

Attachment D

May 23, 2019, Planning Commission
Meeting Minutes

AYES: Zak, Weigand, Lowrey, Kleiman, Koetting, Kramer
NOES:
RECUSED: Ellmore
ABSENT:

ITEM NO. 4 REED RESIDENTIAL VARIANCE (PA2019-060)
Site Location: 1113 Kings Road

Summary:

A variance request to allow portions of a new single-family residence to exceed the allowed height limit due to the steep topography of the property.

Recommended Action:

1. Conduct a public hearing;
2. Find this project categorically exempt under Section 15303, of the California Environmental Quality Act ("CEQA") Guidelines - Class 3 (New Construction or Conversion of Small Structures), California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment; and
3. Adopt Resolution No. PC2019-060 approving Variance No. VA2019-002.

Senior Planner Jaime Murillo reported the project proposes the demolition of an existing single-family residence and the construction of a new approximately 10,800-square-foot single-family residence and new 1,500-square-foot, four-car garage. Due to unique topographic constraints on the property, the applicant is requesting a variance for portions of the dwelling to exceed the height limit for the property. The property is located on the south side of Kings Road. Properties along the south side of Kings Road are typically developed with one- and two-story dwellings that step down the slope towards Coast Highway. Properties on the north side of Kings Road are typically two- and three-story single-family homes. The subject property is constrained by a gully, which causes the property to slope west-to-east as well as north-to-south. The existing home has one story when viewed from the street and two stories when viewed from the cliff side. The existing garage is approximately 13 feet tall measured from the curb. In 1976, a variance was granted for the height of the rear portion of the garage, which measures 31.5 feet from the flat roof to the gully below. The adjacent property to the east, which is more severely impacted by the gully than the subject property, was granted variances in 1973 for the home to exceed the maximum height limit and in 1989 for the patio to exceed the height limit. The new proposed residence will have three levels, but it will appear as two levels from the street. The height of the structure will measure approximately 24 feet from the front ridge elevations to grade, and the highest ridge elevation behind the front ridges will measure approximately 25 feet to grade. When viewed from Kings Road, the structure will appear as a Code-compliant, two-story home. The maximum height limit for sloping roofs in a single-family residential zoning district is 29 feet measured from the existing grade. Because of the gully, the proposed new home will appear as three stories to the adjacent property to the east, and portions of the new home will exceed the maximum height limit of 29 feet. The four key findings to grant a variance are special or unique circumstances of the property, preservation and enjoyment of property rights, no special privilege for the property, and no detrimental impact to the community or surrounding properties. Along the west boundary line, the slope of the lot is 5 percent for the length of the proposed structure. Along the east boundary line, the slope of the lot is 25.5 percent for the length of the proposed structure and approximately 40 percent from the front property line to the deepest point of the gully, which is approximately 26 feet below the front property line. Because of the gully, elements along the east side of the proposed structure will exceed the 29-foot height limit. The elements could be pulled back 19 feet from the east property line, but that would reduce the buildable width of the property from 90 percent to 72 percent of the lot. The Zoning Code allows by-right single-family dwellings to reach a height of 29 feet from the existing grade. Without a variance, the private view impacts from Kings Road would continue to exist with a fully compliant project. To minimize the impact on the adjacent property to the east, the applicant has stepped back the third-floor elements and sloped the roofs adjacent to the east property line.

In response to Chair Zak's inquiries, Senior Planner Murillo advised that the applicant has revised the design multiple times to reduce roof and deck elements on the eastern side as much as possible. The revisions reduce the massing of the structure when viewed from the property to the east but has no effect on the view from the street. A fully compliant structure would block some private views from Kings Road. Deputy Community Development Director Campbell added that no special construction-related conditions of approval have been

proposed for the project because the plan check process will ensure the project complies with all provisions of the Building Code.

