NOTICE OF APPEAL

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INITIALS:

Action Being Appealed: TYPE 1 ADMINISTRATIVE HEARING - Longstein Single-Unit Dwelling with ADU FDP 240014

Date of Action: 12/31/2024 **Decision Maker:** Lori Strand, Hearing Officer

Appellant/Appellant Representative (if more than one appellant):

Name: Kirk Longstein **Phone #:** (708) 646-9486

Address: 728 Cherry Street **Email:** Klongstein@gmail.com

INSTRUCTIONS

For *each allegation* marked below**, attach a separate summary of the facts contained in the record which support the allegation** of no more than two pages, Times New Roman 12-point font. Please restate allegation at top of first page of each summary.

GROUNDS FOR APPEAL

The Decision Maker committed one (1) or more of the following errors (check all that apply):

☑ Failure to properly interpret and apply relevant provisions of the City Code, the Land Use Code, and Charter. **List relevant Code and/or Charter provision(s) here, by specific Section and subsection/ subparagraph**:

Failure to conduct a fair hearing in that:

☐ (a) The Board, Commission, or other Decision Maker exceeded its authority or jurisdiction as contained in the Code or Charter. [*New evidence not allowed*]

☐ (b) The Board, Commission or other Decision Maker substantially ignored its previously established rules of procedure. [*New evidence not allowed*]

☐ (c) The Board, Commission or other Decision Maker considered evidence relevant to its findings which was substantially false or grossly misleading. [*New evidence allowed*]

☐ (d) The Board, Commission or other Decision Maker improperly failed to receive all relevant evidence offered by the appellant. [*New evidence allowed*]

☐ (e) The Board, Commission or other Decision Maker was biased against the appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the Decision Maker's independence of judgment. [*New evidence allowed*]

NEW EVIDENCE

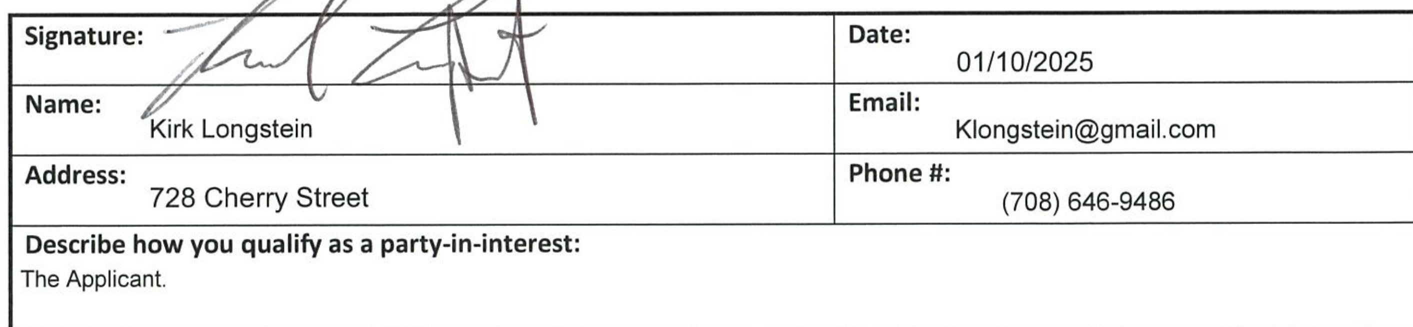
All new evidence the appellant wishes Council to consider at the hearing on the appeal must be submitted to the City Clerk within seven (7) calendar days after the deadline for filing a Notice of Appeal and must be clearly marked as new evidence. No new evidence will be received at the hearing in support of these allegations unless it is submitted to the City Clerk by the deadline (7 days after the deadline to file appeal) or offered in response to questions posed by Councilmembers at the hearing.

APPELLANTS

Parties-in-interest have the right to file an appeal.

A party-in-interest is a person who, or organization which, has standing to appeal the final decision of a board, commission or other decision maker. Such standing to appeal is limited to the following:

- The applicant.
- Anyone who owns or occupies the property which was the subject of the decision made by the board, commission or other decision maker.
- Anyone who received the mailed notice of, or spoke at, the hearing of the board, commission or other decision maker.
- Anyone who provided written comments to the appropriate City staff for delivery to the board, commission or other decision maker prior to or at the hearing on the matter that is being appealed.
- A City Councilmember.



Signature:	**Date:** 01/10/2025
Name: Kirk Longstein	**Email:** Klongstein@gmail.com
Address: 728 Cherry Street	**Phone #:** (708) 646-9486
Describe how you qualify as a party-in-interest: The Applicant.	

Signature:	**Date:**
Name:	**Email:**
Address:	**Phone #:**
Describe how you qualify as a party-in-interest:	

Signature:	**Date:**
Name:	**Email:**
Address:	**Phone #:**
Describe how you qualify as a party-in-interest:	

ATTACH ADDITIONAL SIGNATURE SHEETS AS NECESSARY

Case Number: FDP #240014

Longstein, Kirk – Appellant

Failure to properly interpret and apply relevant provisions of the Land Use Code, specifically Sections 2.1.6, 3.1.9, Division 4.2 (Use Standards), and 7.2.2 Definitions.

