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RESOLUTION NO. 02-

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF
HERMOSA BEACH, CALIFORNIA, APPROVING A VARIANCE TO
ALLOW A 2.8 REAR YARD RATHER THAN THE REQUIRED 5 FEET AND
GREATER THAN 65% LOT COVERAGE TO ALLOW AN AS-BUILT
CONDITION FOR A TWO UNIT CONDOMINIUM PROJECT NEAR
COMPLETION AT 22 CULPER COURT**

The Planning Commission does hereby resolve and order as follows:

Section 1. An application was filed by Dan Mellilo owner of property at 222 Culper Court, seeking approval of a Variance from the rear yard setback requirement of the R-3 zone, to allow a 2.8 foot rear yard rather than required 5 feet and a Variance from the Lot Coverage requirement of the R-3 zone to allow the lot coverage of the building to exceed the maximum allowed 65%.

Section 2 The Planning Commission conducted a duly noticed de novo public hearing to consider the application for a Variance on November 19, 2002, at which testimony and evidence, both written and oral, was presented to and considered by the Planning Commission.

Section 3 Based on the evidence received at the public hearing, the Planning Commission makes the following factual findings:

1. The Planning Commission approved the construction of a 2-unit condominium project on the subject property at their meeting of January 16, 2001. The design, approval, and subsequent construction of the project were based on a survey that contained incorrect information regarding the depth and overall square footage of the lot. Consequently, upon submittal of the final map containing the correct lot boundary information, it was discovered that the building had been constructed too close to the rear property line, and because the lot area was less than the original survey, the building was constructed to contain more than the maximum 65% lot coverage.

2. The original survey incorrectly depicted the depth of the property along the north side property line to be 57.09 feet and at the south side property line as 42.7 feet. The correct dimensions are 55.08 feet along the north and 41.24 feet along the south side property line. The design and layout of the building on the site, including the City's approval was based on the original survey, and the building was constructed consistent with the plans. The lot size based on the original survey was 2,894 square feet, it is now shown to actually be 2,770 square feet. Subsequent to the City's discovery of this discrepancy, the surveyor (Denn Engineers) submitted a survey with the new building identified. It shows the rear of the building with a 2.8 foot setback rather than the required 5 feet. Based on this information, the City cannot proceed with approval of the final map.

3. The applicant is seeking Variances to remedy the situation caused by the surveyor error in order to avoid the hardship of demolishing a portion of the building. The building has been constructed with a 2.8 foot setback to the property line, and with a lot coverage that calculates to be 67% due to the decreased lot size. Given that the building steps along the angled rear property line this deficient setback is

1 not continuous but steps along the rear line of the building. The basis for the request is that the project
2 was constructed pursuant to approved plans, and pursuant to the information available at the time of
3 construction. Further, the applicant argues that resulting impact is not significant given the unique situation
4 that, despite this error, a 5-foot clearance is available to the top of the retaining wall on the adjacent
5 property to the east which would otherwise appear to be the property boundary line. Also, the this
6 retaining wall abuts a common driveway for a large condominium development which is similar to an alley.
7 If considered an “alley” the setback requirement would be 3-feet.

8 Section 4. Based on the foregoing factual findings, the Planning Commission makes the
9 following findings pertaining to the application for a Variance:

10 1. Exceptional circumstances apply to the property and the circumstances involved in the subject
11 case for the following two reasons. The first unusual condition is that an unusually small remnant parcel is
12 located to the north of the property. This remnant is 7 feet in width, with a depth on its north boundary of
13 57.09 feet. It appears that the original survey error was due to a misinterpretation of data on the
14 Assessor’s parcel map, and the mistaken use of the dimension (57.09 feet) on the north side of this
15 remnant parcel as the dimension for this subject property. Secondly, the location of the retaining wall and
16 driveway on the adjacent property is unusual, as it does not align with the property line. Thus, during
17 construction and inspection it was assumed that said retaining wall was the property line and the location
18 of the building 5-foot clear from that wall seemed to verify that assumption. Also, this unique condition in
19 combination with the fact that beyond the retaining wall is the driveway for the 64-unit Planned-Unit-
20 Development to the east, means that the subject building, despite its nonconforming rear yard depth, is
21 approximately 25-feet from the closest building the east

22 2. The Variance is necessary for the enjoyment of a substantial property right possessed by
23 other properties in the vicinity to construct and occupy structures based on survey information and
24 approved plans relied upon prior to construction. The developer would suffer an unnecessary hardship,
25 due to the unique situation described above, if he is forced to reconstruct the building to satisfy the 5-foot
26 setback and lot coverage requirement.

27 3. The Variance would not cause any detrimental effects on surrounding properties as the
28 clearance to the buildings to the rear is substantial, and the encroachment into the yard negligible in
29 comparison. Further, given the extra unused property between retaining wall and the building, the slight
excess in lot coverage will not be noticeable or of material effect.

4. The proposed Variance would not conflict with the General Plan as it only relates to minor
variation from the rear yard dimension and lot coverage, not on the use of the property or intensity of
development.

Section 5. Based on the foregoing, the Planning Commission hereby approves the subject
Variance subject to the following **Conditions of Approval:**

1. **The Variance is specifically limited to the situation and circumstances that resulted because of the faulty information that the developer relied upon to build the condominium and is not applicable to the development of new structures or any future expansion.**

