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Ref: 81570-0001

June 2, 2023

BY EMAIL ONLY

West Los Angeles Area Planning Commission
c/o Neverly Ann Hill, Executive Assistant
City of Los Angeles, Department of City Planning
200 N. Spring Street, Room 272
Los Angeles, CA 90012
neverly.hill@lacity.org

Re: November 30, 2022 LADBS Report to City Council
DIR-2021-8570-1A
824 N. Kenter Avenue (the "Property")

Dear President Waltz Morocco and Members of the West Los Angeles Area Planning Commission:

This office represents Mr. Saeed Kohanoff, owner and developer of the Property referenced above. This responds to the Los Angeles City Council's Charter Section 245 Motion and the Los Angeles Department of Building and Safety's ("LADBS's") report addressing the lot width calculation for the Property pursuant to Los Angeles Municipal Code ("LAMC")¹ Sections 12.03 and 12.22 C.22.

I. BACKGROUND

On September 7, 2022, the West Los Angeles Area Planning Commission ("WLAAPC") denied an appeal and sustained the June 13, 2022, decision of the Director of Planning ("Director") to deny an appeal asserting that the Los Angeles Department of Building and Safety ("LADBS") erred or abused its discretion in its determination to issue building permits for a new four-story single-family dwelling, grading, water fountain, basement shoring, retaining walls, pool and spa at the Property (the "Project").²

At its meeting of September 28, 2022, the City Council adopted a Motion invoking Charter Section 245 and asserting jurisdiction over the September 7, 2022 WLAAPC determination. City Council remanded Case No. DIR-2021-8570-1A back to WLAAPC for reconsideration. Additionally, City Council instructed LADBS to prepare a report reviewing the

¹ References to Code Sections are to the LAMC, unless specified otherwise.

² Building Permits Nos. 18010-30000-03098, 18030-30000-04200, 18020-30000-01813, 18020-30000-01812, 18020-30000-01811 & 18047-30000-01149 (the "Permits").

applicability of Section 12.22 C.22 as an alternate calculation for lot width and how it may impact the Project, specifically, how it may impact the application of the Cumulative Side Yard Setbacks Option of Section 12.21 C.10(b)(3)(iii) Residential Floor Area (“RFA”) bonus.

II. LOT WIDTH

One of the available options for allowing a 20% floor area bonus in the BHO is the Cumulative Side Yard Setbacks Option.

A. Lot width is at the center of the floor area bonus provided by the Cumulative Side Yard Setbacks Option.

“The combined width of Side Yards shall be at least 25% of the total **Lot Width**, as defined in Section **12.03** of this Code, but in no event shall a single Side Yard setback be less than 10% of the **Lot Width** or the minimum required by Paragraph (a) of this Subdivision, whichever is greater. One (1) foot shall be added to each required Side Yard for each increment of 10 feet or fraction thereof of height above the first 18 feet of height. The width of a required Side Yard setback shall be maintained for the entire length of a Side Yard and cannot alternate from one Side Yard to the other” Section 12.21 C.10(b)(3)(iii). **Emphasis** added.

Ultimately, the side yard setbacks required to utilize the floor area bonus are dependent on the lot width. The wider the lot, the wider the required cumulative width of the side yards. Appellants prefer to apply Section 12.22 C.22 instead of Section 12.03 because it would result in greater Lot Width and greater side yards. For this relatively narrow lot, larger side yards would make the design of the new dwelling impractical and ineligible for the floor area bonus under the Cumulative Side Yard Setbacks Option.

B. The Cumulative Side Yard Setbacks Option for a floor area bonus requires Lot Width be calculated as defined in Section 12.03.

The Code language allowing a floor area bonus using the Cumulative Side Yard Setbacks Option is quite specific. Section 12.21 C.10(b)(3)(iii) is an isolated Code Section only applicable for certain lots which qualify under the BHO. The Code language could not be more clear. A floor area bonus is not available unless the cumulative side yard width is “at least 25% of the total **Lot Width**, as defined in Section **12.03** of this Code.”³ There is no mention of Section 12.22 C.22 or any other alternative. The language requires specifically that the Lot Width be as defined in Section 12.03. There is no other option.

³ Section 12.21 C.10(b)(3)(iii). **Emphasis** added.

III. THE APPEALS

A. Appellants' initial argument fails.

In its initial appeal before the Director, appellants argued that LADBS's determination to issue the Permits was in error because the Baseline Hillside Ordinance ("BHO") effective March 17, 2017, which applies to the Project, changed the previous version of the BHO by eliminating all the floor area bonus options. This assertion is absolutely incorrect. The only floor area bonus option removed from the previous version of the BHO was the green building option. The Project utilizes the Cumulative Side Yard Setback Option currently provided in Section 12.21 C.10(b)(3)(iii).

