



COUNTY OF PLACER
Community Development/Resource Agency

Michael J. Johnson, AICP
Agency Director

PLANNING

MEMORANDUM

DATE: February 24, 2009
TO: Honorable Board of Supervisors
FROM: Michael Johnson, Director of Planning
SUBJECT: **THIRD PARTY APPEAL – PLANNING COMMISSION’S APPROVAL OF A VARIANCE – “HILT VARIANCE” (PVAAT20080229)**

ACTION REQUESTED

The Board of Supervisors is being asked to consider a third-party appeal of the Planning Commission’s decision to deny an appeal and to approve a Variance to allow a 30-foot front yard setback (where a 50-foot setback from the edge of easement is required) in order to bring an existing residence into compliance with County Code.

BACKGROUND

Applicant’s Original Request

The applicant originally requested approval of a Variance to allow for a reduced setback of 30 feet from the edge of easement of Ridge View Road, where 50 feet from edge of easement is normally required, in order to bring an existing residence into compliance with County Code.

Project Site

The project site is located at the end of Ridge View Road in the Foresthill area (APN: 064-141-034). The subject parcel consists of approximately 20 acres and is developed with an approximately 2,992 square foot single-family residence. The existing residence is located near the southwest property line, approximately 30 feet from the edge of easement of Ridge View Road. The subject parcel slopes significantly downward to the north and east sides of the property towards a canyon located on-site, and the site contains heavy tree coverage.

Project History

The subject property is one of three contiguous parcels that were created with a Grant Deed by the previous property owner. The parcels were legalized as separately saleable parcels through a Certificate of Compliance (COC 96-04) in 1996. However, the Parcel Map on file with the County has not been updated since the Certificate of Compliance was recorded, and therefore does not reflect the reconfiguration of the property by the Grant Deed, nor does the Parcel Map indicate the parcel’s southwest road easement (see Exhibit D - the subject parcel is a portion of the Parcel Map, Parcel B).

The Variance application came to the attention of the Planning Department by way of the Code Enforcement Division of the Building Department. The residence on-site was unknowingly constructed in violation of the setback requirements from the access easement on the southwest

property line (because the Parcel Map had not been updated to reflect the reconfiguration of the property, as described above). A Building Permit was issued in June 2002 by the County, and construction began on the residence.

The site plan provided to the Planning Department at the time of building permit sign-off did not identify a front setback on the property. Because the Parcel Map on file with the county did not reflect the reconfiguration of the property by the Grant Deed or the easement of Ridge View Road, staff was not aware of this restriction and did not accurately identify the front property line of the parcel. Because of this, the west property line was identified as the front yard (although there is no road easement on this property line) and the southwest property line was identified as a side yard. Therefore, a 30-foot side yard setback was imposed on the southwest property line where a 50-foot setback from the edge of easement of Ridge View Road should have been required, and a 50-foot front yard setback was mistakenly imposed on the west property line. As a result, the residence was inadvertently constructed within the required setback from the road easement on the southwest property line. The setback encroachment was brought to the attention of the County with a citizen complaint that was filed with Code Enforcement in September 2007.

ACTION OF PLANNING COMMISSION

On October 9, 2008, a Planning Commission hearing was held for an appeal of the Zoning Administrator's approval of a Variance to allow for the reduction of the front setback of 50 feet from edge of easement of Ridge View Road to allow for 30 feet from the edge of easement in order to bring the existing residence into compliance with County Code. The Planning Commission heard reports from Development Review Committee staff and received public testimony from the appellant's attorney, Mr. Charles Tweedy, and from the applicants. Topics that were brought up at the hearing included questions related to the road easement on site, the front setbacks imposed on the applicant's property, and special circumstances on the subject property (including the heavy tree coverage on site and the steep slope of the property). The Planning Commission found merit in the applicant's justification for the Variance, and took action to close the public hearing and continue the appeal to the December 11, 2008 Planning Commission hearing, in order to allow staff to prepare findings specific to the testimony that was entered into the record.

Consistent with the Planning Commission's direction given to staff at the October 9, 2008 Planning Commission hearing, staff returned to the Planning Commission on December 11, 2008 with findings specific to the testimony that was entered into the record at that hearing. At the December 11, 2008 hearing, the Planning Commission opened the public hearing, (limited to comments on the findings), closed the public hearing, and adopted a motion (5-1-1) to deny the appeal and uphold the Zoning Administrator's decision to approve the Variance. Commissioner Farinha was absent, and Commissioner Johnson was opposed, due to concerns related to the special circumstances on the subject property. However, the majority of the Planning Commission found that there were in fact special circumstances on the subject property that warranted approval of a Variance.

LETTER OF APPEAL

On December 17, 2008, Catherine Eddy filed a third-party appeal challenging the Planning Commission's decision to deny the appeal and uphold the Zoning Administrator's decision to approve the Variance to allow for the reduction of the front setback of 50 feet from edge of easement of Ridge View Road to allow for 30 feet from the edge of easement in order to bring the existing residence into compliance with County Code. (A copy of the appeal is attached as Exhibit C). The appeal raises the following issues:

- 1) The appellant states that there is no evidence of special circumstances applicable to the property, including size, shape, topography, location or surroundings; and
- 2) The appellant states that the approval of the Variance will constitute a grant of special privilege.

RESPONSE TO APPEAL LETTER

The following are specific responses to each issue raised by the appellant:

Issue 1 - There are no special circumstances on the subject property.

