

ZA-2021-10187-F, 15021 Bestor Blvd,

REASONS FOR THE APPEAL

Case No.: ZA-2021-10187F
CEQA No.: ENV-2021-10188-CE
Project Site: 15021 Bestor Blvd., Pacific Palisades
Applicant: Stephen Neal Flesner/Carmen Alexandra Tebbe
Appellants: Jack and Diane Allen

BACKGROUND:

The Appellants: The Appellants are a husband and wife who own and live in the property next door to the subject property. They have lived there since 1973. Appellant Jack Allen first moved to the Pacific Palisades in 1943 and has been familiar with the involved properties and the neighborhood since then, having watched his current home being built in 1947. He has served as Vice-President and Legal Counsel on the Palisades Civic League which operates as the Architectural Review Board for Tract 9300, the Tract in which the subject homes, as well as all of the neighborhood both south and north of Bestor Blvd. from Monument St. on the west to Chatauqua Blvd. on the east. He also served as an elected member of the Pacific Palisades Community Council for 26 years, representing the Area north of Sunset Blvd. west of Temescal Canyon and east of Rivas Canyon. He is also a member of the Historical Society and is familiar with the history of the subject area.¹

The Applicants: The Appellants know little about the Applicants except that they purchased the subject property in 2020 and it appears to be a second home for them.

The Subject Property: The subject property is a reverse corner lot located at the intersection of Bestor Blvd. and McKendree Ave. The property fronts onto Bestor Blvd.

Front Yard Setbacks: The subject property is located in Tract 9300 recorded in 1920. The tract includes all the homes north of Sunset Blvd. between Temescal Canyon on the west and Rivas Canyon on the East, including Bestor Blvd. The CC&Rs for all 27 lots fronting Bestor Blvd. on the north side between McKendree Street and Chatauqua, require a 25 foot front yard setback. However, the setbacks for the Appellants lots on the block are between 40 and 44 feet. Therefore, the prevailing front yard setback as required by the LAMC is 42 feet. This restricts not only what can be built in the setback but the heights of fences, walls, and hedges.²

The Project: The Project was described as the following in the Notice of Public Hearing:

“The construction, use, and maintenance of a proposed 6-foot high hedge and 5-foot high pool enclosure fence/gate within the front yard area in conjunction with the existing

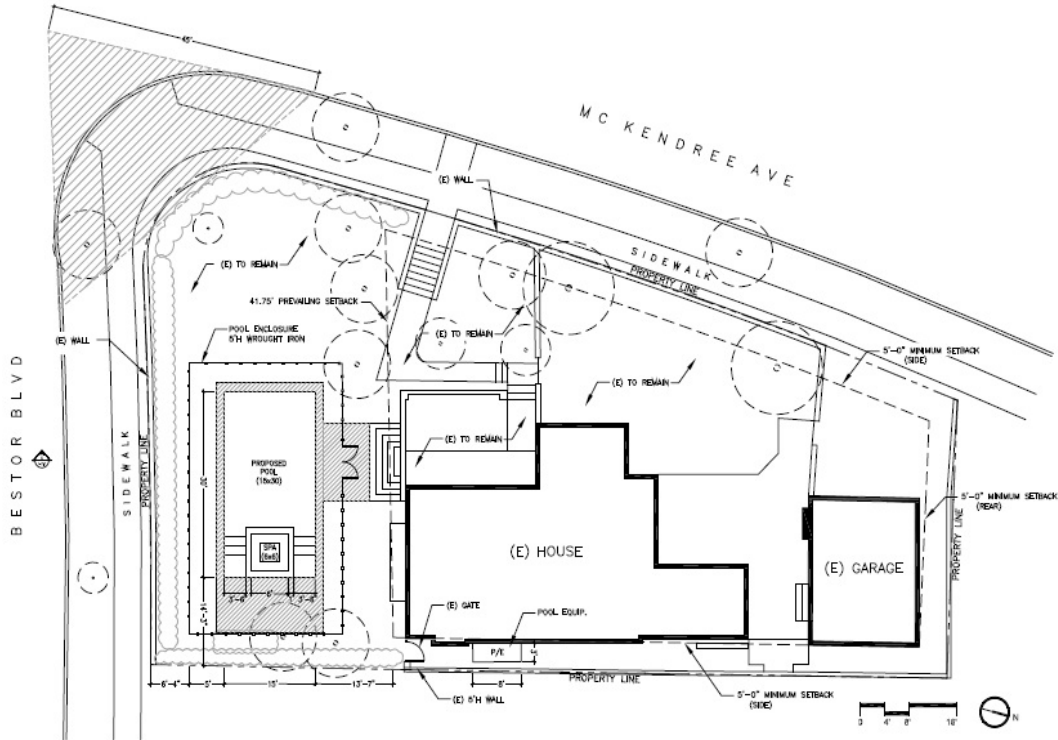
¹ Mr. Allen has been the President of the Palisades Preservation Society for 32 years. He also served as President of the Pacific Palisades Residents Assn. and as a member of the Community Plan Advisory Committee for the Brentwood-Pacific Palisades Community Plan in 1975 and 1995-96.

