

**REGULAR MEETING OF THE CITY OF
COSTA MESA PLANNING COMMISSION
June 27, 2005**

The Planning Commission of the City of Costa Mesa, California, met in regular session at 6:30 p.m., June 27, 2005 at City Hall, 77 Fair Drive, Costa Mesa, California. The meeting was called to order by Chairman Perkins, followed by the Pledge of Allegiance to the Flag.

ROLL CALL:

Commissioners Present:

Chairman Bill Perkins

Vice Chair Donn Hall

Eleanor Egan, James Fisler, and Bruce Garlich

Also Present: R. Michael Robinson, Secretary

Costa Mesa Planning Commission

Tom Duarte, Deputy City Attorney

Ernesto Munoz, City Engineer

Wendy Shih, Associate Planner

Hanh Tran, Assistant Planner

Rebecca Robbins, Assistant Planner

MINUTES:

The minutes for the meeting of June 13, 2005 were accepted as corrected.

PUBLIC COMMENTS:

Agnes Dwyer, 2318 Newport Boulevard, Costa Mesa, discussed a recent development review (DR-05-05) of the adjacent property where the owner will construct a large building. She said the problem lies with a 10-foot entrance between her property and the new building along with parking and circulation on site. She requested that Planning Commission review this project.

In response to the Chair, Deputy City Attorney Tom Duarte explained that there should be no discussion of this development review since the project was approved at staff level; it is appealable, and it could be within the jurisdiction of the Planning Commission.

In response to the Chair, Planning Commission Secretary R. Michael Robinson explained that Ms. Dwyer had visited the Planning Division and she understands the project complies with all the City's development standards, and that the developer is not requesting any variances. He said the project does not require discretionary review from the Planning Commission, however, as Mr. Duarte indicated, the decision can be appealed by the adjacent property owners. The Chair requested that the appeal process be explained to Ms. Dwyer by staff.

**PLANNING COMMISSION
COMMENTS/SUGGESTIONS:**

Commissioner Garlich wished his wife, Marietta, a happy 30th wedding anniversary.

Commissioner Garlich, referencing the recent ruling by the Supreme Court on the subject of "eminent domain", requested that the City Attorney's Office advise the Commission regarding the state's ability to impose greater limits on condemnation, at a future date when there has been the opportunity to understand the opinion. He said specifically, he does not anticipate the State of California making this more difficult, however, there have been many things tried by the State to usurp cities authorities on regulation of land use in the past. He asked what actions the cities might be able to take, subject to being preempted by the State; how it relates to existing California Redevelopment Law; and whether we know what the League of California Cities may be planning to do about this.

Commissioner Fisler wished the Garlichs a happy anniversary.

Vice Chair Hall stated that regarding the Costa Mesa Municipal Code, Title 20 (Property Maintenance), he has been contacted by several citizens requesting that he look into "leaf blowers and hand mowers" with respect to noise and pollution, the hours they are

used; and how close they are to residences. He said the information is so broad he is asking that his request go on to City Council since it is their purview, and that they look into this and perhaps ask questions of some of the citizens regarding these complaints that everyone is subjected on a continuing basis.

Chairman Perkins said he has been involved in youth programs over the years, particularly at his church. He congratulated 3 friends who graduated during the past week: Shane Collins, Carolyn Aires, and Shawn Lowe who will all be moving on to college. He also congratulated Jeff Walderan who has plans to attend a 4-year university.

The Chair wished everyone a safe and happy 4th of July. He asked people to be mindful of their citizenship and reflect on those lives given in service to our Country for it's freedom. He also wished the Garlichs a happy 30th anniversary.

CONSENT CALENDAR:

On a motion made by Chair Perkins, seconded by Commissioner Egan and carried 5-0, the following item on the Consent Calendar received the action below.

A RESOLUTION FOR ACCESS EASEMENT

475 Anton Boulevard

A resolution of the Planning Commission of the City of Costa Mesa finding that the proposed access easement across 475 Anton Boulevard for the Orange County Flood Control District is in conformity with the City of Costa Mesa 2000 General Plan. Environmental determination: exempt.

Adopted Planning Commission Resolution PC-05-38 finding that the proposed access easement is in conformity with the City of Costa Mesa 2000 General Plan, based on analysis and information in the Planning Division staff report and the description as shown on the street map in Exhibit A".

PUBLIC HEARINGS:

APPEAL OF ADMINISTRATIVE ADJUSTMENT ZA-04-64

Machovsky/Varela

The Chair opened the public hearing for consideration of an appeal for Administrative Adjustment ZA-04-64 for Ray Varela, authorized agent for Jason and Gwendolyn Machovsky, to allow a 15-foot rear setback for a second-floor balcony and an exterior stairway (20 feet required), located at 151 Monte Vista Avenue, in an R2-MD zone. Environmental determination: exempt.

