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REGULAR MEETING OF THE
PLANNING COMMISSION
CULVER CITY, CALIFORNIA

April 13, 2005
7:00 P.M.

Mike Balkman Council Chambers

MEMBERS PRESENT: D. Scott Malsin, Chair
Sheila M. Thomas, Vice-Chair
Maureen M. Muranaka, Commissioner
David Rockwell, Commissioner
Marcus Tiggs, Commissioner

ADVISORY PRESENT: Sherry Jordan, Senior Planner
Kriss Casanova, Planning Technician
David McCarthy, Deputy City Attorney
Bryn Morley, Special Counsel
Craig Johnson, Building Official

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CALL TO ORDER

Chair Malsin called the meeting to order at 7:03 p.m.
The Pledge of Allegiance was led by Mr. Ron Wiertzema.
Roll Call: Malsin, Thomas, Tiggs, Muranaka, Rockwell present.

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PUBLIC COMMENT

None.

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PUBLIC HEARING

PH-1. Appeal of a denied Administrative Variance, 3970 Shedd Terrace.

Ms. Casanova presented the staff report.

Chair Malsin declared the Public Hearing open and called on speakers who submitted comment cards.

Ben Hong, 2959 Shedd Terrace, Culver City

- Urged Commission's approval of the Applicant's request for a variance.

Paul Jacobs, representing the Alexanders (the Applicant)

- Provided a lengthy presentation delineating the Applicant's Response to Staff Comments, which was submitted in writing to the Planning Division and Commissioners.
- Indicated the variance process offers an opportunity for Commissioners to use their discretion in determining that ordinance regulations may in certain instances be inappropriate to enforce the strict letter of the law and to interpret certain words and phrases contained in the variance statutes.

Kenneth Alexander (Applicant)

- Read his Oral Remarks to the Planning Commission dated April 13, 2005.

Vice-Chair Thomas moved, seconded by Commissioner Muranaka, to close the Public Hearing.

Chair Malsin requested staff's response.

Ms. Casanova

- *Staff has previously addressed the issues raised and stands by their recommendation.*
- *Reiterated that the Code states the variance be disapproved in the event one or more of the findings cannot be made.*

Chair Malsin entertained comments from the Commissioners.

Commissioner Muranaka

- Respectfully disputed the characterizations of both staff and the applicant, saying she disagrees with Mr. Alexander and his Counsel that they have overwhelmingly met the factual requirements to support the six conditions required to meet the variance; on the other hand, she believes staff has painted with a very broad brush the "dire circumstances" of granting the variance.
- This is not a clear-cut case and, in order to make the findings necessary to support the variance, she has applied equitable considerations.
- Very disturbed by the contentious tone on both sides.
- In favor of supporting the variance with the clear understanding that the Applicant has not overwhelmingly met their case.

Vice-Chair Thomas

- In favor of supporting the variance based on the facts and circumstances.
- Distressed by the level of effort on both sides for something that should not have been so difficult.
- The City acknowledges there are certain exceptions for areas that are special; this area is exceptional since there are very few regular lots in Blair Hills and, as such, approval of the variance in no way provides special privilege to this lot.
- An applicant has the burden to prove that all six findings are met and must advocate for their position to obtain a variance, whereas staff needs to disprove only one. It

seems highly inappropriate that staff should find reasons why all six conditions are not met, especially since it is very clear that at least some of them can be met.

- The only condition open to question is No. 2; the others, while perhaps not overwhelming met, deal with practical difficulty or unnecessary hardship in relation to the need for an addition and are easy to tip in favor of the Applicant.

Commissioner Tiggs

Outlined his opinion on each of the findings as follows:

- No. 1, Special Circumstances - staff has emphasized comparable properties have similar square footage and properly recognizes that the Applicant's property is shallow; Applicant points out there is a steep slope with a drop off, the downhill neighbor objects to allowing heavy equipment on his property, the backyard may contain fill dirt, there are no sidewalks, and the street dead ends in a cul-de-sac.
 - The Applicant should have obtained a soil report since their allegation that building cannot safely occur in the backyard relies on a 1982 geological report for the general area which indicates there might be a problem. Staff has noted it is unclear whether an addition could safely be built in the backyard so it is appropriate they are requiring the Applicant to provide a soil report.
 - The Applicant has satisfactorily met the findings for No. 1 because of the shallowness of the property and the fact that access would be required through the neighboring property and said neighbor is not willing to provide that access.
- No. 2 - Unnecessary Hardship - staff indicates the Applicant has the option of adding a second floor, discounting the subsequent obstruction of the neighbor's view; the Applicant notes heavy equipment access is limited, risks associated with construction, and financial hardship. The case of Zacasian v. the City of Sausalito determined that financial hardship alone is not enough but indicated it can be considered along with the other circumstances. Taking that into consideration with the other circumstances, believes the Applicant has met that finding.
- Staff does not give much emphasis to precedent while the Applicant does emphasize precedent as far as variances and other driveways. Agrees with staff that variances cannot be granted solely on the basis of other properties having short driveways but, if one examines the Lugo and Whitmore cases, in those instances where variances were granted, the Planning Department determined the fact that a significant number of properties in the area had shorter driveways was enough to meet the findings for Finding No.'s 3 and 5. Staff has not made a compelling argument justifying that those findings cannot be met at least by precedent.
- No. 3 - Unreasonable Deprivation of Use - considering Lugo and Whitmore, there have been other occasions in which the Planning Division determined a variance was sustainable because of short driveways on surrounding lots.
- No. 4 - Detrimental or Injurious to Property or Improvements in the Area - staff relies on the premise that a car cannot park completely on the lot due to the shorter driveway which might create the need for additional off-site parking and cause vehicular obstruction; Applicant relies on the fact there is no sidewalk and on a statement from Chief Montanio indicating there were no reportable traffic incidents for people backing out of short driveways.