² LAMC 12.21.C.10.(a)(1)&(6)

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single-family residence *and proposed pool.*” (Emphasis added)

Thus, the proposed pool is part of the project as will be discussed further on in the discussion objecting to the determination that the project is exempt from CEQA.



DISCUSSION OF GROUNDS FOR APPEAL

1. The Hearing Officer Arbitrarily Denied Appellants a Fair Hearing as Required by Law and Thus Violated Their Right to Due Process.

Los Angeles Municipal Code Section 12.24.D requires the Hearing Officer to conduct a public hearing at which evidence shall be taken in all Quasi-Judicial Approvals. On pages 8 and 9 of the Zoning Administrator's Determination, it is stated:

“A Notice of Public Hearing was sent to nearby property owners and/or occupants abutting a proposed development site for which an application, as described below, had been filed with the Department of City Planning. All interested persons were invited to attend the public hearing at which they could listen, ask questions, or present testimony regarding the project. In conformity with the Governor's Executive Order N-29-20 (March 17, 2020) and due to concerns over COVID-19, the Office of Zoning Administration Public Hearing was conducted telephonically on April 7, 2022 at approximately 9:30 a.m. The purpose of the hearing was to obtain testimony from affected and/or interested persons regarding the project.” (Emphasis Added)

The Appellants were never permitted to participate in a public hearing regarding the subject Application. In fact, no public hearing was even conducted.

The Appellants were notified by a Notice posted in front of the Applicants' property that there would be held on April 7, 2022 at 9:30 AM. In response, the Appellants sent a letter to the Office of the Zoning Administrator on April 3 objecting to the granting of the Application. A copy of that letter is attached hereto.

The hearing on April 7 was conducted on Zoom and by telephone. Mr. Allen checked in by Zoom prior to the hearing commencing and Mrs. Allen checked in by telephone also prior to the hearing. Also, a friend also checked in by telephone.

When the Hearing Officer opened the hearing, he asked the Applicants for their comments. A representative for the Applicants announced that her clients had received the Appellants' letter and wished to postpone the Hearing. The Hearing Officer then said that he could proceed with the hearing but the Applicants' representative reiterated that the Applicants did not wish to proceed with the hearing. At that time both Mr. Allen and Mrs. Allen signaled that they wished to be heard but the Hearing Officer did not acknowledge either of them and said he was taking the matter off calendar but that if the Applicants wished to proceed later, they should request that the matter be reset for a hearing.

Then, out of the blue, the Appellants received in the mail a Notice of Decision granting the Application. As far as the Appellants know, there never was a public hearing held in which the Appellants had an opportunity to participate. Thus, the Appellants have been arbitrarily denied due process as provided by law.

Swimming Pools Are Not Permitted in Frontyard Setbacks in R1 Zones.

As stated in the City Zoning Code:

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“ All portions of the required front yard of one-family dwellings, ...R1...Zone not used for necessary driveways and walkways, including decorative walkways, shall be used for planting, and shall not otherwise be paved.”³

Installing a swimming pool and its accessory structures in the front yard is not planting but paving.

The assertion that the Zoning Code allows swimming pools and spas in required yards is not true. That assertion is based on a misreading of the language in Section 12.21.C.1.(g) which states:

“ No swimming pool, fish pond or other body of water which is designed or used to contain water 18 inches or more in depth shall be permitted in any required yard space in which fences over 3-1/2 feet in height are prohibited, even though the pool, pond or body of water extends below the adjacent natural ground level.”

