

February 3, 2003

**Honorable Mayor and Members of the
Hermosa Beach City Council**

**Regular Meeting of
February 11, 2003**

SUBJECT: VARIANCE 02-3, APPEAL -- APPEAL OF THE PLANNING COMMISSION DECISION TO DENY AFTER THE FACT VARIANCES TO ALLOW A LESS THAN REQUIRED REAR YARD SETBACK AND GREATER THAN THE MAXIMUM 65% LOT COVERAGE FOR A TWO-UNIT CONDOMINIUM PROJECT CONSTRUCTED BASED ON AN INCORRECT PROPERTY LINE SURVEY.

LOCATION: 222 CULPER COURT

APPELLANT: DAN MELLILO

Planning Commission Recommendation

To sustain the Planning Commission's decision to deny the requested Variance by adopting the attached resolution.

Background

On November 19 2002, the Planning Commission voted 5:0 to deny the requested Variances. The subject project is near completion. Pursuant to the requirements of the Subdivision Map Act, the applicant submitted a final map for City approval in September 2002. Staff discovered that the property dimensions shown on the final map substantially changed from the tentative map and original survey. The City correctly reviewed and approved the design and layout of the building on the site based on the original survey, and the building was constructed consistent with the plans. The original survey incorrectly indicated 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 shown on the current survey are 55.08 feet along the north and 41.24 feet along the south side property line. The lot size based on the original survey was 2,894 square feet; it is now shown at 2,770 square feet.

A new project surveyor (Denn Engineers) has submitted a survey with the new building location identified. It shows the rear of the building with a 2.8 foot setback on the ground floor rather than the required 5 feet. Based on this information, staff cannot proceed with approval of the final map.

The appellant was advised of options available to resolve the Zone Code, Subdivision Ordinance and Building Code problems related to the current building location. The options include, purchase of a portion of the adjacent property and a subsequent lot line adjustment or a long-term easement on the adjacent property. This last option will not resolve the lot coverage problem. Recently the appellant confirmed that he is in the process of trying to obtain the property necessary to satisfy his setback requirements, but has not concluded discussions with the adjacent property owners.

Analysis

The appellant is requesting Variances from the Zoning Ordinance to obtain relief from the 5-foot rear yard setback requirement for the ground floor and the 3-foot rear yard setback requirement at the second floor and above, and from the maximum lot coverage requirement of 65%. The building has been constructed with a 2.8-foot setback to the property line on the ground floor, and 0.7 feet at the second floor, and lot coverage calculates to be 67% due to the decreased lot size. A driveway on the adjacent property provides almost 25 feet of clearance between the appellant's building and the building on the adjacent property, however, the Building and Zone Code regulations are based on building distance to the property line. Given that the building steps along the angled rear property line this deficient setback varies from 2.76 feet to 5.28 feet. (Please see attached survey.) The appellant believes that a Variance is justified since the project was constructed pursuant to approved plans and with to the information available at the time of construction. Further, the unique situation presented by the property with a 5-foot clearance on the ground floor to the top of the retaining wall on the adjacent property to the east, appears to be the property boundary line. According to the appellant, this retaining wall abuts a common driveway for a large adjacent condominium development, which is similar to an alley. If an alley setback requirement was applied to the property only 3-feet of ground level and 1-foot of upper level setback would be required.

In order to grant a Variance, the Council 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

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 the basic setback requirement by 2-feet does not seem consistent with established requirements and is not minor. However, given the unique circumstances related to the facts of this case, 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 as described below.

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

The Commission did not find that exceptional circumstances related to the physical condition of the property were involved. To the contrary, the reason the building was constructed out of

compliance with setbacks had nothing to do with the physical condition of the property but was due to a defective survey.

Two physical conditions were discussed that possibly could be considered unique circumstances, but were dismissed by the Commission. The first was the unique remnant parcel that is located to the north of the property. This remnant parcel varies from 7 to 7.28 feet in width, with a depth on its north boundary of 57.09 feet. The original survey error may have been 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 the subject property. The property would appear to be wider than it actually is. The second condition that possibly could be considered unique relates to the location of the retaining wall and driveway on the adjacent property not aligning with the appellant's property line. During construction and inspection the project plans were presumed to be correct and it was assumed that this retaining wall was the property line and the building location was 5-feet clear from the wall. The condition of the property line in combination with the fact the closest building to this property line is almost 25 feet away is arguably unique, despite the nonconforming condition.

