



# CITY OF LONG BEACH

# EXHIBIT D

DEPARTMENT OF DEVELOPMENT SERVICES

333 West Ocean Blvd., 5<sup>th</sup> Floor Long Beach, CA 90802 (562) 570-6194 FAX (562) 570-6068

PLANNING BUREAU

## APPLICATION FOR APPEAL

An appeal is hereby made to Your Honorable Body from the decision of the

- Site Plan Review Committee
- Zoning Administrator
- Planning Commission
- Cultural Heritage Commission

Which was taken on the 14th day of August, 20 17.

Project Address: 5744 E. 2nd Street, Long Beach, CA

I/We, your appellant(s), hereby respectfully request that Your Honorable Body **reject** the decision and  Approve /  Deny the application or permit in question.

ALL INFORMATION BELOW IS REQUIRED

**Reasons for Appeal:** Objections cover two categories. Five written objections were submitted to Zoning Administrator. They are attached hereto and incorporated by reference herein. Applicable laws, at minimum, require four total offstreet parking spaces, one federally mandated "disabled" and three City required "ordinary/conventional", since application specifies 750 net sq.ft. of commercial space. Alternatively, even if minimum requirements are met, City should explain why more ordinary parking is not necessary for three new businesses. Candor and equity are corollaries of LBMC 21.10.020.

Appellant Name(s): Dinko J. Bozanich

Organization (if representing) None

Address: 5740 E. 2nd Street

City Long Beach State CA ZIP 90803 Phone 562-522-2023

Signature(s) *Dinko Bozanich* Date 8-16-17

- A separate appeal form is required for each appellant party, except for appellants from the same address, or an appellant representing an organization.
- Appeals must be filed within 10 days after the decision is made (LBMC 21.21.502).
- You must have established *aggrieved* status by presenting oral or written testimony at the hearing where the decision was rendered; otherwise, you may not appeal the decision.
- See reverse of this form for the statutory provisions on the appeal process.

BELOW THIS LINE FOR STAFF USE ONLY

Appeal by Applicant  Appeal by Third Party

Received by: *gmas*

Case No.: 1610-09

Appeal Filing Date: 8/17/17

Fee: 100

Fee Paid

Project (receipt) No.: PLNS-39800

Subj: **OBJECTIONS--Application # 1610-09 (LCDP 17-013)**  
 Date: 8/11/2017 2:15:52 A.M. Pacific Daylight Time  
 From: Chiefandarchie@aol.com  
 To: gina.casillas@longbeach.gov

**OBJECTIONS--Application # 1610-09 (LCDP 17-013)**

My name is Dinko J. Bozanich. My wife and I are Long Beach residents and we own the property at 5740 E 2nd St, next door on the west side of the lot sought to be developed. Technically, the named applicant is an architect, but the real party in interest is Richer Vaudry (Vaudry), the owner of both the undeveloped lot immediately east of my property and the developed two lot property immediately east of that undeveloped lot.

Vaudry's proposal specifies THREE (3) new businesses within only 750 net sq. ft. and only TWO (2) "ordinary" off street parking spaces, plus a federally mandated "disabled" parking space. None of that proposed parking is accessible from 2nd St. Instead Vaudry proposes access only by increased use of an archaic and sub-standard alley that visibly is in need of much repair. All other lots in that block that are legally required to have off street parking provide access from 2nd St to all such parking.

This proposal is breath-taking and absurd when compared to commercial development anywhere in Long Beach. Those reactions are exacerbated when it is realized that the location is in the Naples-Belmont Shore commercial area, known for its extreme parking issues and hotbed of public clamor about those issues.

Can Vaudry's proposal happen? Incredibly YES, if his proposal complies with applicable law. So far, the City of Long Beach ("City") Planning Bureau declares it does comply. Typically and politely, answers to any questions are "it meets the code", "it's up to code", etc. When pressed, there is always a disclaimer such as "I'm not an attorney".

Though sincere, such replies obscure reality. A pivotal or indispensable component of those replies is at least one legal opinion or legal conclusion. Also implicit is that the law to apply is unambiguous and indisputable. How likely is such certainty, given the nature of Vaudry's incredulous proposal? What I say below should be understandable by lay persons. The reader need not be an attorney. I am confident that your answer to the question just posed in this paragraph is that both City and Vaudry are, at best, on extremely shaky ground.

Before listing my objections, I want to make six (6) points. This should facilitate understanding my objections and avoid misconstruing what I say.

(1) I unequivocally endorse the federal mandate regarding "disabled" parking that is included in the Americans with Disability Act ("ADA"). Further, I want to show my respect for disabled persons entitled to such parking spaces. Thus, although common vernacular has been "handicap" or "handicapped" spaces, it appears that symbols or "disabled" is preferred. Even "ADA" parking is used. Throughout I will use "disabled" parking spaces.

