



CITY OF

NEWPORT BEACH

City Council Staff Report

September 10, 2019
Agenda Item No. 20

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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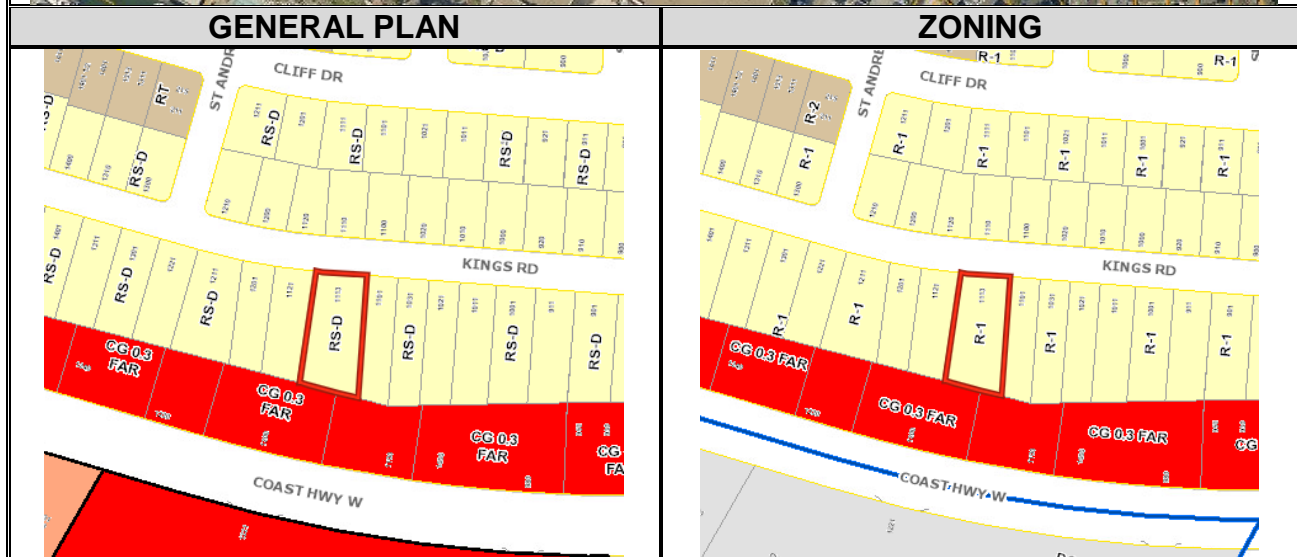
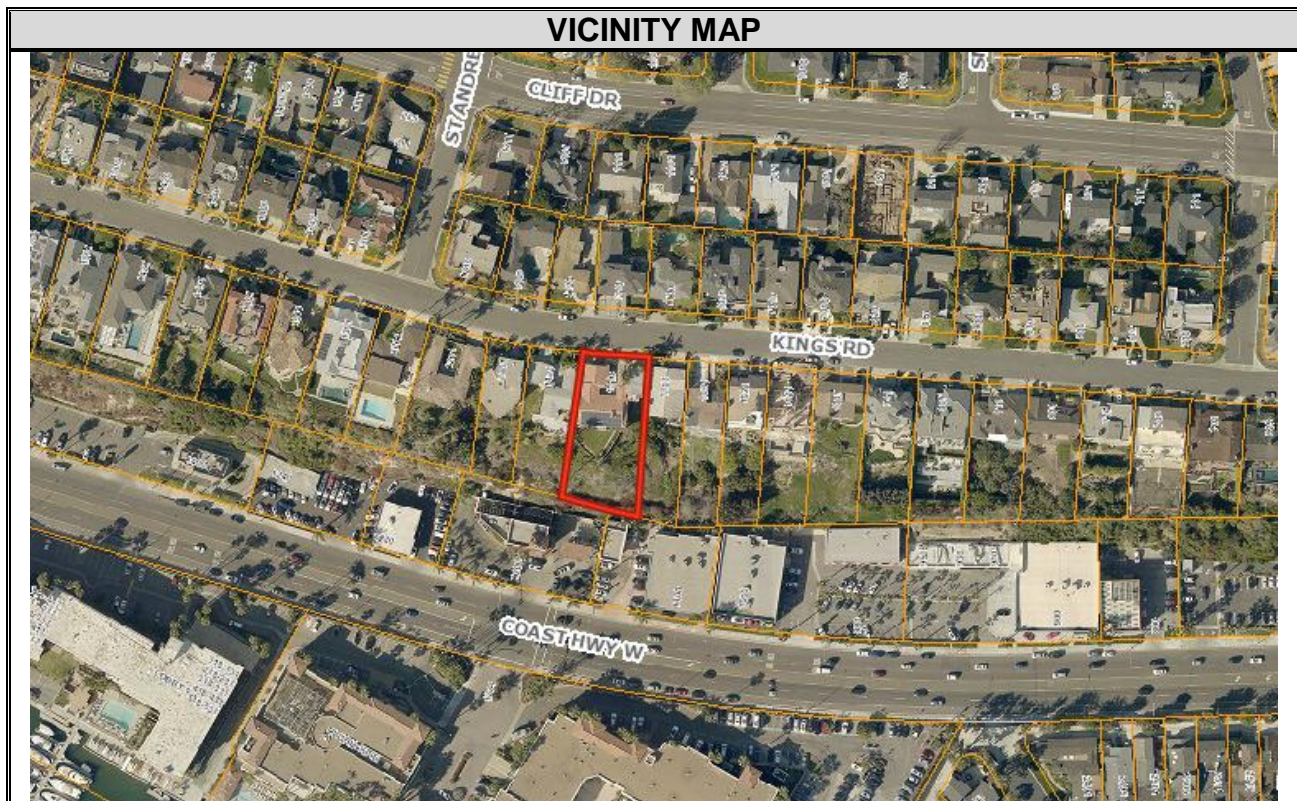
TITLE: Resolution No. 2019-80: Appeal of Reed Residential Variance for
1113 Kings Road (PA2019-060)