That the sub-section does not specifically state that swimming pools are allowed in “required yard spaces.” It only states that a swimming pool WILL NOT be allowed in any required yard space UNLESS there is a fence over 3 ½ feet in height. Moreover, the provision is part of the same sub-section which specifically states that the front yard setback “...shall be used for planting and shall not be otherwise paved.” Under the rules of statutory interpretation, the specific governs the general.

Granting the Application For An Exception to the Height Restrictions For An Over the Height Restrictions For Fences and Hedges In Front Yard Setbacks Will Become a Precedent For the North Side of Bestor Blvd.

Currently, there are eight properties between McKendree and Chautauqua on the north side of Bestor Blvd., including the Applicant, that have hedges, walls, or fences that exceed the 3 ½ foot height limit. However, none of the owners have applied for and received permission from the Zoning Administrator to construct a fence or permit a hedge that exceeds the 3 ½ foot height limit.

In 2009, there were a number of properties along the north side of Bestor that had over-the-height fences and hedges. Building and Safety issued citations to every property owner in violation of the height limits, including the Appellants. Most of the properties were in violation but in some cases such as the Appellants, Building and Safety was measuring the height from the sidewalk instead of where the natural ground level was. In the Appellants’ case, the hedge was the height of six foot retaining wall at the front of Appelants property and there was a three-foot hedge behind the top of the wall as a safety barrier. The Appellants appealed on the grounds that before Bestor Blvd. was carved out of the hillside, the natural ground level was at the top of the retaining wall. ⁴Both the LADBS Appeals Board and the Zoning Administrator denied the appeal but an appeal to the Area Planning Commission was granted. Thus, the top of the retaining walls

³LAMC Sec. 12.21.C.(1)(g)

⁴ LAMC Sec.12.22.c.(f).(1)

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along Bestor was established at the point from which the height of fences and hedges in front of or in the front yard setback is measured.

Thus, any claim that the neighborhood was developed with over in height walls and hedges add fences is not only incorrect, it is purposely misleading.⁵

Subsequently, all hedges, fences, and walls on the north side, including the Applicants', were brought into conformity with the height restrictions. However, since then, eight of the properties, including the Applicants', are now non-conforming. Any claim by the Applicants' that their hedges are consistent with the neighborhood is not supported by the evidence. They are not consistent with the hedges in the front setbacks of houses in the neighborhood.⁶

In 2013, the owner of the lot on the east side of Appellants' property proposed to build a house with only a five-foot front yard setback. However, all the neighbors on both sides of Bestor and also other neighbors living in the vicinity, banded together to oppose the effort to violate the prevailing front yard setback requirement.

One of the problems is that when people become property owners in the area and they see neighbors with over- the -height limit hedges, walls, and fences, they think that it is legal for them to also do the same. The problem is that they are unaware of the Zoning regulations, which was true of many of the owners along Bestor who were cited for violations. That problem is exacerbated if owners such as the Applicants are granted an Exception because then, other new owners, unaware that over- the -height fences, hedges and walls are illegal, seeing that the Applicants' property has over- the -height fences and hedges, think that they are legal and then violate the zoning regulations.

The Appellants' concern is that if the Zoning Administrator grants the Exception, it will become a precedent for other property owners in violation of the front setback height restrictions to also seek permission and thus destroy the oneness of front yards that characterize the north side of Bestor Blvd. The Appellants are well aware that the Zoning Administer has consistently cited precedents using examples that are sometimes far distant from the relevant property as

⁵ The Applicants use the term "neighborhood " loosely without defining what the term means. There are several types of neighborhoods involved. There are two distinctive neighborhoods between those properties on the north side of Bestor and the south side, the north side being designated Hillside (R1H) and carved out of the hill, and the south side which is more level and is zoned R1. Then (Fn.5 cont.) there is the neighborhood surrounding the Applicants' property but how broad is it is not defined. It includes homes with minimum front yard setbacks or different front yard setbacks.. There is also a much larger neighborhood that includes properties on Bestor and much of the area north of Bestor.

