

Item 1

RESOURCES AND DEVELOPMENT MANAGEMENT DEPARTMENT REPORT

DATE: October 18, 2006

TO: Orange County Planning Commission

FROM: RDMD/PDS/Current and Advance Planning Services

SUBJECT: Public Hearing on the Appeal of the Zoning Administrator's Approval of Planning Application PA05-0090 for a Use Permit

PROPOSAL: The applicant proposes to construct a new multi-level, single-family dwelling with a three-car garage with attached second residential dwelling unit on a steep down hill sloped lot zoned R1-10000 District. Because of the steep down slope, the applicant proposes to construct an elevated driveway from the street edge to the new three-car garage with driveway retaining walls up to 11 feet high in the front setback area. A Use Permit was approved by the Zoning Administrator to permit the over high walls

LOCATION: The project site is located in the Panorama Heights, east of Hewes Street, south of Chapman Avenue, west of Crawford Canyon Road, between Circula Panorama and Baja Panorama at 12486 Vista Panorama, Santa Ana. Third Supervisorial District.

APPLICANT: Mr. and Mrs. Aaron Albertson

APPELLANT: Mr. Danny Siler

STAFF CONTACT: Chuck Shoemaker
Phone: (714) 834-2166 FAX: (714) 834-3522

SYNOPSIS: The appellant requests the Planning Commission consider his appeal of the Zoning Administrator's conditional approval of Planning Application PA05-0090.

Transmitted under cover of this report is; Mr. Danny Siler's letter of appeal dated September 5, 2006, a letter from Mr. and Mrs. Albertson dated September 8, 2006, minutes of the August 24, 2006 Zoning Administrator and all materials provided to the Zoning Administrator for the hearing of August 24, 2006. This report is focused upon the points raised by the appeal and a brief overview of the project. The August 24, 2006 Staff Report to the Zoning Administrator provides a discussion of the applicant's proposal which remains unchanged from the Zoning Administrator hearing.

PDS/Current and Advance Planning Services recommends the Planning Commission deny the appeal and uphold the Zoning Administrator's approval of PA05-0090 for a Use Permit subject to the Findings and Conditions of Approval.

OVERVIEW:

The applicant requested Use Permit approval to construct an elevated driveway measuring approximately 27 feet wide and 34 feet from the garage to the street edge. The Orange County Zoning Code, Section 7-9-137.8 “Elevated driveway on steep topography”, permits an elevated driveway of this type on a steep down sloping lot but has a maximum width requirement of 20 feet. The applicant requests approval of a Use Permit, as allowed under Section 7-9-137, to permit a 27 feet wide driveway with over height walls as an alternative to the 20 feet wide driveway permitted outright by the Zoning Code. The proposed maximum height of the walls approaches eleven (11) feet at a point adjacent to the northern property line. The Planning Commission exhibits have been highlighted to depict the wall’s location and the points where it exceeds the permitted building height. The wall supports the driveway and an entry walkway to the house from the driveway.

On August 24, 2006 the Orange County Zoning Administrator conducted a public hearing to consider Planning Application PA05-0090. Many residents addressed the Zoning Administrator and expressed concerns related to parking, the attached second residential dwelling, and compatibility with the neighborhood. Following public testimony the Zoning Administrator approved the applicant’s request noting that the discretionary aspect of the request related to the over height wall in the front setback area.

Subsequent to the Zoning Administrator’s action, on September 5, 2006, Mr. Danny Siler submitted a letter of appeal citing ten reasons for his appeal. They are discussed in greater detail later in this report. Generally, the items parallel the comments expressed either in writing or verbally at the time of the Zoning Administrator hearing.

SURROUNDING LAND USE AND SITE PHOTO:

Direction	Zoning	Existing Land Use
Project Site	R1 (10000)	Vacant
North	R1 (10000)	Single-family dwelling
South	R1 (10000)	Single-family dwelling
East	R1 (10000)	Single-family dwelling
West	R1 (10000)	Vacant



PUBLIC NOTICE:

On October 6, 2006, notices of the Planning Commission hearing were mailed to all owners of record within 300 feet of the subject site. Additionally, a notice was posted at the site, and at the 300 N. Flower Building (HGO Building) as required by established public hearing posting procedures.

CEQA COMPLIANCE:

The proposed project is Categorically Exempt, Class 3, from the requirements of the California Environmental Quality Act. Prior to project approval, the Zoning Administrator must find this determination adequate to satisfy the requirements of CEQA. Appendix A contains the required CEQA Finding.