ABSTRACT:

An appeal of the Planning Commission's May 23, 2019, decision to approve Variance No. VA2019-002 related to the the construction of a new 10,803-square-foot, single-family residence and a 1,508-square-foot, four-car garage located at 1113 Kings Road was filed. The variance authorized portions of the upper level roof and deck, and portions of an office and covered patio on the main level of the proposed home to exceed the allowed height limit due to the steep topography of site. The appeal was filed by Stop Polluting Our Newport (SPON). For City Council's consideration is to either deny the variance or uphold Planning Commission's approval of the variance.

RECOMMENDATION:

- a) Conduct a de novo public hearing;
- b) 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
- c) Adopt Resolution No. 2019-20, *A Resolution of the City Council of Newport Beach, California, Upholding and Affirming the Planning Commission's Approval of Variance No. VA2019-002 to Allow Portions of a New Single-Family Residence to Exceed the Maximum Height Limit for Property Located at 1113 Kings Road (PA2019-060).*



LOCATION	GENERAL PLAN	ZONING	CURRENT USE
ON-SITE	Single-Unit Residential Detached (RS-D)	Single-Unit Residential (R-1)	Single-family residence
NORTH	RS-D	R-1	Single-family residences
SOUTH	General Commercial (CG)	Commercial General (CG)	Car wash and auto sales facility
EAST	RS-D	R-1	Single-family residences
WEST	RS-D	R-1	Single-family residences

FUNDING REQUIREMENTS:

There is no fiscal or budget impact related to this item.