Assistant Planner Hanh Tran reviewed the information in the staff report and gave a presentation. She said staff was recommending that Planning Commission uphold the Zoning Administrator's decision by adoption of Planning Commission Resolution.

The applicant Wendy Machovsky, 151 Monte Vista Avenue, Costa Mesa, described the reasons for their request.

Authorized agent and appellant, Ray Varela, 155 Monte Vista Avenue, Costa Mesa, representing the property owners, Jason and Wendy Machovsky, stated that he is the architect for the project and he said his client believes that having access to their backyard is important. Mr. Varela discussed the details related to the deviation for a deck and an exterior stairway in its planned location, and adequate parking (4 spaces) as required by code. He also described his justification points for the appeal.

Responding to a question from Commissioner Garlich regarding confirmation that a redesign of this project that could meet the requirements, but would be a little smaller than what the architect and property owners would like it to be, Mr. Varela stated his clients are basically saying that there is no other place to put the stairway because of site limitations, otherwise, it encroaches on the parking below and is more costly for his client. Mr. Varela also confirmed there is an interior stairwell that allows the client immediate access to their bedroom and downstairs, leading directly into their back yard.

Commissioner Garlich said that it seems this is being done from scratch, and that there is an existing setback standard. He asked the

appellant if an addition could be designed for this property that meets that setback requirement. Mr. Varela said they have looked at various houses and other designs and they are more expensive; more importantly, those homes impede on the privacy of other adjacent properties.

No one else wished to speak and the Chair closed the public hearing.

MOTION:
ZA-04-64
Upheld Denial

A motion was made by Commissioner Garlich, seconded by Chair Perkins and carried 4-1 (Donn Hall voted no), to uphold the Zoning Administrator’s decision of denial by adoption of Planning Commission Resolution PC-05-39, based on information and analysis in the Planning Division report and findings in exhibit “A.”

During discussion on the motion, Commissioner Garlich said he felt the Commission has been very considerate on many home modifications for a variety of reasons, but they seldom have to do with somebody starting with a clean sheet of paper. He said he believes there is plenty of opportunity to meet the standards and provide an addition that would be reasonable for the size of the lot. He said if there is no respect for those requirements, then the City may as well not have them.

The Chair echoed the comments of Commissioner Garlich and added that he did not agree with the special circumstances as described by Mr. Varela.

Commissioner Egan also agreed with Commissioner Garlich. There was discussion between Commissioner Egan and staff regarding the number of bedrooms versus parking spaces. Ms. Tran explained that parking was adequate, and she detailed how the plans included the additional parking, noting that this is a single-family residence in an R2-MD zone.

In response to a question from Vice Chair Hall concerning the setback of the stairway on the ground floor area only, Ms. Tran explained that the first floor can actually go up to a 10-foot rear setback, whereas the second floor must be 20 feet. In further response, she stated that there was also a problem with encroachment of the second-story balcony.

Commissioner Fidler supported Commissioner Garlich’s motion. He felt that corner lots are unique and sometimes it’s necessary to find that uniqueness, but as Commissioner Garlich stated, we are starting with a clean piece of paper in this case. He felt the architect would be able to work it out in any case, and would still achieve a great house if he changed the plans a little.

The Chair explained the appeal process.

PARCEL MAP PM-04-294
Morehart

The Chair opened the public hearing for consideration of Parcel Map PM-04-294 for John Morehart/126 Properties LLC, to subdivide an existing parcel into three parcels, located at 548 Bernard Street, in an R2-HD zone. Environmental determination: exempt.

Associate Planner Wendy Shih reviewed the information in the staff report and gave a presentation. She said staff was recommending approval, by adoption of Planning Commission resolution, subject to conditions.

In response to the Chair regarding compliance of the conditions of approval by the applicant, Ms. Shih stated that the applicant was diligently working to gain compliance with the conditions of approval. In further response to the Chair regarding the map being premature, Ms. Shih stated that the original application did not contain a specific requirement that the work be completed prior to recordation of the map, although a time period was agreed upon.