DISCUSSION:

As mentioned earlier, the applicant proposes to build a new single-family home with attached second residential unit on a vacant 8,160 square foot lot, created in the 1920s. The site's legal

description is Lot 12, Tract 904. The site slopes down from the road over 30%, and will require less than 500 cubic yards of grading. The project includes related retaining walls ranging in height up to 11 feet high (plus an additional 3.5 foot tall guardrail fence) partly located in the front yard setback where walls cannot exceed 3.5 feet in height, therefore requiring approval of a Use Permit. The neighborhood is characterized by homes on steep lots, accessed either by elevated driveways, driveways on artificially elevated grades, driveways that enter into garages sunken into upslope, driveways that cross multiple properties, or driveways that meander through up or down curves in an effort to reduce steep grades. Elevated driveways are supported by either columns or solid retaining walls. Solid retaining walls are becoming the more common procedure for locating driveways. The proposed driveway arrangement would not be atypical in the area, since there are examples of similar driveway designs in the vicinity of the project sites. Staff supported the proposed driveway design because it would create the opportunity for additional off-street parking spaces within the driveway and adjacent to a street that has diminished on-street parking available; and, because the driveway design was typical of new development occurring in the vicinity.

The Zoning Administrator made the following two required findings that this particular over height wall would not impact the neighborhood.

- (1) The height and location of the fence or wall as proposed will not result in or create a traffic hazard.
- (2) 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.

The remainder of this Report is focused on the ten items outlined in Mr. Danny Siler's Appeal Letter of September 5, 2006. Many of the topics raised in Mr. Siler's appeal letter were contained in comment letters from nearby residents and were discussed in the August 24, 2006 Staff Report to the Zoning Administrator. Excerpts from the Staff Report are included in the following discussion.

Item 1: "10 days notice is required to be given to homeowners in the surrounding area. Some neighbors report only 8 days notice."

Response: This item refers to the hearing notice for the Zoning Administrator (ZA) hearing. The topic was discussed in the Staff Report and further discussed at the ZA hearing. The discussion from the August 24, 2006 Staff Report is provided below.

Though the notices were provided to the post office to conform to the 10 day noticing requirements outlined in the state planning and zoning laws, it was reported by a neighbor that the notice was not received until August 16, 2006. It was also reported the notice was delivered by County staff. There is no record of delivery by County staff. County noticing procedures indicate the notice may be delivered or mailed. Government Code Section 65090 through 65094 describes the procedure for public noticing. Section 65093 addresses notice deficiency. It indicates that failure to receive notice or timely notice does not

invalidate the actions of a local agency for which the notice was given. The Zoning Administrator has the discretion to conduct the hearing or continue the hearing but, there is no requirement to re-notice the hearing.

This topic was also discussed at the ZA hearing. Staff explained they had discussed the topic with County Counsel and that Counsel referred staff to the applicable Government Code Sections. The Zoning Administrator did not continue the hearing.

Public hearing notices for this hearing were mailed on October 6, 2006.

Item 2: “Notice of the hearing was posted on the property but it was posted behind a guardrail where it could not be seen. A photo is available.”

Response: The staff person who posted the hearing notice for the Zoning Administrator hearing reported difficulty placing the stake on the site. There is a guardrail that traverses the entire site. The height of the guardrail makes it difficult using a standard County notice stake to place the stake in a manner where it can be viewed. Placing the hearing notice at the project site is in addition to the mailed notice.

The public notice for this Planning Commission hearing was posted on the project site on October 6, 2006 and was placed in front of the guardrail.

Item 3: “This matter should have been given to the North Tustin Advisory Commission (Committee) (NTAC) for review. The NTAC hearing was held in January 2006 but it was for a different address. Nearby residents did not recognize the subject property.”

Response: The applicant’s property is a “through” lot with potential access from either Vista Panorama or Baja Panorama. Baja Panorama in the vicinity of the applicant’s property is unimproved. When the application was submitted the legal description indicated a Baja Panorama address. This was the address NTAC used for its mailing. The applicant addressed this issue at the Zoning Administrator hearing. He explained that the address they used initially to identify their property was the one contained in their purchase documents. It was always their intention to access their property from Vista Panorama. Regardless the address, the same assessor parcel number identifies this property (APN 094-233-11). The discussion below is an excerpt from the August 24, 2006 ZA staff report.

There were also comments concerning the NTAC meeting. There was some confusion related to the property’s address at the time NTAC conducted its meeting. Initially, NTAC considered a second meeting but later decided to defer action to the County after the applicant had revised his plans to eliminate all but the wall supporting the driveway at the front of the site.

Item 4: “The variance permit request reviewed before NTAC in January 2006 was for a different use permit. Now a request for this new and different variance permit in August 2006 should be given to NTAC.”