DISCUSSION:

Project Setting

The subject property is a hillside lot located along the south side of Kings Road in the single-family residential neighborhood of Cliff Haven above and visible from Coast Highway. Surrounding properties include single-family residences to the west, north, and east. Commercial properties are located down slope south of the parcel in the Mariners' Mile commercial corridor along West Coast Highway. Similar to other residences on the south side of Kings Road, the property is developed with the front yard facing Kings Road and the rear of the property abutting the commercial lots down slope.

Project Description / Variance Request

The applicant desires to demolish the existing structure and construct a new 10,803-square-foot, single-family residence and 1,508-square-foot, four-car garage parking. The residence would consist of three levels: a 4,177-square-foot partially below-grade lower level, a 3,361-square-foot main level, and a 3,265-square-foot upper level. From the Kings Road street frontage, the residence would appear as two stories. The daylighting basement level would generally only be visible from the property to the east and from West Coast Highway to the south due to the topography of the site and adjacent lots.

The upper levels of the residence have been designed to step down to maintain a structure height that follows the natural slope of the lot. However, due to the topographical constraint of a gully feature (See Figure 1 below), the applicant is requesting a variance to allow portions of the roof to exceed the 29-foot height limit for sloped roofs and a portion of a deck and associated railing to exceed the 24-foot height limit applicable to decks and flat roofs. The gully feature is located at the northeastern corner of the lot that extends to the south generally along the eastern property line, and affects the siting and design of the proposed construction. The deviations from height limits for the various components of the structure are as follows:

- *Upper level roof eaves:* 1.13 feet, 1.29 feet, and 1.85 feet above 29-foot sloped roof height limit
- *Upper level deck and rails:* 4.47 feet and 2.32 feet above 24-foot flat roof height limit
- *Main level office eave:* 1.74 feet above 29-foot sloped height limit
- *Main level covered patio eave:* 3.07 feet above 29-foot sloped roof height limit

Figure 1 – Topographical Constraint of the Gully Feature

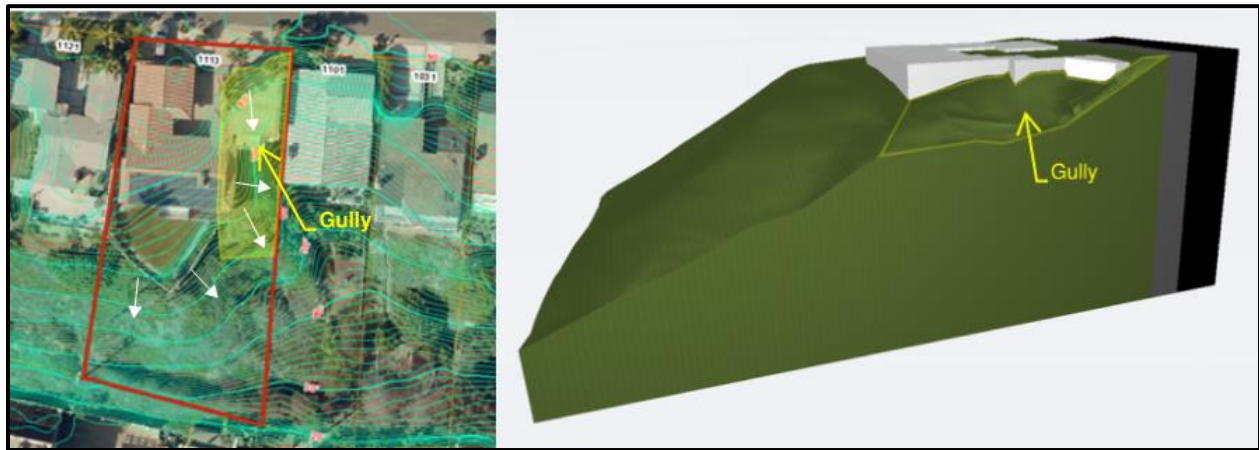


Figure 2 on the next page highlights the portions of roof and deck that exceed allowed height limits.

Figure 3 includes three-dimensional renderings of the proposed residence illustrating the portions of the structure that exceed the 29-foot height limit plane.