B. Appellants argument that the lot width is randomly chosen also fails.

As an alternative argument before the Director, appellants claimed the lot width was calculated incorrectly. Despite the fact that the applicant applied the Section 12.03 definition of "LOT WIDTH"⁴ as expressly required by Section 12.21 C.10(b)(3)(iii), appellants argued the lot width should be randomly measured at the widest part of the Property instead of applying the specific methodology provided in Section 12.03. Appellants cite no authority for calculating lot width differently than provided in Section 12.03.

C. Appellants later argued the Property must apply an exception for calculating Lot Width for flag lots.

At the next appeal brought before the WLAAPC, appellants changed its argument saying the Property is actually a flag lot. Further, appellants argued, despite the plain language of Section 12.21 C.10(b)(3)(iii) requiring the lot width be calculated as provided in Section 12.03, the lot width should be calculated as provided in Section 12.22 C.22. This, too, is absolutely incorrect as explained above.

IV. THE LADBS REPORT TO CITY COUNCIL

A. LADBS makes it clear that the language of the exception is not mandatory.

LADBS does not thoroughly discuss the characteristics of a "flag lot."⁵ The Director more accurately describes the Property as "irregularly-shaped,"⁶ In any event, LADBS explains that calculating lot width for a flag lot pursuant to Section 12.22 C.22 is an option, not a

⁴ Attached hereto as Exhibit "A" is a copy of the sketch and tabulation from the approved plans showing the actual Lot Width and tabulation of required side yards.

⁵ A flag lot look like a flag (main buildable portion) supported by a flag pole (the access strip), said access strip being far narrower than the buildable portion of the lot.

⁶ June 13, 2022, Letter of Determination at p. 3.

mandate.⁷ Even if Section 12.22 C.22 were applicable here, which it is not for the reasons given above, it would **not be required** to be used. Calculating lot width pursuant to Section 12.03 can **always be used**.

Whether the Property is considered a flag lot or not, the plain language of Section 12.22 C.22 is not mandatory language.

“Where a flag lot is situated in the "H" Hillside or the Very High Fire Hazard Severity Zone pursuant to Section [57.4908](#) of the Municipal Code, the lot width **may be calculated** by measuring the width of the main buildable portion of said flag lot on a straight line parallel to the general direction of the frontage street and midway between the rear and front lines of the main buildable portion of the flag lot provided, however, that the main buildable portion contains the lot width and not less than 90% of the lot area required for lots in the zone classification in which the flag lot is situated, said lot area to be calculated exclusive of the area contained within the access strip portion of the flag lot.” Section 12.22 C.22. **Emphasis added.**

Although the option presented in this section is available for flag lots in Hillside or Very High Fire Hazard Severity Zones, it clearly is not required. The phrase “**may be calculated**” is deliberately used in the language of the exception as permissive language. The phrase “**shall be calculated**” is not used in the exception because it is not intended to be mandatory. In the case at hand, however, where the applicant has chosen to take advantage of the Cumulative Side Yard Setbacks Option, there is no choice but to calculate the lot width as defined in Section 12.03.

In its reply report to City Council LADBS calculated the Lot Width according to Section 12.22 C.22 as an exercise to respond to the City Council Motion. LADBS did not say it is correct to apply it in this case, however.

B. Order to Comply and Certificate of Substandard Property are corrected.

The Council Motion includes a statement that this Project should be subject to higher scrutiny because certain activity at the Property in the past had been called into question as early as 2000. A 2007 Order to Comply and a Certificate of Substandard Property are specifically mentioned. The current Property owner and applicant for the contested Permits purchased the Property 2006, in the condition described in the Order to Comply and Certificate of Substandard Property. The violations were committed by the previous Property owner.

⁷ November 30, 2022, report from LADBS at p. 2.

The current Property owner has corrected all of the pre-existing violations. The Order to Comply and Certificate of Substandard Order are no longer in effect.

The “potential violation of the City’s haul route requirements in 2021” mentioned in the Motion was not a violation at all. No haul route was required and none was applied for. A supplemental permit for the originally issued grading permit was required to “to revise grading plans and quantities” to correct the summary of earthwork quantities shown on the previous grading permit.

V. CONCLUSION

Appellants have not carried its burden to provide substantial evidence to support the assertion that LADBS was in error or abused its discretion by issuing the Permits. The applicant has proven the Permits were properly issued. Consequently, the appeal should be denied.