Response: This topic was also discussed in the August 24, 2006 Zoning Administrator Staff Report. The NTAC did carefully consider the application as may be seen in their discussion and request that conditions of approval be added to the project. There is no variance requested for this property only a Use Permit for the over height walls. The following discussion is an excerpt from that staff report.

NTAC reviewed this proposal at a public meeting held January 18, 2006 and requested the inclusion of four conditions: 1) dust control monitoring for trucks and street clean-up by the applicant; 2) the applicant exercise erosion control for rocks, mud and drainage control; 3) any substantial changes to input fill must return to NTAC for review; and, 4) applicant must receive obtain Certificate of Compliance from Professional Engineer for height. Staff believes items 1, 2 and 3 are adequately addressed through the Conditions of Approval. Dust and erosion control are an integral part of the Grading Permit process (Conditions of Approval Nos. 7, 9, 11, 12 and 21 address these items). Staff agrees that should a Changed Plan be submitted for this project it should be shared with the North Tustin Advisory Committee (Condition of Approval No. 3 addresses this item). In reference to the building height comment, staff discussed with NTAC that following their meeting, the applicant revised his plans to eliminate the need for a Use Permit associated with an 8 foot tall wall at the rear of the house that encroached into the side yard setback area where maximum wall heights cannot exceed 6 feet. The height of the house is consistent with the height of other recently approved houses; therefore, such certificate is not required.

Item 5: “The proposed house to be constructed is not compatible with the neighborhood. Neighborhood standards have not been considered. It is too big and tall.”

Response: The topic of neighborhood compatibility was discussed in the August 24, 2006 Staff Report and at the ZA hearing of the same date. The discussion below is an excerpt from the August 24, 2006 Staff Report.

The comment related to building height relates to the overall height of the applicant’s house and its compatibility with surrounding development. Nearby houses have employed various techniques of construction and hence the appearance of houses in the vicinity vary. For example, the house to the north follows the site’s topography more than the house located along the south property line. Included with this staff report is a photo that depicts the range of development styles in the general vicinity. In the photo the applicant’s lot is generally located in the upper left corner. (The vicinity photo may be helpful in locating the site (the last attachment to the August 24, 2006 staff report)) The houses in the near and mid foreground are located on Circula Panorama. These houses all comply with the 35 feet height limitations. The proposed house is multi-story; it would appear two stories, 25’5.5”, in height at the west or street frontage. The house steps down slope to the east. It is the down slope or east elevation that appears the tallest elevation. The practice for interpreting the height limit “envelope” requirement in the Zoning Code is that a structure’s

height is measured from finished grade 5 feet from the front wall (toward the street), and a 5 feet from the rear wall (toward the back of the lot). When such an envelope is created, the height of the proposed structure complies with the 35 feet tall height envelope. As mentioned earlier in this report (referring to the August 24, 2006 Staff Report), the applicant's original plan included walls that encroached into the side setback area at the rear of the house. The portions of the wall in the setback areas required Use Permit approval as they were in excess of the maximum permitted height of 6 feet. Because the plans were revised the discretionary aspect of the wall at the rear of the house has been eliminated. The height of the house is consistent with the height of other similar houses that have been approved in recent years.

The Zoning Administrator listened to all the public testimony. He requested staff respond to the comments provided at the hearing. He carefully considered the testimony before taking an action to approve the Use Permit for the over-height walls supporting the driveway.

Item 6: "The proposed house to be constructed blocks the views of other residences. This is a "view" neighborhood. Other's "views" were not considered."

Response: Views are frequently a topic of discussion when evaluating properties which have views or potential views. Unfortunately, there are no assurances that views will be protected unless there is either a view easement over properties that protect the views for the benefit of one property over another or the zoning restricts building heights. To staff's knowledge there are no easements or deed restrictions that restrict building heights in the Panorama Heights area. The applicant's dwelling unit enjoys the same zoning designation as the surrounding community. Residents have employed various building techniques when building in this area. The applicant chose to build their house so that the main living levels would be on the same level as the garage with the master bedroom one floor above and the secondary bedrooms and the second residential unit one floor below the main living level. The height of the house is consistent with other residences recently constructed in the vicinity and the Zoning Code.

Item 7: "Owner is building this house for profit at the expense of others; possibly taking \$100,000 of value away from nearby properties by taking their "view.""

Response: Staff can offer no response to this topic.

Item 8: "Parking is inadequate. There is no street parking on Vista Panorama. Additional off-street parking should be considered."