(2) It is essential to correctly understand the meaning and role of the so-called Supremacy Clause of the U.S. Constitution. It is quite simple. If there is a conflict (collision) between federal law and state or local law, federal law prevails. The Supremacy Clause requires that result. But there must be a conflict (collision). Mere presence of federal law as to the same subject where there is also state or local law is very prevalent and quite routine. Indeed, conflicts (collisions) are relatively rare. In other words, countless federal laws co-exist with state and local laws and no federal overrides occur.

(3) Beware of making assumptions. For example, it may seem any parking space is always just a parking space, regardless whether it is an "ordinary" parking space or a "disabled" parking space. After all, a vehicle is a vehicle and it only requires one space to park. But the correct meaning of "parking space" may lead to differences contingent on context or who is the driver.

(4) City (Long Beach) is not a monolith. It is a duly enacted government structure with separation of powers that include legislative, executive, and administrative authority. Specifically, only the City Council has legislative power. Further, that power is non-delegable--only the City Council can enact ordinances. Administrative actions do not and cannot usurp the City Council's legislative authority.

(5) Vaudry proposes a new use of his land. Focus on this simple fact must never be lost. Keeping that focus should keep irrelevant factors or notions creeping in to any analysis. There is no pressure to save an existing use nor any adverse

~~Monday~~, August 14, 2017 AOL: Chiefandarchie

impact from a new law.

(6) Questioning or challenging stances taken by City or one of its officials or employees does not mean there is any question about sincerity or good faith. Mistakes are made. They may be new or old. Old ones can survive for decades. They are perpetuated by history, custom, training of employees, etc. "This is the way it's always been done", "I was taught this way to do it", etc should not foreclose discovery of a long ago fundamental mistake or profound error, which has escaped detection and would still be buried but for diligence and logic that stimulate a second look..

#### OBJECTION # 1

Four (4 ) separate parking spaces, three (3) "ordinary" spaces plus one (1)"disabled" space are required by applicable laws. Thus Vaudry's application must be denied.

Vaudry's proposal meets federal law but does not comply with the applicable City ordinance, which requires one (1) "ordinary" space per 250 sq. ft. of net commercial space. Vaudry's proposal specifies 750 sq. ft. net commercial space.

Both federal and City's law apply because there is no conflict (collision) between those laws. ADA's parking mandate is very clear—one (1) space for the first 25 spaces required by local law. Absolutely nothing in that mandate suggests any intent to repeal, supercede, replace, amend, or otherwise override any applicable law that requires less than 25 parking spaces. In cases of less than 25 the obvious ADA intent is to supplement or add to local law.

So there is no misunderstanding, in cases where 24 or 25 spaces are required by local law, the Supremacy Clause becomes relevant. Without knowing if a 25th or 26th space is actually available, it is premature to conclude a conflict (collision). There is no need, however, to further discuss this hypothetical case, since the numbers are so different from those in Vaudry's application.

When the numbers are as low as they are in this case, ADA's parking mandate and local law co-exist and both apply to Vaudry's proposal. Unfortunately, City's current stance reflects (1) misapplication of federal law and (2) refusal to enforce its own law. Though unnecessary for me to explain why City has erred, it looks like a colossal misunderstanding of the Supremacy Clause and how it works.

#### OBJECTION # 2

Without enacting an ordinance that changes City's existing parking laws, a "disabled" space cannot be deemed by City to be an "ordinary" parking space and thereby authorize automatic changes (in every case both the number and ratio) of City's own duly enacted parking requirements. Yet that is exactly what City is doing. Thus Vaudry's application must be denied.

The federal mandate is not and cannot be used by City to start with a gross number of parking spaces (determined by a precise method specified by its existing ordinances) and to then summarily, without exercising its legislative power to enable such a result, use a federally mandated parking space to arrive at a net number. Such a "gross and chop one" technique borders on being offensive and an abusive use of federal law at the expense of City's "ordinary" drivers. It looks even worse when you compute how that works when the gross is three (3) versus 20 parking spaces.

Despite my foregoing harsh comments, City has the legislative power to adopt "gross and chop one". If City wants to use that or any other technique that incorporates the federal mandate into how to compute off street parking requirements, it can do so. But it requires the City Council to enact one or more ordinances that include a change in existing City law.

#### OBJECTION # 3

None of the steps in City's "review/appeal" process, including any ruling by the City Council on Vaudry's application, can constitute an exercise of City's legislative power. All rulings on that application as it moves up the ladder to the City Council are exercises of City's administrative powers. No administrator can usurp City's non-delegable legislative authority. Accordingly, the Planning Bureau's (Department of Development) action(s) cannot be deemed to cure, nullify, or overcome OBJECTIONS #1 and # 2. Thus Vaudry's application must be denied.

CONCLUSION

I continue to ponder other possible objections. Therefore I reserve the right to orally make further objections at the hearing scheduled Monday, August 14, 2017.

Nevertheless, it is manifest that the above objections squarely raise substantial issues of law. One need not be an attorney to reach that conclusion. Prudence signals that before ruling on my objections, even if the hearing officer is an attorney, legal advice should be sought. Therefore, I urge that a referral be made to City's Attorney. Better sooner than later. There is no plausible reason why further time and resources of Vaudry or City should be consumed before confronting the crux of this matter and rendering a fully informed ruling. Delaying the inevitable serves no useful purpose. Nor does an uninformed ruling.