- Staff's argument for this finding not being met is not compelling despite the mention of the California Vehicle Code in the supplemental staff report; the characteristics of the area being a cul-de-sac with few homes, ample street parking, and the correspondence from Chief Montanio point in the Applicant's favor on this Finding.
- No. 5 - Variance Should Not Be Contrary to Purposes and Intent of Zoning Code - incorporating some of the items previously mentioned, this Finding has also been met.
- The tone taken between the parties and some of Mr. Alexander's comments were unnecessary.
- In favor of the variance.

Commissioner Rockwell

- Found the tone on both sides objectionable but more strongly objectionable from the Applicant.
- Would have appreciated a soil report since it is basically speculation at this point whether the previous study is founded.
- Queried to what extent the Commission is bound by precedent and to what extent the evening's decision will set precedent.
- Since there are likely other situations in which the ordinance is not applicable to a particular street or neighborhood, it might make sense to modify the Code rather than allow the variance(s).
- The two properties to the north of the Applicant's have driveways which are the same in concept as that being requested. The common sense approach seems to indicate approval of the variance is appropriate.

Ms. Morley

- *Precedent is determined on a case-by-case basis. If a matter comes forward with the same circumstances and facts, there could be precedence.*

Commissioner Muranaka

- The cases cited do not necessarily have value as precedents since they were administrative decisions and are not binding; however, Commissioners do have the authority to decide whether or not to give weight to those former decisions.

Chair Malsin

- Also disturbed by the tenor of the correspondence between the Applicant and staff.
- Although some of the findings were easy to agree with, for the sake of argument, he noted the following:
 - Leaving aside the fact the back of the property is at the edge of a slope, it is a sizable lot with considerable flat area, the house is large by the City's standards, and there is no hardship in not being able to construct an addition in exactly the manner one would like.
 - The Commission recently discussed and commented on a draft View Preservation ordinance, which by Council's direction addresses views obstructed by landscaping only. The proposed ordinance does not apply to

views obstructed by building structures such as second story additions so the relevance of this is limited.

- Precedents occurring prior to a law or ordinance was adopted do not necessarily carry much weight with subsequent projects. This area was developed in the 50's and 60's and the City adopted the 20-foot standard for driveways in the 80's; so the law governing at the time a particular action is engaged is the one that should prevail.
- The planned development of Heritage Park appears in practical terms to be inadequate, having permitted so little sidewalk area to accommodate parking and virtually no driveways. Nevertheless, the City granted those development standards for that particular area.

Commissioner Tiggs moved, seconded by Vice-Chair Thomas, to overturn the denial for the requested Administrative Variance at 3970 Shedd Terrace. The motion carried unanimously 5:0.

Ms. Jordan indicated the item will be considered a categorical exemption (minor additions to a structure) which will be included in the Resolution.

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CONSENT CALENDAR

C-1. Secretary's Report.

Commissioner Muranaka moved, seconded by Vice-Chair Thomas, to receive and file the Secretary's Report. The motion carried unanimously.

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C-2. Approval of Minutes.

Commissioner Muranaka moved, seconded by Commissioner Tiggs, to approve the minutes of March 9, 2005 as amended. The motion carried 4:0 with Commissioner Rockwell abstaining.

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ITEMS FROM STAFF

Ms. Jordan advised the Commissioners of their upcoming meeting schedule and agenda items.

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ITEMS FROM PLANNING COMMISSION

Chair Malsin commented that the Green Building Tour orchestrated by Craig Johnson was very enjoyable. He noted that the City Council did adopt the Open Space Ordinance, saying he along with Commissioner Tiggs and Vice-Chair Thomas were able to participate in the discussions.

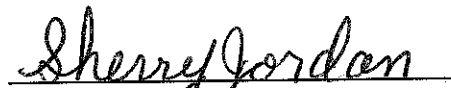
ADJOURN

Commissioner Tiggs moved, seconded by Vice-Chair Thomas, to adjourn the meeting at 8:48 p.m. to May 11, 2005 at 7:00 p.m. in the Mike Balkman Council Chambers at City Hall. The motion carried unanimously.



D. SCOTT MALSIN, CHAIRPERSON
PLANNING COMMISSION
CITY OF CULVER CITY, CALIFORNIA

ATTEST:


SHERRY JORDAN
Senior Planner