The project plans (Attachment F) provide additional information on the site topography as well as the location, height, and layout of the proposed structure.

Planning Commission Meeting

On May 23, 2019, the Planning Commission conducted a noticed public hearing and, following receipt of public comments and deliberation, voted 5-0 (2 abstentions) to adopt Resolution No. PC2019-015 approving the project, which includes the written findings for the action (Attachment B).

The May 23, 2019, Planning Commission staff report is included as Attachment C and includes a detailed analysis of the request. The staff report includes written correspondence submitted both in support and opposition, including a petition.

A total of 27 public comments were made at the hearing; 10 comments in support and 17 comments in opposition. Comments in support generally concluded that the design of the project was compatible with the neighborhood, the lot is constrained, and the request is reasonable given the constraint. Comments in opposition were generally related to the loss of private views, lack of community outreach, large size of home, and method of height measurement. The meeting minutes are included as Attachment D.

At the conclusion of the meeting, the Planning Commissioners in support of the project concluded that the subject property was atypical with highly unusual conditions in topography, and that the variance findings could be supported. The portion of the residence subject to the variance is not visible from Kings Road and the detriment due to private views being blocked expressed by neighbors is not created by the variance itself, but rather the height-compliant two-story elements located closer to Kings Road.

Figure 2 – Roof Plan and Section Exhibit - Height Exceedances

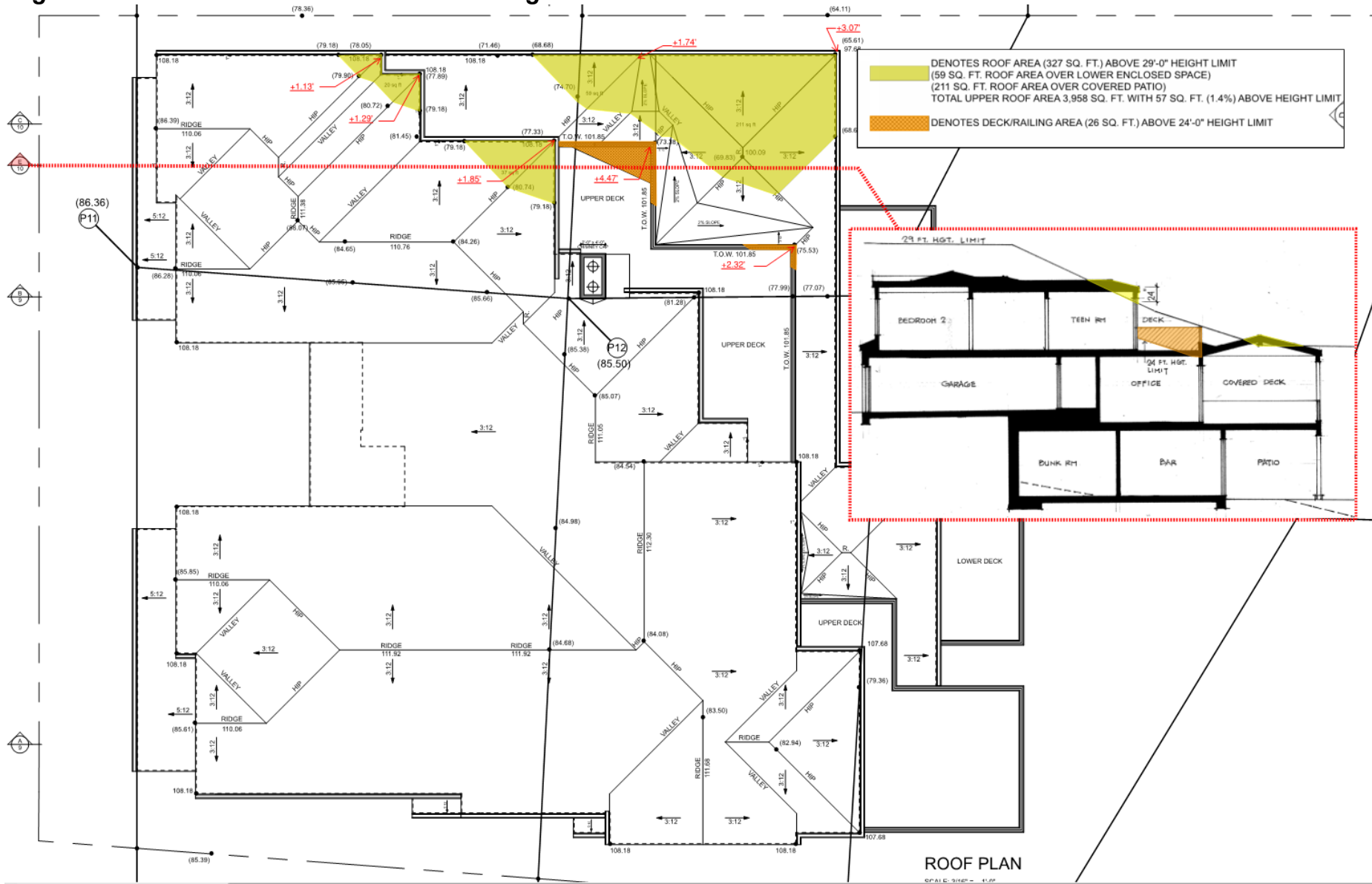


Figure 3 – 3D Rendering Illustration of Height Exceedances (Yellow Plane Represents 29-Foot Height Limit)



Rear Elevation



Front Elevation (Kings Rd)



Right Side Elevation



Left Side Elevation



Left Side Elevation
(Looking Down)



Left/Front Elevation

Appeal

On June 5, 2019, an appeal was filed by Stop Polluting Our Newport (SPON) stating five concerns: 1) opposition by neighboring homeowner associations; 2) inconsistency with the General Plan; 3) cumulative environmental effects; 4) findings for approval not defensible; and 5) alternatives rejected. The complete appeal application is attached as Attachment E.