⁶ The Applicants presented a number of photographs that show that over the height walls and hedges are common in the neighborhood. However, none of them show that. Photos Nos.1 and 7 show hedges that are in violation of the Zoning regulations and the property owners have not received an Exception from the City authorizing them to have such hedges. Photo No. 6 shows a hedge but the hedges are legal in that the front hedge is no higher than the retaining wall and the hedge behind the wall is less than 3 ½ feet high. Photo No. 1(Appellants house) does not show any hedge in the front yard facing Bestor.

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justification to grant an exemption. That is true in this case.

The Zoning Administrator cites on page 8 of the Zoning Administrator's Letter of Determination that over- the -height fence/hedge was approved by the Zoning Administrator for a single-family dwelling located at 15306 Bestor Blvd. In 2010. But the facts in that case are different than the facts in this case so it is not relevant. That property is located on the southwest corner of Bestor Blvd. and Monument. It is not relevant to the properties located on the north side of Bestor Blvd. east of McKendree. It does not have a wall. The case arose because the owners were cited by Building and Safety as a result of a complaint that the hedge and fence exceeded the 3 ½ foot height limit and being on a corner, obstructed the view of drivers at the intersection. While the Zoning Administrator approved the continued use of the over- the -height fence and hedge, the Zoning Administrator required that from the corner of the intersection of Bestor Boulevard and Monument Street, the first 20 linear feet extending along Bestor Boulevard and the first 20 feet extending along Monument Street, the existing hedge could not exceed a height of 3 feet. If the Zoning Administrator in this case wants to use the decision at 15306 Bestor as a precedent, then it would be also appropriate to require the Applicants in this matter to also reduce the height of the walls and hedges to 3'6" but that was not done.

The Subject Property is a Historical Property in the Pacific Palisades.

The Pacific Palisades was developed by the Methodists in the early 1920s. The subject property has on it the home of the Methodist Minister which was built in 1926 and was the third home built north of Bestor Blvd. It is the last of those homes standing. The home is Spanish-style architecture and is very beautiful. It is one of the last of the original homes built in the Pacific Palisades prior to World War II and is mentioned in the histories of the community. It is a very distinctive architecture and has often been listed on both architectural and garden tours.

To put a swimming pool in the front yard would destroy the beautiful landscaping and allowing a six-foot high hedge in the front yard would obscure the view of the house for those traveling on Bestor. One reason Mr. Allen considered the subject house as being so unique was that it was so visible. From 1943 until 1950 when Mr. Allen went to fight in Korea, there were no hedges either in front of the wall or in the front yard which made the subject house really stand out. At that time, the house was surrounded by an attractive wrought iron fence. Thus, the granting of the application for the exceptions will only obscure the view of a classic house, a view everyone should see.

Granting the Exception For A Reverse Corner Lot Will Result In Reduced Safety.

Because the property is a reverse corner lot, LADBS requires that the intersection of the front yard wall or fence and the side yard wall or fence be either angled or set back to create a better view of approaching traffic or pedestrians and children. However, the corner of the Applicants' property is not at a right angle which is the most common configuration of a reverse corner. The subject property is at an acute angle at 70 degrees instead of 90 degrees. This makes the sight lines much more difficult for drivers and pedestrians to observe conditions at the interjection.

Photo No. 5 submitted by the Applicants' which shows the hedge and wall on the corner of their property was taken from the west side of McKendree and at the east/west sidewalk line.

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While that is the view a pedestrian has walking east on Bestor, it is not the view a driver has who is driving south on McKendree. From the perspective of a driver approaching Bestor, the hedge obstructs the driver’s view of traffic driving westbound on Bestor.

Bestor Blvd. Is a raceway for many drivers. Until the mid-1980s, collisions between vehicles traveling west on Bestor collided at least once a month with vehicles traveling south on McKendree even though there was a stop sign on McKendree. As a result, Mr. Allen, with the help of neighbors, including the then occupants of 15021 Bestor, persuaded the City to install stop signs on Bestor Blvd. at the intersections of McKendree. While this significantly reduced the number of accidents at these intersections, it hasn’t completely limited them.

But LAMC section 12.24.X.7.(a) completely negates the purposes that support the implementation of prohibiting walls, fences and shrubbery being restricted to 3 ½ feet in height, particularly on corner lots. It makes the safety of the occupants of the property paramount to the safety of pedestrians, children, motorists, and bicyclists and that is even questionable. While increasing the height permitted will make it more difficult for criminals to access the property, it will also conceal their activities.