In response to a question from Commissioner Egan regarding when the first building permit was issued for this property following City Council’s approval of PA-03-02, Ms. Shih explained the foundation permit to allow the Huscroft House to be moved to this loca-

tion was issued in September 2003. Commissioner Egan concluded that the application exceeded the 12-month time limit. She further explained that if the Commission were to approve the map with the condition that it not be recorded until the conditions are fulfilled (there are 2 conditions that relate to the time), it would have to be altered. Because City Council originally set the time limit, she asked if the Commission had the authorization to extend the date. Deputy City Attorney Tom Duarte responded that Commission could not extend the time; that it would have to go back to City Council. Commissioner Egan agreed it would then have to go back to City Council and that the only option open to the Commission was denial. In response, Planning Commission Secretary Mike Robinson stated that the Commission can approve the map with the options suggested in the Supplemental staff report. Commissioner Egan disagreed because she said the time has already run out.

Commissioner Garlich said he understood the logic of Commissioner Egan's argument, however, he was not prepared to deny the application. He felt if the Commission were to adopt option 2 in the Supplemental report which was to approve the parcel map conditional on completing the conditions of approval before it can be recorded, is incentive to the property owner to complete that work because he cannot sell the house or any of the other parcels without having that action completed. He confirmed with staff that for example, condition of approval #5 required all other 4 units on the property to be upgraded to architectural consistency, including compatible paint colors, composition shingles, shutters, etc., and to have been completed within 12 months, which would have been last September. In further response, Ms. Shih stated that the only permits pulled, and work started to this date, was for the Huscroft House. Commissioner Garlich concluded that nothing has really been done with regard to the other units. He said condition of approval #6 requires Energy Star products, and that hasn't been done because nothing has been done to the other units. He said condition of approval #7 requires the completion of construction and relocation of the house to be finished in 12 months, and staff has indicated that is ongoing. He said condition of approval #9 requires upgraded landscaping within 12 months, and nothing is underway. Commissioner Garlich felt that Mr. Morehart got a good deal and that he had every right to rely on the approval he got from City Council, however, he felt the City in return, has a right to expect the conditions that were imposed, to be complied with and if the Commission does not use something like a recordation condition, then the City will be left to be deal with this in the future, with as many as 3 or 4 other owners and he did not believe this was a situation he would like the City put in.

As a procedural question, Commissioner Garlich asked if the Commission were to adopt option 2, is it added as a condition of approval. Ms. Shih explained that this option would be an addition to the conditions as part of the approval.

In response to a question from Commissioner Egan regarding the Commission's possible choice to complete the project and extend it for a specific amount of time, Mr. Duarte explained that those conditions are attached to the conditional use permit, and that is not what is before the Commission this evening; the Commission cannot act on the CUP because it has not been agendaized. There was further discussion regarding her previous testimony and the time element contained in the conditions of approval. Mr. Duarte repeated that the Commission couldn't change the conditions to the CUP, which is not before them.

In response to a question from Commissioner Garlich inquiring whether the Commission could take action on option 2 of the Supplemental Memorandum as written, Mr. Duarte confirmed.

Mr. Robinson suggested that rather than saying, "comply with condi-

tions of approval,” state that, “to complete the improvements discussed in the conditions of approval.”

In response to a question from the Chair concerning legality of option 2, Mr. Duarte explained that this option can be acted upon by the Commission.

No one else wished to speak, and the Chair closed the public hearing.

Vice Chair Hall did not see a problem with 4 different property owners. He said the Parcel Map is the only item agendaized and all the things Council has already done, are not itemized.

A motion was made by Vice Chair Hall, seconded by Commissioner Garlich and carried 5-0 to approve the parcel map, but conditioned its recordation with the County on the completion of all the conditions of approval associated with the Huscroft House under PA-03-02, by adoption of Planning Commission Resolution PC-05-40, based on information and analysis contained in the Planning Division staff report and Supplemental Memorandum of June 23, 2005. The second confirmed the motion.

Chair Perkins agreed that subdividing this lot and allowing Mr. Morehart to sell off three of the parcels would not be in the City’s best interest, but did agree with Vice Chair Hall in moving forward. He said he hoped the Council would replay this Commission meeting before going ahead with any decision.

Commissioner Egan said despite her misgivings she would support the motion because she did not see much else that the Commission could do. She said her “misgiving” was about whether the Commission is requiring something that is impossible.

The Chair explained the appeal process.

MOTION:
PM-04-294
Approved

REPORT OF THE DEVELOPMENT SVS. DEPARTMENT

None. Mr. Robinson made a correction to the agenda under Item “X” which should read, “adjourn to the Planning Commission meeting of July 11, 2005, not the “study session.”

REPORT OF THE CITY ATTORNEY’S OFFICE:

None.

ADJOURNMENT:

There being no further business, Chairman Perkins adjourned the meeting at 7:20 p.m. to the Planning Commission meeting of Monday, July 11, 2005.

Submitted by:

R. MICHAEL ROBINSON, SECRETARY
COSTA MESA PLANNING COMMISSION