

**PLANNING & DEVELOPMENT SERVICES DEPARTMENT REPORT**  
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**DATE:** March 9, 2006

**TO:** Orange County Zoning Administrator

**FROM:** Resources & Development Management Department/Land Use Services Division

**SUBJECT:** Public Hearing on Planning Application PA05-0079 for Variance and Use Permit

**PROPOSAL:** The applicant is requesting a Variance for a new detached garage with recreation room and half-bath attached to it at its rear to be placed as close at one point as 21.5 feet from the edge of a shared private road, where a minimum of 30 feet is required, and as close as 5 feet to the side property line where a minimum of 13 feet is required (representing 10% of the average lot width); and a Use Permit for existing and new combination block walls and wrought iron fencing to a height of 5.5 feet, where a maximum of 3.5 feet is permitted.

As part of the project, an existing detached garage that is closer to the front property line than permitted by current zoning regulations would be removed, and the existing over-steep down driveway to the entrance to said garage would be re-graded to a grade not exceeding 6% down, as permitted by the Zoning Code.

**LOCATION:** In the Lemon Heights area at 11241 Carol Way. Third Supervisorial District.

**APPLICANT:** John S. Frey, Jr., owner and applicant

**STAFF CONTACT:** J. Alfred Swanek, Project Manager E-mail: Jim.Swanek@rdmd.ocgov.com  
Phone: (714) 796-0140 FAX: (714) 834-4772

**SYNOPSIS:** Land Use Services Division recommends Zoning Administrator approval of PA05-0079 for Variance and Use Permit subject to the attached Findings and Conditions of Approval.

**BACKGROUND:**

The subject site is developed with a single-family dwelling and detached garage. The aerial photo below illustrates that the property drops steeply at the rear into a gully. The photo also depicts existing combination block walls and wrought iron fencing at the front of the property to a height of 5.5 feet, where a maximum of 3.5 feet is permitted.



**SURROUNDING LAND USE:**

The subject site and all surrounding properties are zoned 125-E4 (20000) “Small Estates”. The subject site and surrounding sites are developed with single family dwellings.

**REFERRAL FOR COMMENT AND PUBLIC NOTICE:**

A Notice of Hearing was mailed to all owners of record within 300 feet of the subject site. Additionally, a notice was posted at the site, at the 300 N. Flower Building and as required by established public hearing posting procedures. A copy of the planning application and a copy of the proposed site plan were distributed for review and comment to the North Tustin Specific Plan Advisory Committee and appropriate County Divisions. As of the writing of this staff report, no comments raising substantial issues with the project have been received.

On January 18, 2006, the North Tustin Advisory Committee unanimously recommended approval of PA050079. It is noted in their minutes (attached) that the applicant stated there would not be a shower in the recreation room, resulting in it not being viewed as a guesthouse. The minutes also reference favorable comments from the neighbors on either side of the project.

**CEQA COMPLIANCE:**

The proposed project is Categorically Exempt (Class 3, new construction or conversion of small structures) from the documentation requirements of CEQA. Appendix A contains the required CEQA Finding.

**DISCUSSION/ANALYSIS:**

The subject site is developed with a single-family dwelling and detached garage. The property drops steeply at the rear into a gully, which poses a physical development constraint on this property and

complicates compliance with standard E4 District front setbacks of a minimum of 30 feet from the edge of any shared private road easement. As part of the project, an existing detached garage still closer to the front property line would be removed, and the existing over-steep down driveway to the entrance to said garage would be re-graded to a grade not exceeding 6% down, as permitted by the Zoning Code.

In terms of the side yard setback, it is noted the existing garage is located approximately the same distance from the side as the proposed replacement garage; and that the placement of a detached garage/recreation room exceeding 12 feet in height in the side yard setback could be approved under a use permit, rather than a Variance. However, an enclosed detached structure could not be placed in the front setback by a Use Permit [see Zoning Code 7-9-137(f)]. Therefore, staff recommends the requirements of this structure be considered under a single variance.

Before this variance request can be approved, the Zoning Administrator, in accordance with State and County planning laws, must be able to make the variance findings listed below.

*That there are special circumstances applicable to the subject building site which, when applicable zoning regulations are strictly applied, deprive the subject building site of privileges enjoyed by other property in the vicinity and subject to the same zoning regulations; and*

*That approval of the application will not constitute a grant of special privileges, which are inconsistent with the limitations placed upon other properties in the vicinity and subject to the same zoning regulations when the specified conditions are complied with.*

When the house was originally approved, there was a Variance granted (V470 in 1951) to allow the house and a detached garage to be placed as close as 12 feet from the edge of the private road in front. A side yard setback was not required, even though the structures were 5-6 feet from the property lines, as the property at that time was zoned “R4”, with a 5 foot minimum side yard setback. In approving V470, finding was made that “the lot slopes away from the road rather abruptly (with the slope beyond that point in excess of 1 foot fall in 4) and it would be economically impractical to build at the required setback, which would place the house below the road”.

Staff finds justification for the side yard variance in that the lot has long been built out with basically 5-6 foot structural setbacks on either side, and there is no longer practical room to place new structures toward the center of the site.

Finally, there are existing and proposed combination block walls and wrought iron fencing at the front of the property to a height of 5.5 feet, where a maximum of 3.5 feet is permitted. Traffic Engineering feels confident that they can work with the applicant on an acceptable final design for these features to not impede the safe movement of vehicles leaving this property to enter onto Carol Way, and has recommended approval subject to their standard “line-of-sight” condition. Special findings of compatibility are required. These are:

*That the height and location of the fence or wall as proposed will not result in or create a traffic hazard; and*

*That the location, size, design and other characteristics of the fence or wall will not create conditions or situations that may be objectionable, detrimental or incompatible with other permitted uses in the vicinity.*

**RECOMMENDED ACTION:**

Land Use Services Division recommends the Zoning Administrator:

- a. Receive staff report and public testimony as appropriate; and,
- b. Approve Planning Application PA05-0079 for Variance and Use Permit subject to the attached Findings and Conditions of Approval.

Respectfully submitted,

Charles Shoemaker, Chief  
LUSD/Site Planning Section

**APPENDICES:**

- A. Recommended Findings
- B. Recommended Conditions of Approval

**EXHIBITS:**

1. Applicant's Letter of Explanation
2. Site Plans and site photos

**APPEAL PROCEDURE:**

Any interested person may appeal the decision of the Zoning Administrator on this permit to the Orange County Planning Commission within 15 calendar days of the decision upon submittal of required documents and a filing fee of \$245.00 filed at the Development Processing Center, 300 N. Flower St., Santa Ana.