

November 12, 2002

**Honorable Chairman and Members of the
Hermosa Beach Planning Commission**

**Regular Meeting of
November 19, 2002**

SUBJECT: VARIANCE 02--3
222 CULPER COURT

APPLICANT: DAN MELLILO

REQUEST: AN AFTER THE FACT VARIANCE TO ALLOW A REAR YARD OF 2.8 FEET RATHER THAN THE REQUIRED 5 FEET AND GREATER THAN THE MAXIMUM 65% LOT COVERAGE FOR A TWO-UNIT CONDOMINIUM PROJECT CONSTRUCTED BASED ON AN INCORRECT PROPERTY LINE SURVEY.

Recommendation

To direct Staff as deemed appropriate from the following alternatives:

1. Deny the requested Variance by adopting the attached resolution
2. Approve the requested Variance by adopting the alternative resolution.

Background

The subject project is near completion, with the only outstanding construction items being the interior finishes. Pursuant to the requirements of the Subdivision Map Act, the applicant recently submitted a final map for City approval. Staff discovered that the property dimensions has substantially changed from the tentative map and original survey. 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 staff'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, staff cannot proceed with approval of the final map.

Analysis

The applicant is requesting Variances from the Zoning Ordinance to obtain relief from the 5-foot setback requirement and 65% maximum lot coverage requirement. The building has been constructed with a 2.8 foot setback to the property line, and lot coverage 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 not continuous but steps along the rear line of the building. The basis for the request is that the project was constructed pursuant to approved plans, and pursuant to the information available at the time of construction. Further, the resulting impact is not significant given the unique situation that, despite this error, a 5-foot clearance is available to the top of the retaining wall on the adjacent property to the east which would otherwise appear to be the property boundary line. Also, the this retaining wall abuts a common driveway for a large condominium development which is similar to an alley. If considered an "alley" the setback requirement would be 3-feet.

The concept of a Variance is that basic zoning provisions are not being changed but the property owner

is allowed to use his property in a manner basically consistent with the established regulations with such minor variation as will place him in parity with other property owners in the same zone.¹ The facts and circumstances in this case do not appear to be consistent with this principle, as violating basic setback requirement by 2-feet does not seem to be consistent with established requirements and is not minor. However, given the unique circumstances related to the facts of this case, including that the apparent property boundary along a defining feature (the retaining wall) does not align with the actual property line, the practical effect of the variation may be considered minor.

In order to grant a Variance, the Commission must make the following findings:

1. There are exceptional or extraordinary circumstances limited to the physical conditions applicable to the property involved.
2. The Variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same vicinity and zone, and denied to the property in question.
3. The granting of the Variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located.
4. The Variance is consistent with the General Plan.

Discussion of Findings

Finding 1: *Exceptional circumstances apply to the property involved.*

The first condition that may be considered unique is the remnant parcel that is located to the north of the property. This remnant is 7 feet in width, with a depth on its north boundary of 57.09 feet. It appears that the original survey error was due to a misinterpretation of data on the Assessor's parcel map, and the mistaken use of the dimension (57.09 feet) on the north side of this remnant parcel as the dimension for this subject property. The second unusual condition relates to the location of the retaining wall and driveway on the adjacent property not aligning with the property line. Thus, during construction and inspection it was assumed that said retaining wall was the property line and the location of the building 5-foot clear from that wall seemed to verify that assumption. Also, this unique condition in combination with the fact that beyond the retaining wall is the driveway for the 64-unit Planned-Unit-Development to the east, means that the subject building, despite its nonconforming rear yard depth, is 25 feet from the closest building the east.

Finding 2: *A Variance is necessary for the preservation of a substantial property right possessed by other properties in the vicinity of the subject property.*

This finding is difficult to make in this case, because the use of the property for two new units is still possible whether or not the Variance is granted. There will be an obvious financial hardship to the owner, however, if he is forced to reconstruct the building or pursue some other remedy (like purchasing some of the adjacent property for a lot line adjustment) to satisfy the 5-foot setback and lot coverage requirement. Financial issues or other costs to remedy errors are not typically linked to general property rights and should not be considered grounds for a Variance. However, in this case, the Commission may find it appropriate to link the unique hardships of this case to general property rights, and make the above finding. The property right being denied may be construed as the result of physical conditions created with recent development of the property. The property owner lawfully obtained all necessary permits and is now being denied ability to use the property.

¹ Longtin's California Land Use, 2nd Edition, 1987, Chapter 3, Part G, "Variances and Conditional Use Permits"

Finding 3: *A Variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which it is located.*

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

Finding 4: *The granting of the Variance will not conflict with the provisions of or be detrimental to the general plan.*

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.

Based on the required findings as described above, it would be difficult to make the findings to support the Variance in this case. However, if the Commission deems it appropriate, findings could possibly be made to support a Variance not because of the survey error but because of unique conditions of the subject property and adjacent properties.

The owner has been advised that he has the option of purchasing the land required to conform with the zoning standards and process a Lot Line Adjustment. He has declined to pursue to option because the adjacent property is a large Planned Unit Development with Condominium form of ownership with several owners and a Homeowners Association.

Ken Robertson
Associate Planner

Concur:

Sol Blumenfeld, Director
Community Development Department

Attachments

1. Proposed Resolutions
2. Location Map
3. Applicant's Correspondence
4. Photographs

Included in packet as separate attachments:

Approved Tentative Map with original survey
Current Survey with new building identified
Project Plans

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