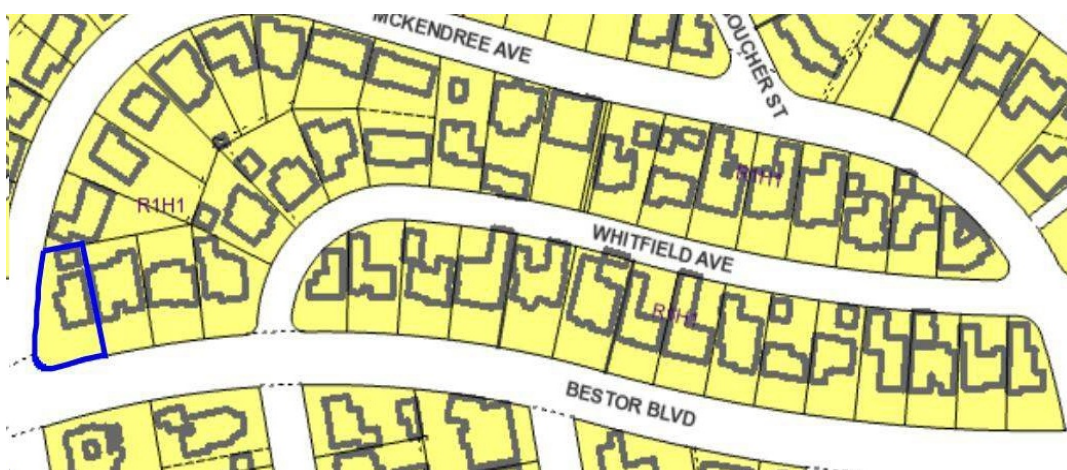
If the Exception is granted, it should include a condition that the existing wall and hedges be modified so that they comply with the required setbacks and heights for the corner of the wall.

There Are Errors in the Findings of Fact.

In the Background portion of the Findings of Fact on page 7 of the Letter of Determination, there are several erroneous statements. First is this statement.

“The immediate neighborhood is characterized predominantly by through lots and improved with one to two-story single-family residences within a hillside area to the north of Bestor Boulevard and Whitfield Streets.”

None of the lots in the immediate neighborhood facing Bestor Blvd. between McKendree and Whitfield are through lots.



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“Three properties located at 15007, 15105, and 15306 Bestor Boulevard and one property located at 15061 McKendree were observed with similar combinations of fence, wall, and hedges that are over in height. Properties in the area can be found improved with side yard fences (hedges) that extend to 6 feet in height.”

The property at 15306 has been discussed previously and is irrelevant. The hedge in front of 15105 Bestor hides the retaining wall behind it. The top of the retaining wall is the original appellants height that existed prior to the grading of Bestor Blvd. so the hedge is within the 3 ½ foot height limit above the retaining wall as permitted by the LAMC. As noted above, there are several properties on the north side of Bestor Blvd. that have over-height hedges, none of which have a permit authorizing them to be over-height. That includes 15007 Bestor.

“The subject property is currently improved with a two-story single-family dwelling with a detached two-car garage. The single-family residence functions with its pedestrian and vehicular entries oriented toward McKendree Avenue, while its outdoor activities occur in the open space area along Bestor Boulevard. Also, the subject property is currently improved with an over-in-height hedge along the Bestor Boulevard (front yard) property line and has an over-in-height hedge along the McKendree Avenue (side yard) property line. Since the technical front yard functions as a side yard due to the corner lot configuration, allowing an over in height wall would be consistent with other functioning side yard fencings.”

It is obvious that the Zoning Administrator is really stretching to justify granting the Application. But it is a nonsequitor. First, the front of the house faces Bestor Blvd. so the yard facing Bestor is the front yard. Second, corner lots typically have their entrances and driveways on the side streets. It is advantageous for those properties because the driveways don't take up a third of the front yard and on the hillside lots in the block between McKendree and Whitfield, the owners of the corner lots have a short but also level driveway. This allows them to have much more space in the front and the side yard facing the street. Moreover, it allows corner lot owners the option of having shorter and less steep entrance sidewalks. What the Zoning Administrator proposes is for the Applicants to have their cake and eat it too, particularly because the Zoning Administrator does not require the Applicants to reduce the height of their over-height hedges in the side yard on McKendree to 3 ½ feet.

