

**City of Culver City, California
Agenda Item Report**

Meeting Date: 09/09/13		Item Number: <u>A-4</u>	
CITY COUNCIL AGENDA ITEM: Discussion of Potential Changes to the Existing Planning Division Fee Structure for Variance Applications and Direction to City Staff.			
Contact Person/Dept.: Sol Blumenfeld		Phone Number: (310) 253-5702	
Fiscal Impact: Yes ☒ No ☐		General Fund: Yes ☒ No ☐	
Public Hearing: ☐		Action Item: ☒ Attachments: ☐	
Commission Action Required: Yes ☐ No ☒ Date: _____			
Public Notification: (E-Mail) Meetings and Agendas – (09/04/13); Mr. Baker (09/04/13)			
Department Approval: Sol Blumenfeld (09/04/13)		City Attorney Approval: Carol Schwab (by H. Baker) (09/04/13)	
Chief Financial Officer Approval: Jeff Muir (09/04/13)		City Manager Approval: John Nachbar (09/04/13)	
<u>RECOMMENDATION</u> Staff recommends the City Council discuss potential changes to the existing Planning Division fee structure for variance applications and provide direction to staff. <u>BACKGROUND</u> The City Council received a request from Mr. David Baker, through his attorney, to approve a fee waiver for an application for a variance from residential development standards for his property located at 4272 Jackson Avenue ("Subject Property"), based on financial hardship (See Attachment No. 1).¹ In response to Mr. Baker's request, the City Council directed staff to provide an analysis of variance fees in order to determine if a request, such as Mr. Baker's, justifies lowering the current fee of \$17,832. The merits of Mr. Baker's variance application request are not the subject of this report. <u>DISCUSSION</u> Processing a variance is a labor intensive procedure that requires a public hearing and significant staff resources and research. Consistent with State law, the criteria to approve a variance are based upon four mandatory findings related to the unique physical conditions of the property which do not apply to other properties in			

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the same vicinity and zone.² Such findings are often difficult to make because most residential neighborhoods are developed to uniform standards.

Prior to 2007, the City processed two types of variance applications: 1) a “minor” variance applicable to a single family or two family dwelling with a fee of \$1,900.00; and 2) a “regular” variance with a fee of \$2895.00 applicable to all other land uses. As part of the 2007 Comprehensive Fee Study, most fees citywide were recommended to be increased to achieve full cost recovery. The cost recovery is intended to take into account all staff time and City resources applicable to processing a permit. Cost recovery for Planning Division fees at that time was only 15%. Consistent with the Study findings, the City Council approved incremental changes to the cost recovery rate. The rate was incrementally increased to approximately 45% in FY 07/08 and to 85% in FY 10/11, and the reduced fee for a “minor variance” application for single and two family dwellings was eliminated, since all variances require a Planning Commission hearing and virtually the same level of review.

If the “minor variance” request was still available today, it is likely that Mr. Baker’s situation may have fallen into that category. However, under the current Zoning Code, there are no other administrative remedies available to Mr. Baker other than a “regular” variance application (i.e. an Administrative Modification may only be granted for up to 10% of specific development standards and cannot be used to waive the standard entirely), which requires the payment of a \$17,832 fee to process. Although Mr. Baker’s request was the catalyst for this discussion, if it is contemplated that there may be similar situations that arise in the future, then it may warrant the City Council’s consideration of reverting back to a tiered fee structure for variance requests. However, if this is a unique situation that is unlikely to occur, then a change to the variance fee may be premature at this time.

In considering this issue, it is important to note that a reduced fee will not take into account code enforcement costs related to abatement of property violations or the increased property values that inure to the property owner by effectively relieving the owner from complying with required development standards. For example, in Mr. Baker’s case, he has enjoyed years of illegal use of his garage without providing required on-site parking. This situation has created a disbenefit and impact to the neighboring residents who have complained about the property, while at the same time significantly increased the value of Mr. Baker’s property due to the additional square footage that was illegally converted.

If the City Council wants to consider a variance fee reduction, it may 1) revert back to a tiered fee structure providing for a reduced fee for only certain types of variance applications such as single or two family dwellings or 2) reduce the existing variance fee (currently set at 85% cost recovery); and 3) potentially adjust other permit fees to make up the difference (up to 100% of the permit processing costs), effectively subsidizing the costs of one permit with another.

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If the City Council wishes to move forward with such a fee reduction, this would require a separate hearing to modify the City's Fee Schedule. Another option is to allow this change to occur as part of the new fee study that will be conducted this fiscal year for consideration by the City Council during the next fiscal year budget process.