Commissioners Kramer and Kleiman disclosed a communication with the applicant's consultant. Chair Zak disclosed communications with the applicant's consultant and the applicants. Commissioner Koetting disclosed a phone call from the applicant's consultant. Commissioner Ellmore disclosed a meeting with the applicant's consultant. Commissioner Lowrey disclosed a conversation with the applicant's consultant. Vice Chair Weigand disclosed conversations with the applicant's consultant and members of the public.

Chair Zak opened the public hearing.

Shawna Schaffner, applicant's representative, advised that a 26-foot-deep gully on the lot results in a steeply sloping surface, which severely limits the allowable building height on the eastern portion of the site. The areas for which a variance is requested are located below the height-compliant areas of the front of the house. The applicant requests a variance for the upper-level eaves, the upper-level deck and railing, and the main-level office and covered patio roof. The largest encroachment above the height limit is located at the main level of the house. The property owners have reached out to their neighbors. The applicants have revised plans by removing exterior decks and covered patios, removing enclosed rooms at the rear of the house, redesigning the upper level, reducing the footprint of the upper level, changing the a central roof ridge, and reducing the height of the eastern roof ridge. The proposed house will increase the footprint of the western side of the existing house by 12 feet. The footprint for the eastern side of the existing house will be stepped back. If the variance is granted, the structure will be approximately a half foot taller than the existing garage, for which a variance was granted. The chimney is allowed to exceed the height limit and is not part of the variance request. The areas of the house that require a variance are not visible from the street and are located behind the height-compliant sections of the house. If the applicant proposed a single-story structure, the main level would still require a variance. The applicant agrees with the conditions of approval.

In reply to Vice Chair Weigand's queries, Deputy Community Development Director Campbell advised that the applicant will be required to comply substantially with the plans presented to the Planning Commission. Senior Planner Murillo clarified that the existing garage measures 13 to 15 feet tall from Kings Road. Ms. Schaffner provided street view depictions of the existing structure, the proposed structure, and a structure at the height limit. Deputy Community Development Director Campbell explained that there are no restrictions protecting private views from Kings Road. Private deed restrictions have been placed on some properties along the south side of Kings Road, but they are not subject to City enforcement. Granting the variance will affect the views for the neighbor to the east of the property. Other designs that are below the height limit could push the house further away from the street, but that is not the proposed project.

Vice Chair Weigand wished to ensure the public is aware of other designs the applicant could propose that would not require Commission approval.

In answer to Commissioner Ellmore's inquiries, Ms. Schaffner indicated the maximum buildable square footage for the lot is approximately 29,000 square feet. The proposed square footage is approximately 10,800 with a 1,500-square-foot garage. Ms. Schaffner was not aware of a study of a 29,000-square-foot house that determined whether a variance would be needed. Based on buildable area, many of the lots in the neighborhood are developed more intensely than the project site. Deputy Community Development Director Campbell explained that staff utilized a technique contained in the Municipal Code to determine the grade for the purposes of measuring height. The grade determination is accurate and reflects the existing topography of the lot. He would not recommend any changes to the grade plane that staff identified in the report. To determine a grade that would not require a variance for the proposed project, staff would have to use grades in the gully that are approximately 13 feet higher than they actually are. Staff did not feel those grades would reflect the existing topography, and those grades could be detrimental to the neighboring property. Staff looks at the grades and identified the points necessary to achieve and create a plane that closely reflects the existing topography. If an applicant feels the points are inappropriate, the determination can be appealed to the Planning Commission. Staff does not recommend the Planning Commission change the technique utilized to determine the grade.

In response to Commissioner Kleiman's questions, Deputy Community Development Director Campbell indicated the neighboring property would be subject to the same grade determination procedure used for the project site,

but staff would probably utilize more grade points. The neighboring house would probably continue to require a variance if staff utilized a similar procedure.

In reply to Commissioner Lowrey's query, Ms. Schaffner advised that the property owners contacted the neighbors across Kings Road when they first developed plans and have continued outreach over the past six months with neighbors. The neighbors to each side of the subject property have submitted correspondence in support of the project.