15015 Bestor Blvd. showing the long driveway and amount of reduced front yard available if the entrance is made from Bestor Blvd.

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The Rationale For Restricting the Height of Walls, Fences, and Hedges in Residential Zones.

Restrictions on the height of walls, fences, and hedges are an exercise of the police power by the City. There must be a rational reason to support the use of the police power. Restrictions on such heights are justified by the need to preserve the openness of the street scape and also for security purposes so that the police and neighbors can see whether suspicious persons are on the property.

The Application Must Be Denied Because There Isn't Any Evidence to Support The Findings Required By The Municipal Code.

The first finding that is required by the Municipal Code in order for the decision maker to grant the application for an exception is:⁸

1. that the project will enhance the built environment in the surrounding neighborhood or will perform a function or provide a service that is essential or beneficial to the community, city, or region;

There is no evidence that adding a swimming pool, installing a five-foot high fence and allowing the hedge to six feet high is going to enhance the built environment in the surrounding neighborhood. The facts are that the project would degrade the Appellants' adjacent property. will not be compatible with adjacent properties which are in conformance with the required front yard setback including the Appellants' property.

It would be detrimental to the surrounding neighborhood. It would reduce the oneness that the required deep front yard setbacks provide. It would also obscure the view of a classic and locally historic house. Any claim by the Applicants' that their property is different than other properties in the area and deserves special consideration is not based on either fact or good zoning practices. The problems that the Applicants' face is that every block has corner lots and zoning regulations do not make exceptions just because they are corner lots except to impose more restrictions on lots that are on reverse corners, restrictions which the Applicants are not now complying with and will not comply with if their Application is granted. The Applicants' bought the property as a reverse corner lot and got exactly what they paid for.

Moreover, because the Applicants' property already has an existing 3'10" high retaining wall which is legal and can plant and maintain a 3 ½ foot high hedge behind it.⁹ That gives them over seven feet of height above the sidewalk so that they have plenty of privacy without having to plant an over- the -height hedge behind the wall. The Appellants have a five-foot high

⁷ Model Zoning Ordinance, with Commentary, by Fred H. Bair, Jr. and Ernest R. Bartley, Public Administration Clearing Service of the University of Florida, 1958.

⁸ LAMC Sec. 12.24.E

⁹ Applicants claim that retaining wall is 3'5" high which they mistakenly believe is the legal height limit but in fact it is 3'10" high and that is the legal height limit because that conforms to the original grade.

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retaining wall and a 3 ½ foot high fence on top of the wall and we have no privacy problems at all.¹⁰

Nevertheless, the Zoning Administrator found to the contrary. The stated justification is:

“The property is located in a neighborhood characterized by one and two-story single-family dwellings, many of which observe a variety of fence and hedge heights within the front and side yard setback, often in excess of 3-feet 6-inches. Those properties include three properties located at 15007, 15105, and 15306 Bestor Boulevard and one property located at 15061 McKendree.”

As stated on page 8, the property at 15007 is in non-compliance, the property at 15105 does not exceed the height limit, and the property at 15306 is not similar to the properties on the north side of Bestor (not a hillside lot). The property at 15061 McKendree is also in non-compliance. It makes no sense to use non-compliant properties as justification for approving any other non-complying application.

Then the Zoning Administrator has the gall to say that approving the Application will “not create a new negative precedent for the area” when in fact he is using the approval of the over-height hedge and fence at 15306 as a precedent and he will use this as a precedent in the future.

The Zoning Administrator also attempts to justify his decision on the basis that the subject property is unique because it is a corner lot. But it is no more unique than every other corner lot on the north side of Bestor. The Application would never qualify for the issuance of a variance which is based on the uniqueness of the property that does not allow it the privileges enjoyed by all other similarly zoned properties in the area. In fact, as discussed previously, it enjoys privileges that other properties on Bestor do not enjoy.

For the Zoning Administrator to state that his approval is consistent with the spirit and intent of the zoning regulations is a non-sequitur given that the intent and spirit of the zoning regulations is to ensure open front yards which create open space.

The next finding made by the Zoning Administrator is that 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;

A major justification used by the Zoning Administrator concerns through lots. As discussed previously, the lots between McKendree and Whitfield are not through lots and therefor any justification based on through lots does not justify the finding.

