

PLANNING & DEVELOPMENT SERVICES DEPARTMENT REPORT

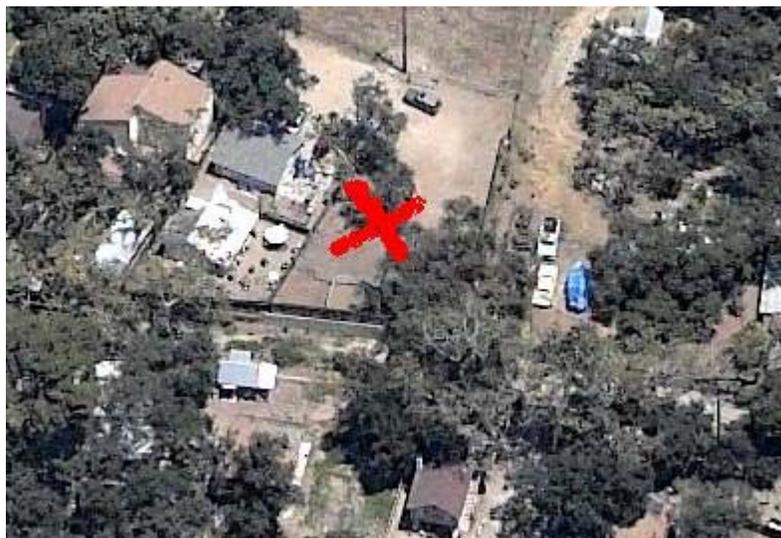
HEARING DATE: February 21, 2007
TO: Orange County Planning Commission
FROM: Land Use Services Division

SUBJECT/SYNOPSIS: PA06-0083, a site development permit for construction of a garage and carport with second story storage space, which would be attached by a patio cover trellis to a two-story single-family dwelling built with no permits on an adjoining separate legal building site. On this other site, there also exists an additional existing single family dwelling (now labeled “2nd unit”) built with permits in 1976 but since added to without permits.

All unpermitted work done by one or more previous owners, including the removal of one oak tree of unknown size, an interior fire sprinkler system in that “main” or “front” house with no permits, percolation testing for a new septic disposal system (septic tank and seepage pits), installation of that system, and possible grading of as much as 1.5 feet of fill generally in the area behind the new garage, is proposed to now, after-the-fact, be approved, in order for the current owner to be able to occupy and use the property.

The “proposed” homes and garage would all together total 2,826 square feet of living space, 600 square feet of garage space, 200 square feet of carport space, 388 square feet of garage second floor storage space, 100 square feet of “original house” loft storage and 264 square feet of area under the trellis/patio cover, on two legal building sites totaling 14,386 square feet (portions thereof being located in Hickey Creek) in the “Trabuco Oaks Residential” (TOR) District of the Foothill-Trabuco Specific Plan. The size of these lots does not trigger open space dedication.

LOCATION: 20741 Mountain View, Trabuco Canyon (District 3) [Property seen in 2003, when unpermitted front house was only a one story structure, North is to left]



APPLICANT: Gary and Christine Hoffman, owners

STAFF Jim Swanek (Jim.Swanek@pdsd.ocgov.com)

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FOOTHILL/TRABUCO SPECIFIC PLAN REVIEW BOARD:

On November 10, 2006, the Foothill/Trabuco Specific Plan Review Board reviewed this project. They declined to recommend either approval or denial of the application. Their minutes, attached as Exhibit 2, draw the Planning Commission's attention to a wide variety of issues, being:

1. "Orange County Zoning Code allows only one SFD (single family dwelling) per 20,000 s/f. Lot 216 is considerably smaller than 20,000 s/f and even when the two lots are combined (which they should not be without a lawful joining action) are approximately 17,000 s/f. Thus the second unit should probably NOT be considered a SFD, but could become a guest house after removal of the kitchen and/or bath."
2. "That Lot 216 should be appropriate for a guest house under current State laws."

Staff Response: State law requires that where a single family dwelling exists on a legal lot, a second unit of at least "efficiency" size must be allowed with the provision of parking per local ordinances. The Specific Plan does not identify second units as permitted uses, and this project does not meet the "second unit" standards of Zoning Code Sec. 7-9-146.5(b)(1) or (3). The original permitted house from 1976 on this lot was 432 sq. ft. in living area. It is now 584 sq. ft. in living area. This structure in terms of its size only would meet both the standards of state law and the Zoning Code as a permitted "second unit".