Jeff Wingler remarked that the project improves the neighborhood. The property is unique in comparison to other properties in the vicinity. The applicant should be granted a variance.

Peggy Palmer related that the applicant worked with the neighbors and offered four options for the project. The Cliff Haven Community Association is willing to host an event for the applicant to explain the project to neighbors.

Charles Klobe, Newport Heights Improvement Association Board Member, commented that variances should be the exception rather than the rule. Variances should be granted when there is an overwhelming hardship to the builder or a public benefit for the change in policy. The project meets neither condition.

Jim Mosher did not understand the reasons for staff recommending a variance instead of a site development review. Section 20.52.090.G of the Municipal Code clearly states the granting of prior variances is not relevant or admissible evidence for the granting of a new variance. The applicant did not provide any simulations of how the project will affect the public views from Coast Highway, a designated coastal view road, or minimize alteration to a site's natural topography as stated in the General Plan Natural Resources Element.

John Pomer indicated his family is comfortable with the project.

Bruce Trotter opposed a variance for the project.

Mike Robertson related that the project will impact every homes' views to some degree and will impact the values of all neighboring homes.

T.J. Williams advised that the project will block the entire view from his home and the views from most homes along the street. He wanted a second opinion regarding staff's determination of the grade points for the subject property.

Amy Williams stated there are different techniques to determine the grade of the property. Many aspects of the project should be discussed and reviewed.

Chris Gruber supported the project.

Brian Krebs supported the Planning Commission granting a variance for the project. The project is consistent with the character of the neighborhood.

Lee Goodin understood the project designer has minimized the potential visual impacts of the project, especially considering the landscape of the lot. The small portion of the home that exceeds the height limit is minimally visible from West Coast Highway. He supported a variance for the project.

Matt Wooley supported the project.

John Stedfield indicated the project will affect his views and property value. Earlier in the day, the applicant approached him for the first time to discuss the project. He opposed the variance.

Carol Anne Dru advised that the neighbors would contest approval of the project without a community meeting. She did not understand the calculation of the existing grade in order to determine the height limit. She requested the Planning Commission continue the project so that neighbors can reach a congenial resolution.

Nancy Barfield expressed frustration with people being allowed to build tall homes and in the setbacks. The project will impact her views.

DJ Countess believed the requested variance is reasonable and supported a granting of the variance. The large lot has substantial land constraints.

Doug DeCinces suggested the applicant excavate the site in order to build the maximum square footage for the house without exceeding the height limit. The massing of the house is an eyesore.

Lynn Lorenz concurred with the comments of Michael Alexander. Granting the variance will set a precedent for future projects in the neighborhood. The project should comply with the standards and rules.

Jeff Frum indicated the project will impact neighbors' views.

Tom Baker requested the Planning Commission not approve the variance request as the building height will not be compatible with the neighborhood. The applicant should revise the design so that a variance is not needed.

Robert Brauchli supported the project as it conforms to the Building Code. The applicant has attempted to lessen the project's impact on neighbors.

Carolyn Brubaker remarked that the project appears to be overwhelming and overbearing. She requested the project be reduced in size.

Doris Perry supported the project because the applicant should be allowed to develop the property as they wish.

Max Johnson supported a continuance of the item to allow a community discussion of the project.

Josh Beyer did not understand the community outrage because the project complies with the Code. He supported the project.

Sandra Ayers indicated the project is not fully compliant with the Code. The granting of a previous variance is not justification for granting another variance. The project does affect the views from the bluffs. A variance is not necessary to build a house on the lot.