Pursuant to NBMC Section 20.64.030(C)(3) (Conduct of Hearing), a public hearing on an appeal is conducted “de novo,” meaning that it is a new hearing and the prior decision of the Planning Commission to approve the application has no force or effect. The City Council is not bound by the Planning Commission’s prior decision or limited to the issues raised by the appeal.

Staff Responses to Appeal

A summary of the appellant’s primary concerns and staff responses are discussed below:

- 1) *Representatives of two neighboring Homeowner Associations stated their opposition at the hearing and their offers to conduct community meetings were ignored despite the increasing desire by the City Council in preparing for the General Plan Update to seek maximum public outreach.*

Staff Response: The subject property is not located within a mandatory homeowners association. The variance was processed in accordance with Chapter 20.62 of the Newport Beach Municipal Code (NBMC), which includes public noticing requirements and public hearing procedures. Staff encouraged the applicant to seek input from neighbors and the community as a private matter and there is no requirement that the applicant hold a separate meeting with the community. Outreach related to the General Plan update process will occur over an extended period of time and the City must act upon applications received in accordance with the Permit Streamlining Act.

- 2) *The granting of the variance is inconsistent with the General Plan. Cumulative issues in terms of heights and bluffs were not considered and the Natural Resources Element of the General Plan was not discussed. The variance will encourage construction over the ravine on the coastal bluff, where the Natural Resources Element of the General Plan includes policies related to preservation of coastal bluffs and minimizing alteration of the site’s natural topography and preservation of such features as a visual resource.*

Staff Response: Goal NR 23 of the Natural Resources Element includes a number of policies intended to preserve natural visual resources such as coastal bluffs and canyons. Most of these policies specifically apply to coastal bluffs subject to marine erosion and coastal canyons, and therefore not applicable to this project site. The following two policies would be applicable to this site:

NR23.1 Maintenance of Natural Topography

Preserve cliffs, canyons, bluffs, significant outcroppings, and site buildings to minimize alteration of the site's natural topography and preserve the features as a visual resource.