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.*

The Commission did not find that the Variance is necessary for a preservation of a substantial property right because the use of the property for two new units is still possible whether or not the Variance is granted. Although there may be a financial hardship to the owner if forced to reconstruct the building or pursue some other remedy (such as purchasing some of the adjacent property for a lot line adjustment in order to satisfy the 5-foot setback, lot coverage, and Building Code requirements, financial concerns are not considered relative to a general property right in granting a Variance.

The property right being denied could possibly be construed as the result of physical conditions created with recent development of the property. While, the property owner lawfully obtained all necessary permits and is now being denied ability to use the property, the Commission did not find it appropriate to link the unique hardships of this case to general property rights, and did not make this finding. Financial issues or other costs to remedy errors are not typically linked to general property rights and typically are not be considered grounds for a Variance

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 Commission found that Variance would not cause any detrimental effects on surrounding properties as the clearance between the appellant's buildings is substantial and the encroachment into the yard negligible relative to this distance. Further, given the extra unused property between retaining wall and the building, the slight overage in lot coverage will not be noticeable or have a 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.

The Commission did not find it appropriate to approve the Variances because it could not make findings number one and two as described above. If the Council interprets some of the facts of the case differently, it will be necessary to bring back a resolution for final approval in support of a Variance.

The owner has been advised that there are other options to resolve the setback problems. As noted, there is the option of purchasing the land required to conform to the zoning and building standards and processing a Lot Line Adjustment. There is also the option of the obtaining an easement from the adjacent property owner although the lot coverage deficiency will remain. The appellant has been reluctant to pursue these options because the adjacent property is a large Planned Unit Development with condominium ownership with several owners and a Homeowners Association.

Ken Robertson
Associate Planner

Concur:

Sol Blumenfeld, Director
Community Development Department

Stephen R. Burrell
City Manager

Notes

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

Attachments

1. Resolution to Sustain the Commission Decision
2. Planning Commission Minutes
3. Correspondence
4. Photographs
5. Approved Tentative Map with original survey
6. Current Survey with new building identified
7. Project Plans

Var222Culper2

RESOLUTION NO. 03-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH SUSTAINING THE DECISION OF THE PLANNING COMMISSION DENYING A VARIANCE TO ALLOW A LESS THAN REQUIRED REAR YARD AT THE GROUND AND UPPER FLOORS AND GREATER THAN 65% LOT COVERAGE TO ALLOW AN AS-BUILT CONDITION FOR A TWO UNIT CONDOMINIUM PROJECT NEAR COMPLETION AT 222 CULPER COURT

The City Council does hereby resolve and order as follows:

Section 1. An application was filed by Dan Mellilo owner of property at 222 Culper Court, seeking Variances from the rear yard setback requirement of the R-3 zone, to allow a less than the required 5 feet at the ground floor; and less than the required 3 feet on the upper floors; and, and to exceed the maximum allowed 65% lot coverage requirement of the R-3 zone.

Section 2. The Planning Commission conducted a duly noticed 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. Based on the evidence, the Commission could not make the necessary findings for a Variance and denied the requested Variances.

Section 3. The applicant filed an appeal of the Commission's decision.

Section 4. The City Council conducted a duly noticed public hearing to consider the appeal on February 11, 2003, at which testimony and evidence, both written and oral, and the record of decision of the Planning Commission was presented to and considered by the City Council.

Section 5. Based on the evidence received at the public hearing, the City Council 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 substandard rear setbacks on both the ground floor and upper floors. 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 less than required setbacks to the rear 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 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 applicant argues that 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.

Section 6. Based on the foregoing factual findings, the City Council makes the following findings pertaining to the application for a Variance:

1. Exceptional circumstances do not apply to the property or circumstances of this case, as the reason for the building being constructed out of compliance with the setbacks and lot coverage requirements of the R-3 zone have no connection to the physical characteristics or conditions of the property, and are instead due to faulty information provided by the surveyor.

2. The Variance is not necessary for the enjoyment of a substantial property right possessed by other properties in the vicinity as other remedies are available for the project, such as demolition and reconstruction or purchase of neighboring property and a lot line adjustment.

Section 7. Based on the foregoing, the City Council sustains the Planning Commission decision and hereby denies the subject Variances.

PASSED, APPROVED and ADOPTED this 11th day of February, 2003, by the following vote:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

PRESIDENT of the City Council and MAYOR PROTEM of the City of Hermosa Beach, California

ATTEST:

APPROVED AS TO FORM:

_____ CITY CLERK _____ CITY ATTORNEY

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