Ms. Schaffner reported the alternative to a variance is to terrace the property further to Coast Highway, which would cause more prominent views throughout the community. The project will block the view from the main level of Mr. Williams' home but not from the upper level of his home. The adjacent property is subject to a height restriction via a private deed restriction. Ed Selich, a member of the committee that wrote the grade language, has indicated the grade determination is appropriate. Wide lots prevail in the neighborhood. Excavating to construct the home will not eliminate the need for a variance. The public has not presented facts that dispute the findings contained in the staff report.

Commissioner Kleiman wondered whether the applicant felt the few elements that require the variance are worth the contentious nature of the variance.

In reply to Commissioners' questions, Ms. Schaffner indicated the applicant conducted three studies regarding adjusting the grade determination. In all scenarios, the structure could have a height of 29 feet for a length of 20 feet into the lot before the grade would have to be adjusted. Deputy Community Development Director Campbell reiterated that the determination is appropriate and reflects the existing topography. Lowering the grade determination would not change the front of the house. The grade could be viewed differently, but in staff's judgment the chosen points are appropriate. The height limit in Newport Beach has changed over the years. The current procedure for determining the grade of a lot was developed in 2008. For many years, structures were not built to the maximum height limit.

Deputy Community Development Director Campbell remarked that staff pushes back quite hard on projects that exceed the height limit and counsels applicants to comply with Code requirements. The Code provides a process

for the applicant to seek relief from standards, a variance application. The encroachments are small and not visible from the street.

Commissioner Koetting commented that the portions of the roof that encroach comprise perhaps 3 to 4 percent of the total roof area. The house could be taller than proposed. He could not understand the outcry over loss of views when the houses are so close together that there are no views. Deputy Community Development Director Campbell added that the two-story front of the home does block private views, but the height at the front of the house is allowed. Therefore, the portion of the residence subject to the variance is not visible. The detriment due to views being blocked expressed by neighbors is not created by the variance. The Planning Commission's discretion lies with the project exceeding the height limit, not the grade determination.

Commissioner Lowrey understood the pros and cons of granting the variance. The applicant's outreach has been unsatisfactory.

Vice Chair Weigand felt a lot of the contentiousness could be alleviated with more information about the project. He hoped the community at large could discuss the project further.

Commissioner Ellmore noted the Planning Commission works within confined parameters. The lot is atypical in nature, and a variance for an atypical lot is justified. Based upon a technical review of the project, he could support it.

Commissioner Kramer advised that the Planning Commission's role is to adjudicate matters based on rules outlined in the General Plan and Municipal Code. In certain situation, the Code allows as normative variances for unusual conditions. The Planning Commission is charged with reviewing and granting variances. Those who oppose the project either don't understand the project or are basing their comments on false information. The City and by extension the Planning Commission have no obligation whatsoever to protect private views or financial impacts associated with such. The application has highly unusual conditions in the topography of the lot that are textbook examples of circumstances foreseen in the Code for which a variance is reasonable. The variance request is for a minor height encroachment. The public hearing before the Planning Commission is the public process.

Motion made by Commissioner Kramer and seconded by Commissioner Ellmore to find this project categorically exempt under Section 15303, of the California Environmental Quality Act ("CEQA") Guidelines - Class 3 (New Construction or Conversion of Small Structures), California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment; and to adopt Resolution No. PC2019-060 approving Variance No. VA2019-002.

AYES: Zak, Ellmore, Kleiman, Koetting, Kramer
NOES:
ABSTAIN: Weigand, Lowrey
ABSENT:

VIII. STAFF AND COMMISSIONER ITEMS

ITEM NO. 5 MOTION FOR RECONSIDERATION

None

ITEM NO. 6 REPORT BY THE COMMUNITY DEVELOPMENT DIRECTOR OR REQUEST FOR MATTERS WHICH A PLANNING COMMISSION MEMBER WOULD LIKE PLACED ON A FUTURE AGENDA.

Deputy Community Development Director Campbell reported the General Plan Update Steering Committee will meet on May 29. Staff will recommend the Steering Committee evaluate a scope of work and cost of services and make a recommendation to the City Council to hire Kearns & West.