Subsequently the "front house" was constructed without any permits, first as a one-story structure of possibly 900 square feet and then, sometime after the 2003 aerial photo above (but well before acquisition by the current applicant), reconstructed without any permits as a two-story structure of the current 2,242 square feet of living area, and 3 bedrooms (plus den/"office"). Zoning Code Sec. 7-9-146.5(b)(3) would thus not have allowed the front unit, built second, to be enlarged beyond the 900 square foot one-story configuration it had until 2003.

The Planning Commission has authority to either approve the front two-story unit, constructed without any permits, to order it to be combined with the one at the rear to make a single dwelling, for it to be returned to a one-story structure as existing prior to 2003, to require it to be modified in some other fashion, or to disapprove said dwelling and require its demolition.

Staff believes the Commission has the authority, should it first choose to approve retention of the unpermitted front dwelling, to then define the "rear unit" (the original unit, later added onto to the extent of perhaps 150 sq. ft.) as a "second unit" for the purposes of complying with State law, since both units in fact "exist".

3. “That adequate off street parking consist(ent) with the Orange County Zoning Code should be achieved. This may require a formal joining of the two Lots.”

Staff Response: The proposed parking of four covered spaces exceeds definitions the County has utilized to determine the off-street parking required for a home and “second unit”. If the front house were instead regarded as a proposed 4-bedroom dwelling with the rear house an existing 0-bedroom dwelling (not a guesthouse or second unit), which is a more accurate description of the proposal, the parking requirement under Zoning Code Section 7-9-145.3(d)(2) would be 5, with 3 covered. The applicant would then be required to maintain an existing additional paved area at least 10’ wide by 20’ long in front of the “front house” as the required 5th parking space.

In terms of the recommended formal joining, there is nothing legal this or any future owner could do to turn the now-proposed garage and second floor storage area into something that might be independently saleable without further discretionary site development permit review. Additionally, this proposal will be approved as a precise plan of development. There is a standard condition to this effect, and staff is recommending in this case a supplementary finding (Finding #) related to all these structures on two lots being part and parcel of one single precise plan of development.

Should the Commission instead choose to require the two lots to be formally combined, they could never again be split apart in the future under the Specific Plan, because the minimum lot size of 20000 square feet would then come into play, and the Specific Plan has no possible procedure to create lots smaller than the minimum for that district.

4. “The applicant should demonstrate the availability of adequate water and water pressure for fire fighting needs at the site.”

Staff Response: Recently, the applicant had the hydrant pressure tested and it was found adequate to serve the existing fire sprinkler system in the front house. These results indicate the applicant will be able to meet those conditions of approval recommended by OCFA and included herein.

5. “That the current or planned replacement septic system leach field or leach pit(s) are properly set back from the property lines on the site and are an adequate distance from existing Live Oak Trees on site, if required by current codes that there (be) 100% excess capacity on the site for a “new leach field”.”

Staff Response: The current County Plumbing Code requires either leach fields or seepage pits, in addition to tanks. Some jurisdictions have abandoned the latter, but the County has not, nor does the San Diego Regional Water Quality Control Board prohibit seepage pits in its current Basin Plan. One existing seepage pit (placed by mistake in Mountain View Road) will be relocated on-site. The applicant thus has an adequate system for both units, but without proper permits. As to oak trees, staff believes this is the area where a prior owner removed a single oak tree for the purposes of installing a new septic system. There are no other trees nearby at present.

6. “Verification that the buildings currently on site are outside the flood pla(in).”

Staff Response: Staff is in possession of materials signed by licensed land surveyor Fred Nankervis demonstrating that the existing AND proposed structures will meet Hickey Creek floodplain requirements.

7. “That there has been no Hydrology study available to the F/TSP Review Board.”

Staff Response: Pursuant to Specific Plan Section III.G.2.0.f., the Manager, Land Use Services chose not to require a hydrology study in the absence of evidence that any significant grading has occurred on this site since 1981, when the rear wall off Hickey Creek was installed by permit.

8. “That there has been no Tree Management Plan available to the F/TSP Review Board.”

Staff Response: Again, under Section III.G.2.0.f., the Manager, Land Use Services chose not to require a Tree Management Plan or “Site Specific Oak Woodlands Analysis” in the absence of evidence that any further significant impacts beyond the one oak tree removed by a previous owner of unknown size would occur. The sycamore trees located near the proposed carport bend rather distinctly away from that structure and toward the existing structures, so that the carport roof will not be within their driplines.