Subj: **Additional OBJECTIONS--Application # 1610-09 (LCDP 17-013)**  
Date: 8/14/2017 7:46:17 A.M. Pacific Daylight Time  
From: [Chiefandarchie@aol.com](mailto:Chiefandarchie@aol.com)  
To: [gina.casillas@longbeach.gov](mailto:gina.casillas@longbeach.gov)

Ms. Casillas,

Before the opening of Friday's business day, I had transmitted written OBJECTIONS # 1 through # 3 to your above email address re the above application. I called your business phone number Friday morning to assure receipt by you. Per a recorded message you stated you were out of the office until Monday. In my email I reserved the right to add oral objections at the Monday hearing. You had told me you would distribute any written objections sent to you, including the Hearing Officer. Thus I assume the Hearing Officer, etc will not get my prior objections until Monday's business day begins. I am now submitting additional written objections. Instead of just adding them orally at the hearing this afternoon you will be able to appropriately distribute them too.

Thank you. Dinko J, Bozanich

Preface to below objections. Nobody has a right to have an application granted. The opportunity to apply may be a right, but City approval is only a privilege, NOT a right.

My first three (3) objections unequivocally establish that Vaudry has failed to meet City's legislated MINIMUM off-street parking requirements. Thus Vaudry is not eligible for City to grant him the privilege to proceed.

The following objections presuppose that City will disagree with OBJECTIONS # 1-3. Stated differently, even if Vaudry has met City's MINIMUM requirements, the below objections nevertheless establish that his application should be denied.

#### OBJECTION # 4

The indisputable facts already known by City and its own laws that secure rights for its residents requires that City address and openly answer if Vaudry's proposal meets the requirements of Long Beach Municipal Code ("LBMC") Section 21.10.020. Inordinate time and resources are unnecessary to address that question. The answer is immediately apparent--Vaudry's application must be denied.

LBMC 21.10.040, entitled MINIMUM REQUIREMENTS, states "The Zoning Regulations shall be deemed the minimum requirements to promote and preserve the health, safety, prosperity and general welfare of the people."

LBMC 21.10.020, states "The purpose of the Zoning Regulations is to promote and preserve the public health, safety, comfort, convenience, prosperity and general welfare of the people of Long Beach. Specifically, the Zoning Regulations intend to achieve the following objectives:"

Fourteen (14) objectives, labeled "A" through "N" are specified. I take the liberty of quoting only four (4) and do so in a different order.

K states "To secure equity among individuals in the use of their property;"

F states "To promote safe, expeditious and efficient movement of people and goods, with a maximum of choice in modes of travel and with adequate provisions for parking, loading, and the transfer of modes of travel;"

E states "To assure preservation of adequate space for commercial, industrial and other activities necessary for a healthy economy;"

C states "To protect residential, commercial, industrial, public and institutional areas from the intrusion of incompatible land uses;"

No extended factual recitation is necessary to see the many ways that the foregoing manifestly establish why Vaudry's

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"MINIMUM" should be rejected. The lot was used for commercial parking for decades and provided seven (7) ordinary parking spaces until two (2) years ago when Vaudry bought the property from its prior owner of 60 years. Proposed are three (3) new businesses and only (two) ordinary parking places. Thus the inevitable increased traffic and off-street parking must cope with five (5) LESS ordinary parking places!

A worse yet scenario is that it discriminates against every other commercial owner on the block who has to provide off-street parking. They all have driveways that provide street access to their required off-street parking, while Vaudry will eliminate his driveway and require increase use of a dilapidated alley.

Does Vaudry's proposal really comply with City's zoning laws, albeit supposedly meeting MINIMUM requirements? So far, City has made nothing public about any consideration and/or resolution of compliance with LBMC 21.10.20.

It must not be assumed that City has done anything of that nature. Additionally, if it has, City is obliged to publicly spell out its analysis and conclusion. TRANSPARENCY, NOT STONEWALLING, is owed to its residents, especially those obviously impacted if Vaudry's proposal is approved.

#### OBJECTION # 5

LBMC 21.10.020, subsection K, explicitly requires equity among individuals in the use of their property. Equitable principles include evaluating if the opposing sides have clean hands or not. The foregoing OBJECTION # 4 assumes that both Vaudry and Long Beach residents, particularly those that would be impacted, have clean hands.

This objection unequivocally alleges that Vaudry has UNCLEAN HANDS. Specifically, as to the property he owns immediately east of his proposed project, for more than a decade he has committed multiple zoning violations, which have been repeated and continuous. Indeed, Vaudry is currently in significant violation of City's zoning law.

Up to this point, City has told me that such allegations, even if true, are not considered. To turn a blind eye ignores City's promise and law of equity among individuals in the use of their property.

I recognize that my allegations require presentation of supporting proof. Thus I request a reasonable postponement of a decision at this administrative stage to enable such proof and an opportunity for Vaudry to respond before this objection can be resolved.