The Zoning Administrator asserts as further justification for making the Finding that:

¹⁰The Applicants previously had a five foot high hedge in front of the wall and a 3 ½ foot high hedge behind the wall but the roots from the hedges were damaging the wall so we removed the hedges. However, the fence we installed behind the wall has small gaps in it so that police can observe any suspicious activities that may occur on the property.

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“Conditions have been imposed upon the authorization to ensure that the proposed pool enclosure fence/gate and hedges do not result in adverse impacts on surrounding properties. Therefore, as conditioned, the project's location, size, height 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.

However, there is nothing in the Conditions that would prevent adverse impacts on adjacent properties. The high hedges just destroy the openness of the neighborhood and make it less enjoyable to live in.

Nor will the project provide a function or provide a service that is essential or beneficial to the community, city or region.

Further, there is no evidence that the proposed project satisfies a required third finding which is that the project substantially conforms with the purpose, intent and provisions of the General Plan, the applicable community plan, and any applicable specific plan. While the Applicants' try to argue that their Application complies with the Brentwood-Pacific Palisades Community Plan, the Plan in no way addresses swimming pools, hedges, fences, or walls. They cite no specific provisions in the Community Plan that addresses the use of their property. What it does have are two Objectives which the Application does not comply with. They are:

“Objective 1-3 To preserve and enhance the varied and distinct residential character and integrity of existing residential neighborhoods.”

The rationale that the Zoning Administrator uses to assert that approval of the Application will comply with the finding is:

“The height of the proposed pool enclosure fence/gate and hedges are consistent with those which have been constructed and maintained within the immediate neighborhood.

Based on this statement, the Zoning Administrator is straining at gnats to make the finding because there is nothing in the immediate neighborhood that justifies his statement. He only cites non-conforming hedges in the immediate neighborhood and does not find any other swimming pools with fences.

Clearly, the Application does not preserve or enhance the existing neighborhood.

“Objective 1-4 To preserve and enhance neighborhoods with a distinctive and significant historic character.”

Their property is historic and their proposed improvements instead of preserving the historic character of their property, it denigrate it.

Essentially, the Zoning Administrator cites no specific provisions in any City Plan that supports the conclusion that their project conforms with the purpose, intent, and provisions of any Plan.

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Required Finding No. 4 states that:

“Consideration has been given to the environmental effects and appropriateness of the materials, design and location, including any detrimental effects on the view enjoyed by occupants of adjoining properties and security to the subject property.”

The Zoning Administrator found that the proposed over-in-height pool enclosure fence/gate and the existing hedges in the front yard will have no significant environmental impacts. But that is not the complete project. The project as stated in the Notice of Hearing as discussed previously, includes the proposed swimming pool, which is why the Applicants needs approval to build in the front yard. Thus, under CEQA Regulations, it is one project. CEQA prevents the division of a project into separate projects.

Section 15378 of the CEQA Guidelines provides the following definition of a project:

a) “Project” means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following:

...

(3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

Thus, a Notice of Exemption was issued by the City in accordance with Section 15378 that includes the pool, the fence, and the hedge. The Notice is attached hereto.

The Notice of Exemption is based on CEQA Guideline 15303, Class 3, which in sub-section (e) includes swimming pools and fences.

In normal times, exempting swimming pools is generally a no-brainer. However, these are not normal times. Currently, California is enduring a severe drought and water conservation is of the highest priority. Faced with a serious water shortage, everyone in California will have to make deep cuts in the amount of water they use. One of the recommended cuts is to not fill swimming pools. Allowing the Applicants to build a swimming pool at this time, is sending the wrong message to everyone, at a time when everyone else is being told to cut back on water usage

Therefore, CEQA Guideline Sub-section 15300.2.c applies which states:

“(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.”

Thus, the issuance of a Notice of Exemption for this Project is invalid. And therefore, the Zoning Administrator’s Finding that the Project will not have any significant environmental effect is not a valid finding.

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In conclusion, the Area Planning Commission should grant the Appeal and set aside the Determination of the Zoning Administrator and the Notice of Exemption.

A handwritten signature in black ink, appearing to read "Jack Allen", written over a light-colored rectangular background.

JACK ALLEN for the Appellants