FISCAL ANALYSIS

The 2007 Comprehensive Fee Study recommended fee increases to full cost recovery. The cost recovery was intended to take into account all staff time and City resources applicable to processing a permit. Cost recovery for Planning Division fees at the time of the study was only 15%. Initially cost recovery was increased to approximately 45% in FY 07/08, then 85% in FY 10/11. The current variance fee is \$17,832.88 and reflects the City policy of 85% cost recovery, which does not fully recover processing costs.

As previously noted the variance fee is intended to reflect the actual costs related to processing an application. Full cost recovery for application processing also has the added effect of preventing the filing of frivolous variance requests, which consume substantial and unnecessary staff time and City resources. If the City Council determines to restructure the variance fees to include a reduced fee to process "minor" variance applications, such as for single or two family dwellings, it will result in reduced Planning Division fees that flow to the General Fund and could also potentially result in additional Planning and Enforcement staff time processing applications and addressing future residential variance application requests.

As discussed above, if the City Council seeks to amend the fees for residential variances in general it will need to amend the Fee Schedule under a separate Council action. In addition, staff recommends that an overall reduction in residential property variance fees should be offset with an increase in other Planning permit fees (increase to a greater percentage of cost recovery) in order to maintain City permit revenues.

ATTACHMENTS

None.

MOTION

That the City Council:

Discuss potential changes to the existing Planning Division fee structure for variance applications and provide direction to staff.

NOTES:

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1. In November 2009, Mr. Baker was issued an "Order to Comply" (OTC) for an illegal garage conversion. In January 2010, Mr. Baker requested an appeal of the OTC noting that the property was purchased with the existing garage conversion in 1973 and the garage had been utilized as sleeping quarters for his immediate family; however, he could not provide supporting documentation. County Tax Assessor's records are inconsistent with City building records and reflect that the conversion took place in 1996.

In February 2010, staff inspected the premises and confirmed that the former garage was utilized as sleeping quarters, but did not contain the defining features of a separate dwelling unit, such as a bathroom or kitchen or separate entrance. Review of City Building and Planning Records indicates that electrical, plumbing, mechanical and building permits were obtained between 1996 and 2009 relative to various improvements on the property, including remodeling a kitchen and adding 160 square feet to the property. However, there is no permit on file with either the Building Division or the County Assessor's office for the garage conversion.

In August 2010, Mr. Baker appeared before the MCAC to formally appeal the OTC requiring the conversion of the garage from habitable space to parking. The MCAC granted Mr. Baker deferred compliance allowing Mr. Baker to maintain the illegally converted garage, subject to the conditions that all outstanding life safety issues be corrected and that a covenant be executed and recorded requiring Mr. Baker to reconvert the garage back to its original use prior to sale or transfer of the property

Although, Mr. Baker complied with all of the life safety requirements, he has not signed the required covenant due to his desire to convey the property unencumbered to his family. Under the circumstances, the only mechanism for Mr. Baker to maintain the illegally converted garage and be relieved of the requirements of the MCAC's decision is to apply for and be granted a property variance. Staff informed Mr. Baker of this option and the current application fees. On May 22, 2012 the City received a letter from Mr. Stephen H. Leventhal, Attorney at Law, representing Mr. David Baker. In his letter, Mr. Leventhal requests, on behalf of his client, a waiver of the fee required by the CCMC to process a variance. Pursuant to Resolution 2012-R035 adopted by the City Council on 05/14/2012, the fee (effective July 16, 2012) is currently \$17,832

2. Pursuant to CCMC Section 17.550.015.B the Planning Commission may grant a variance from development standards only after making all of the following findings:
 1. There are special circumstances applicable to the property (e.g., location, shape, size, surroundings and topography), or to the intended use of the property, so that strict application of the Zoning Code denies the property owner privileges enjoyed by others in the same vicinity and under identical zoning districts;
 2. Strict application of the applicable development standards creates an unnecessary, involuntarily-created hardship, or unreasonable regulation that makes it obviously impractical to require compliance with the development standards;
 3. The variance is necessary for preservation and enjoyment of substantial property rights possessed by other property owners in the same vicinity and zoning district, and denied to the property owner seeking the variance;

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4. The project is consistent with the General Plan and compliance with all other applicable provisions of the Zoning Code;
5. Approval of the variance would not be detrimental to public health, interest, safety or general welfare, and would not be detrimental or injurious to property or improvements in the vicinity and in the same zoning district.