEQA violation. We challenge the MND on these grounds:

- a) that the “**considerable cumulative effect**” of allowing these retaining walls and the factual precedent they will set, on a lot surrounded by other developable lots, and two lots away from a concrete mass at 6009 Rodgerton, four lots away from a concrete mass at 6075 Rodgerton, will set this pristine area of Hillside on a path identical to that which has already destroyed the character of vast swaths of Rodgerton and other Hollywoodland streets.
- b) that this particular result achieves a “short term goal” for the homeowner to the “long term disadvantage” not only of the community, but of the Hillside ordinance governing retaining walls and the HSP, specifically Purposes A, B, C, D, E and H. (See Exhibit B)

In summary, in order to satisfy 3 different, unique privileges: a rear yard, extra parking, and an entry stairwell -- in each case where other options are neither prohibitive, nor the absence of which would constitute a loss of a property right afforded to others, the owners have requested and the ZA erroneously granted four retaining walls, exceeding the normal code limits. None of the walls is justified by the rationales provided, nor, therefore, is the relief granted justified. The proper arbiter of these decisions is the DRB, not the ZA.

Respectively submitted,

Fran Reichenbach, President and Founder of Beachwood Canyon Neighborhood Association

Cc to Hollywoodland Homeowner’s Association