NR 23.7 New Development Design and Sitting

Design and site new development to minimize the removal of native vegetation, preserve rock outcroppings, and protect coastal resources.

The Zoning Code implements Goal NR 23 of the Natural Resources Element through Section 20.28.040 (Bluff Overlay District), which establishes additional development standards regulating the placement and location of structures on certain bluff lots in the City to protect the natural aesthetics of the bluffs. However, this particular segment of bluff above West Coast Highway is not located within the Bluff Overlay District. Although the project site was historically a coastal bluff, the hillside has been significantly altered throughout the years with the development of West Coast Highway and commercial developments below, and residential developments along the top of slopes. The lots are no longer subject to marine erosion and void of any significant rock outcroppings. The Zoning Code allows by-right, development down the entire slope of these lots, provided compliance with development standards are met, such as setbacks and height. In this case, the applicant proposes to develop a residence on the upper half of the lot, similar to other homes along the hillside. A portion of the lower half of the lot would be improved with a terraced retaining wall design and the lowest 25% of the lot will remain undeveloped.

- 3) *The project should not be categorically exempt under Section 15303 of California Environmental Quality Act (CEQA) Guidelines because it has the potential to have a significant effect on the environment.*

Staff Response: The appeal does not provide reasons to support the statement. The Planning Commission determined the project was exempt from CEQA for the reasons explained in the *Environmental Review* section of this report. Staff believes finding the project exempt is appropriate unless substantial evidence of a significant environmental effect were to be introduced. As of the drafting of this report, no such evidence exists.

- 4) *The variance findings cannot be made and are not defensible.*

Staff Response: The appeal does not provide reasons to support the statement. Detailed facts in support of each required variance finding are included in both the adopted Planning Commission Resolution No. PC2019-015 (Attachment No. B) and the Draft Resolution of Approval included as Attachment A of this staff report.

- 5) *Alternatives to variance and options to minimize variance request presented in Planning Commission staff report rejected.*

Staff Response: Alternatives included in the Planning Commission staff report were included to illustrate the changes in design needed to further minimize or eliminate the need for the requested variance. However, these alternatives would not have the effect of changing the appearance of residence as viewed from Kings Road, West Coast Highway, or improve private views from nearby lots. Denial of the variance would significantly impact the functionality of the home design. To avoid the topographic constraint associated with the gully, the proposed teen room, decks, and covered patio features of the proposed residence would need to be setback approximately an additional 15 feet from the easterly side setback line (19 feet from easterly property line). This modification to the design would effectively reduce the buildable width from approximately 90 percent of the lot width to 72 percent of the lot width at those locations. As noted, the resolution recommending denial of the appeal and upholding the Planning Commission's decision to approve the project includes facts in support of each required finding.

Alternatives

Should the City Council determine that there are insufficient facts to support the findings for approval, staff recommends a continuance to allow staff to prepare a resolution reflecting the Council's stated reasons for denial.

ENVIRONMENTAL REVIEW:

This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303, Class 3 (New Construction or Conversion of Small Structures) of the State CEQA Guidelines because it has no potential to have a significant effect on the environment. This exemption covers the construction of new small facilities or structures including up to three new single-family residences in urbanized areas. The proposed project is the construction of a new single-family residence, consistent with this exemption.

The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

NOTICING:

Notice of this hearing was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and posted on the subject property at least 10 days before the scheduled meeting, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

ATTACHMENTS:

Attachment A – Resolution No. 2019-80
Attachment B – Planning Commission Resolution No. PC2019-015
Attachment C – May 23, 2019, Planning Commission Staff Report
Attachment D – May 23, 2019, Planning Commission Meeting Minutes
Attachment E – Appeal Application
Attachment F – Project Plans
Attachment G – Correspondence