Response: The topic of off-street parking was discussed in the August 24, 2006 Staff Report and during the ZA hearing. Residents noted that on-street parking is a premium in their hillside community. Staff reported that the applicant's proposal provided the correct number of parking spaces for a single-family dwelling unit with a second residential unit. Staff also indicated that the driveway provided sufficient width and depth to provide additional off-street parking. The following discussion is an excerpt from the August 24, 2006 staff report.

The comment concerning parking relates to a condition affecting Vista Panorama, and other streets in the general area. Vista Panorama is a narrow street with very limited opportunity for on street parking. As development in the area occurs on street parking is reduced further. Neighbors point to the narrow street, the lack of on street parking coupled with the size of the applicant's house and the second unit as the basis of their comment that additional parking be provided. The applicant's single-family house and second unit are required to provide 3.2 parking spaces under the parking requirements of the Zoning Code (2.2 spaces for the main dwelling and 1 space for the second unit). The project provides 3 garage spaces and a driveway that can accommodate additional parking to comply with the parking requirements. The central issue is whether this project should provide more parking than the regulations require. The Zoning Administrator has the discretion to require more parking though there is no record of other dwelling units being required to provide more parking than the Code requirement.

The Zoning Administrator did not require this project to provide more parking than the Code requirement, which was in keeping with other properties in this community.

Item 9: "Construction of a rental unit on this site is objectionable."

Response: The applicant's plans include a second residential dwelling unit. The topic was discussed in the August 24, 2006 staff report and during the Zoning Administrator's hearing. The following is an excerpt from the August 24, 2006 staff report.

Residents expressed concern the second residential dwelling unit might be used as a rental unit. The applicant's plans include an 842 square foot second residential dwelling unit. The unit has independent access and is located on the lower level of the dwelling. Second units are regulated by a combination of State and County regulations. The State Government Code Section 65852.150 et seq. provides the overarching regulations for second residential units. County Zoning Code Section 7-9-146.5 provides the local development standards. Second units that meet the development standards for setbacks, square footage, and parking are permitted without further discretionary permit. The applicant's second unit complies with all applicable County requirements.

It should be noted that State regulations do not restrict the occupancy of second residential units.

Item 10: "This variance permit request is for an eleven foot high retaining wall in the front setback area. The Zoning Administrator stated that it was acceptable because it is to be under the grade of the street and driveway. If there is concern with the visualization of the wall, why not be concerned with the overall visualization of the building?"

Response: Planning Application PA05-0090 is a Use Permit request for the construction of an over high wall to support the driveway serving the applicant's proposed house. The lot is steeply sloping and consequently the wall's maximum height of eleven feet is on the down slope away from Vista Panorama. The wall would day light at the street. In accordance with the Zoning

Code walls in the front setback area permitted a maximum height of 3.5 feet. The purpose of this height limit is to ensure that walls located in the front setback do not pose a sight distance hindrance for drivers in vehicles either those using the driveway or those traveling the street. For this reason approval of a Use Permit requires two findings. The first finding pertains to sight distance, the second addresses compatibility. The Zoning Administrator determined that because the wall slopes down slope from Vista Panorama it did not pose either a sight distance problem or a design detrimental to the community.

SUMMARY:

Staff has transmitted under this report the materials submitted to the Zoning Administrator for his consideration of Planning Application PA05-0090, a privately-initiated request to construct over height walls to support an elevated driveway providing access to their proposed single-family dwelling unit. Staff discussed the elements of the applicant's request at a public hearing before the Zoning Administrator on August 24, 2006. The hearing was well attended by residents of Panorama Heights including the appellant. The Zoning Administrator listened carefully to the residents' comments; he requested staff to respond and clarify the discretionary aspect of the Planning Application. Planning Application PA05-0090 is a Use Permit for the construction of over high walls in the front setback, which the Zoning Administrator conditionally approved on August 24, 2006. An appeal of the Zoning Administrator's approval was submitted on September 5, 2006. Staff has attempted to respond to the items raised in the appellant's appeal. Staff notes that many of the items were previously expressed in prior comments or before the Zoning Administrator. Staff believes the items have been adequately addressed and that Planning Application PA05-0090 should be approved subject to the original findings and conditions of approval.

RECOMMENDED ACTION:

1. PDSD/ Site Planning Section recommends the Planning Commission:
2. Deny the Appeal and Approve Planning Application PA05-0090 for Use Permit subject to the attached Findings and Conditions of Approval.

Respectfully submitted,

Tim Neely, Director
Planning and Development Services

APPENDICES:

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

EXHIBITS:

1. Letter of Appeal from Mr. Danny Siler dated September 5, 2006
2. Letter from Mr. and Mrs. Albertson dated September 8, 2006
3. Zoning Administrator Hearing Minutes of August 24, 2006
4. PDS Staff Report dated August 24, 2006 with attachments