Very truly yours,

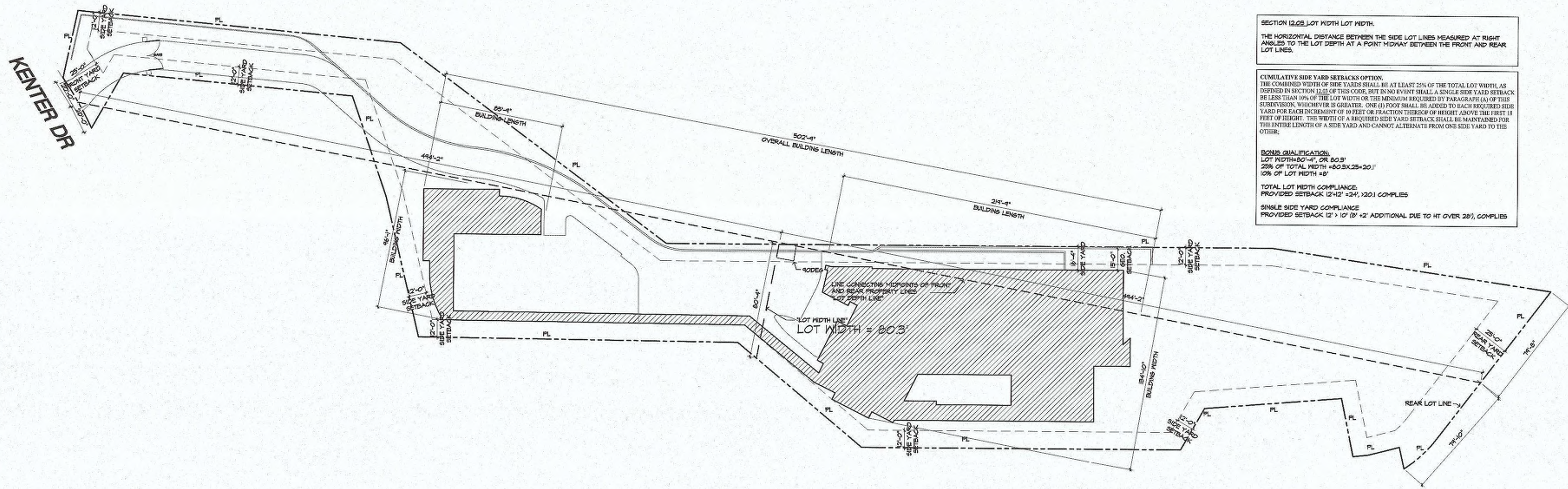


KEVIN K. MCDONNELL of
Jeffer Mangels Butler & Mitchell LLP

KKM:kkm

Attachment: Exhibit “A” Lot Width Sketch and Yard Tabulation

EXHIBIT "A"



SECTION 12.05 LOT WIDTH LOT WIDTH.

THE HORIZONTAL DISTANCE BETWEEN THE SIDE LOT LINES MEASURED AT RIGHT ANGLES TO THE LOT DEPTH AT A POINT MIDWAY BETWEEN THE FRONT AND REAR LOT LINES.

CUMULATIVE SIDE YARD SETBACKS OPTION.

THE COMBINED WIDTH OF SIDE YARDS SHALL BE AT LEAST 25% OF THE TOTAL LOT WIDTH, AS DEFINED IN SECTION 12.03 OF THIS CODE, BUT IN NO EVENT SHALL A SINGLE SIDE YARD SETBACK BE LESS THAN 10% OF THE LOT WIDTH OR THE MINIMUM REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION, WHICHEVER IS GREATER. ONE (1) FOOT SHALL BE ADDED TO EACH REQUIRED SIDE YARD FOR EACH INCREMENT OF 10 FEET OR FRACTION THEREOF OF HEIGHT ABOVE THE FIRST 18 FEET OF HEIGHT. THE WIDTH OF A REQUIRED SIDE YARD SETBACK SHALL BE MAINTAINED FOR THE ENTIRE LENGTH OF A SIDE YARD AND CANNOT ALTERNATE FROM ONE SIDE YARD TO THE OTHER.

BONUS QUALIFICATION:

LOT WIDTH = 80'-4" OR 80.3'

25% OF TOTAL WIDTH = 80.3 X .25 = 20.1'

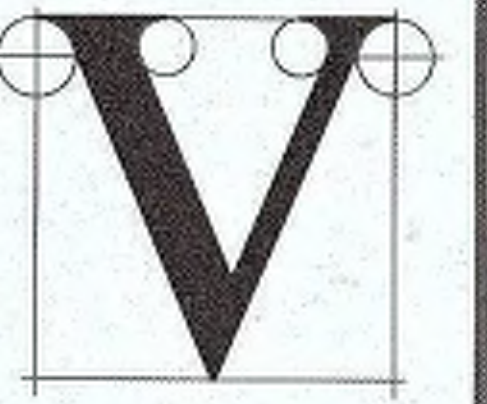
10% OF LOT WIDTH = 8'

TOTAL LOT WIDTH COMPLIANCE:

PROVIDED SETBACK 12'-12" = 24', X20.1 COMPLES

SINGLE SIDE YARD COMPLIANCE:

PROVIDED SETBACK 12' X 10' (8' + 2' ADDITIONAL DUE TO HT OVER 28'), COMPLES



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REVISIONS
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3
4
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VEA ARCHITECTS
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LOT WIDTH
DIAGRAM

A-0.9

NOV 19 2019
5:22/2019 5:39:52 PM



SIDEYARD SETBACK LOT WIDTH DIAGRAM
SCALE 1"=8'-0"

DAY OF HEARING SUBMISSIONS