As for mitigation for the loss of said single oak (here presumed to have been not more than 35 inches in trunk diameter), twelve trees of 15-gallons each are proposed to be placed on 19401 Oakie Dokey, seven in areas previously open space easement-dedicated to the County as part of the approval of PA000015 for placement of a home at that address, plus five trees in the previously approved “development” area, with assurance of continued maintenance to the satisfaction of County Harbors, Beaches & Parks.

PUBLIC NOTICE:

Notices of a Public Hearing were mailed and posted as required by state law. Additionally, a public notice has been mailed to those parties that have specifically requested notification on projects in the Foothill-Trabuco Specific Plan area. As of the writing of this staff report, no objections to the project have been received from said noticing.

CEQA COMPLIANCE:

Pursuant to the California Environmental Quality Act (CEQA), the proposed project is documented by an Addendum Initial Study to EIR 531, prepared for adoption of the Specific Plan itself. Additional mitigation measures were included in the addendum to address grading, drainage, the on-site private sewage disposal system, biologic impacts, and construction noise. These mitigation measures have been transposed into recommended conditions of approval for the project. Prior to project approval, the decision-maker must conclude that this EIR and Addendum is adequate to satisfy the requirements of CEQA for the proposed project. A finding to that effect is included.

PROJECT ANALYSIS:

The project site is located in the Trabuco Oaks Residential (TOR) District of the Foothill/Trabuco Specific Plan. The 0.33 acre lots were created by a tract map recorded in 1929. There are no “resource” or “open space” easements on said map. They were not required at the time, and are not now required due to the smaller lot size.

The applicant is proposing a site development permit to construct a new 3-car garage to be attached by a trellis to an existing single family dwelling, itself on a separate lot with another single family dwelling at the rear.

A number of elements of the project have already been completed without benefit of permits by prior owners, including:

1. An addition to the original “rear” house;
2. Constructing an entirely new, 2-story, “front” house;
3. Removing one oak tree;
4. Performing percolation testing.
5. Installing a new septic disposal system (septic tank and seepage pits, with one of the latter placed in the road right of way); and
6. Grading of perhaps 1.5 feet of fill generally in the area behind the new garage.

There is no reason to believe that Items 1-5 above were completed prior to the adoption of the Specific Plan in 1991. It is possible that Item 6 was performed near the time of the Specific Plan adoption. If in fact performed at any time prior, said work may not have required any permits due to its minor scale. In staff’s view, Item 6 presents no substantive issues even today, with the Specific Plan in place.

The Trabuco Oaks District height limit of 35’, grading yardage limitation of 3,000 cubic yards, and structural setbacks of 10’ from the front and rear and 5’ from the sides would be met by the proposed plan of development.

Attached as Exhibit 5 is the Foothill-Trabuco Specific Plan Project Consistency Checklist completed for this project. Staff concludes the project proposal is generally consistent with the Specific Plan Regulations, Guidelines, Goals and Objectives.

The Commission must exercise its discretionary judgment on the two-story “front house” of 2,242 square feet of living area and 3 bedrooms (plus den/office). It was constructed after the existing house at the rear, and after the Specific Plan went into effect. Staff believes the Commission has complete authority to order the demolition of this house, to order it to be combined with the one at the rear to make a single dwelling, for it to be returned to a one-story structure as existing prior to 2003, or to make other modifications.

RECOMMENDED ACTION:

1. Receive staff presentation and public testimony; and
2. Approve PA06-0083, subject to recommended findings and conditions (Appendices A-B).

Respectfully submitted,

Timothy S. Neely, Director
Planning & Development Services

APPENDICES:

- A. Recommended Findings for Project Approval
- B. Recommended Conditions for Project Approval

EXHIBITS:

- 1. Applicant's Letter of Justification
- 2. Foothill-Trabuco Specific Plan Review Board meeting minutes
- 3. Project Plans (Planning Commission copies only)
- 4. Addendum Initial Study PA04-0062 to EIR 531 (Planning Commission copies only)
- 5. Foothill-Trabuco Specific Plan Project Consistency Checklist (Planning Commission only)
- 6. Site Photographs

APPEAL PROCEDURE:

Any interested person may appeal the decision of the Planning Commission on this permit to the Orange County Board of Supervisors within 15 calendar days of the decision upon submittal of required documents and a filing fee of \$760.00 filed at the Development Processing Center, 300 N. Flower St., Santa Ana.