The Planning Commission concluded that there are special circumstances applicable to the subject property, including the heavy tree coverage, the steep slope of the property, and the canyon on-site. The area where the residence is constructed has a slope of 15 percent, which is the most level area on the property and is limited to a small portion of the 20-acre site. Approximately 90 percent of the project site contains slopes ranging from 30 to 50 percent, which increase towards the east of the property. Approximately ten percent of the property has a slope less than 30 percent; however, this is a cumulative percentage and includes areas located on the 20 acre parcel that are not easily accessible. Therefore, the heavy slope of the property limits the availability of a suitable building site. Additionally, the site contains heavy tree coverage, which further limits the availability of a suitable building site.

The Planning Commission concluded that the subject property contains a number of site constraints that warrant the approval of a Variance, including the steep slope of the property and the heavy tree coverage. The residence is located at 30 feet from the east side property line, meeting the side setback requirement of 30 feet. Because of this, the residence cannot be located any further to the east without encroaching into the side setback area. To the north of the residence are a number of large trees, including two large pines located directly behind the residence. In order to locate the residence further to the north of the property, the applicants would need to remove these trees, and they would also need further grading of the property due to the drop in slope just to the north of the residence. Additionally, relocating the residence to the north of the property would bring the residence closer to the leach lines and repair areas.

The Planning Commission concluded the location and use of the road easement in question presents additional special circumstances to the subject property. The easement runs along and terminates on a small portion of the subject property and the neighboring parcel to the southeast (which is also owned by the applicant). This portion of the road easement is not utilized by the appellant, nor is the road easement needed for the appellant to access her property. Should this portion of the easement be improved in the future for access to the adjoining lot (which is owned by the applicant), there would only be three parcels taking access from this section of the easement, and the Planning Commission concluded that the existing residence on the subject parcel would not have an adverse impact to the potential improvement of the easement. Therefore, the granting of the Variance to allow for a reduced front yard setback to the road easement does not harm the appellant, nor does it create a situation in the future that would negatively impact the adjoining parcel which may utilize the portion of the road easement running along the subject property.

The purpose of the setback of 50-foot setback from the edge of the road easement of Ridge View Road is to protect the integrity of the road right-of-way. It should be noted that only 19 feet of the 50-foot easement area is improved with a gravel surface. It is unlikely that this portion of the easement would be widened to 50 feet in the future, given that it only serves two additional properties. However, should Ridge View Road be improved to 50-feet in width in the future, the existing residence would not impact the integrity of the road right-of-way, as the residence is 30 feet outside of the road easement.

It was because of these special circumstances that, on December 11, 2008, the Planning Commission found the strict application of the Zoning Ordinance has been found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classifications.

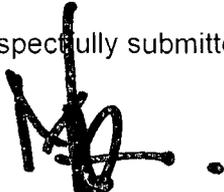
Issue 2 –The approval of the Variance will constitute a grant of special privilege

At the December 11, 2008 Planning Commission hearing, the Planning Commission found that the approval of the Variance was not a grant of special privilege. The approval of the Variance to the 50 foot setback from the edge of easement of Ridge View Road to allow for 30 feet from edge of easement permits the existing 2,992 square foot single-family residence to remain in its current location and brings the residence into compliance with County Code. Because of the limitations created by the special circumstances on the subject parcel, had the applicants applied for a Variance prior to the construction of the residence, the Variance would likely have been approved. Single family dwellings are an allowed use within the Residential Forest zone district, and therefore, the Variance would not be authorizing a use uncommon to the vicinity and in the Residential Forest zone district. It was the Planning Commission's determination that the granting of this Variance would not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity or in the same zone district, as the structure is a 2,992 square foot single-family dwelling which is an allowed use within the Residential Forest zone district.

RECOMMENDATION

Staff recommends the Board deny the appeal and uphold the Planning Commission's decision to approve the Variance and adopt the findings set forth in Exhibit A to permit the front setback to allow for a 30-foot setback from the edge of easement (where a 50-foot setback is normally required), thereby bringing the existing residence into compliance with County Code.

Respectfully submitted,



MICHAEL J. JOHNSON, AICP
Community Development Resource Agency Director

EXHIBITS:

- Exhibit A – CEQA and Variance Findings
- Exhibit B – Vicinity Map
- Exhibit C – Appeal letter
- Exhibit D – Applicant's Statement
- Exhibit E – Site Plan
- Exhibit F – Site Plan Approved at Front Counter
- Exhibit G – Parcel Map
- Exhibit H – Approximate Topography Map – Guiliani and Kull, Inc.
- Exhibit I – Sewage Disposal "As-Built" Plot Plan
- Exhibit J – Aerial Photo Including Approximate Topographical Lines
- Exhibit K – Close-up of Aerial Photo
- Exhibit L – Assessor's Page
- Exhibit M – Zoning Map
- Exhibit N – Planning Commission staff report

cc. Catherine Eddy – Appellants
Craig and Lisa Hilt – Property Owners

Copies Sent by Planning:
Michael Johnson – Community Development Resource Agency Director
Paul Thompson – Deputy Planning Director
Karin Schwab - County Counsel
Phil Frantz - Engineering and Surveying Division
Vicki Ramsey - Environmental Health Services

Andy Fisher - Parks Department
Yu-Shuo Chang - Air Pollution Control District
Subject/chrono files

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