1. **Improper Classification of Use:**
   The hearing officer determined that the application for a proposed Single-Unit Dwelling with an attached ADU did not comply with LUC Division 4.2 (and the applicable definitions in LUC Article 7) because the use proposed by the Application did not meet the definition of Single Unit Dwelling, but rather, appeared to fall within the definition of "Two-Unit Dwelling."

   This decision relied exclusively on an interpretation of LUC §4.2 and §7.2.2, which defines a "Single Unit Dwelling" as a dwelling containing no more than one unit, as inconsistent with an attached ADU.

   This interpretation, however, disregarded other relevant provisions in the Code critical to an accurate interpretation of the Single-Unit Dwelling use and failed to acknowledge the distinct use category set aside for ADUs in the Code as it relates to a Single-Unit Dwelling and other Residential Uses.

   First, the attachment of another Dwelling Unit to a Single-Unit Dwelling does not remove it from the realm of being classified as a Single-Unit Dwelling. For example, LUC §4.2 and §7.2.2 contemplate a Single-Unit Attached Dwelling, meaning "a single-unit dwelling attached to one (1) or more dwellings or buildings, with each dwelling located on its own separate lot."

   The Application proposed a Single-Unit Dwelling with an attached ADU. Thus, the Application's proposal of an ADU as attached to a Single-Unit Dwelling does not automatically run afoul of the definition of a Single-Unit Dwelling and catapult it into the classification as a Two-Unit Dwelling. Otherwise, the separate use category of Dwelling Unit expressly reserved for ADUs in the Code would be rendered meaningless, where all Single-Unit Dwellings for which an attached ADU is proposed would be Two-Unit Dwellings and all Two-Unit Dwellings for which an attached ADU is proposed would be Three-Unit Dwellings. Here, there would be no need to have a separate category of uses in the Code for ADUs.

   Instead, and instructive here, the Code includes ADUs in both use and building type categories in Articles 4 and 3 of the Code, respectively, to ensure comprehensive regulation, and to allow an important category of "accessory" use to be separately included in the Code provisions permitting certain types of Residential Uses. As such, ADUs are regulated very uniquely throughout the Code and warrant a separate use attributable to these unique characteristics, as Section 4.2 and 7.2.2 of the Code so clearly indicate. Thus, the Code clearly indicates an intent for ADUs to be distinguished from Single-Unit Dwelling, Two-Unit Dwelling, Single-Unit Attached Dwelling uses and not subsumed within them.

   Any other reading of the Code ignores the distinguishing "accessory" characteristic of ADUs as a distinct use reserved in the Code, which is why the definitions relating to both detached and attached ADUs , emphasize the uniquely subordinate nature of an ADU, as it is dependent upon another "primary dwelling unit."

   To be sure, and for further context, ADUs are categorized as a Residential Use in the Code because their primary purpose is to provide additional living space as part of and subordinate to a primary Dwelling Unit.

Thus, a Single-Unit Dwelling with an attached ADU is not a Two-Unit Dwelling because 1. The ADU is not a primary Dwelling Unit and 2. The definition of a Two-Unit Dwelling clearly requires two primary dwelling Units on one lot. If the Table of Primary Uses does not indicate that Section 4.3.1(M) applies, the additional use standards for Two-Unit Dwellings are not enforceable for this particular application. These ambiguities definitions require the City Council's interpretation for the legislative intent of the Code adopted on May 7, 2024.

2. **Misapplication of Terminology:**
The hearing officer decided not to see the effective similarities between a duplex (which is allowed in the district) and the proposed Single-Unit Dwelling with an attached ADU. Furthermore, the officer incorrectly classified an "Accessory Dwelling Unit (ADU), attached" as a Two-Unit Dwelling rather than recognizing its intended role as a subordinate dwelling unit within a primary residence.

Relevant LUC Provisions

- Article 3, Section 3.1.5: Provides form-based standards for "Duplex" building types but lacks a formal definition of "Duplex" in Article 7.
- Article 4, Section 4.3.1: Defines residential uses:
- (B) Accessory Dwelling Unit: Must remain subordinate to the primary dwelling. ADUs and primary structures cannot exist on separate lots.
- (M) Two-Unit Dwelling: Defined as a building containing two primary dwelling units on one lot, sharing a common wall or floor/ceiling.

Conclusion

Given the distinctions within the LUC, the application for an "Accessory Dwelling Unit, attached" is not subject to a Type 2 hearing. The ADU is an accessory use and building type subordinate to the primary dwelling, and its classification under the LUC does not align with the definition or standards for a "Two-Unit Dwelling."

ADUs as a clear "accessory" residential use per the Code, being defined as subordinate to a primary dwelling, and therefore a separate and distinct category of residential use for a reason, such that the hearing officer's interpretation of Single-Unit Dwelling and attached ADU as contradictory, completely undermines the inclusion of ADUs as a separate use category.

The hearing officer's commentary stating that she was not persuaded by any argument that an ADU is an accessory use which allows it to be included in a Single-Unit Dwelling use is incorrect. The implication of "accessory uses" in the definition of *Dwelling* most certainly operates to allow another residential use that is, by its name and definition, accessory and subordinate in nature.