

**RESOURCES & DEVELOPMENT MANAGEMENT DEPARTMENT  
REPORT**

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**DATE:** September 30, 2004

**TO:** Orange County Zoning Administrator

**FROM:** Planning and Development Services Department/Current Planning Services Division

**SUBJECT:** Public Hearing on Planning Application PA 04-0061 for a Site Development Permit (grading) and Use Permit (wall height).

**PROPOSAL:** Site Development Permit for grading in excess of 500 cubic yards in building sites with slopes exceeding 30%; and a Use Permit to allow construction of overheight retaining walls, in conjunction with construction of a single family residence.

**LOCATION:** 12258-60 Circula Panorama, Panorama Heights - Third Supervisorial District.

**APPLICANT:** TNT Resources, owner

**STAFF** J. Alfred Swanek, Project Manager

**CONTACT:** Phone: (714) 834-2626 FAX: (714) 834-4772

**SYNOPSIS:** The Current Planning Services Division recommends Zoning Administrator approval of the site development and use permits, subject to the attached Findings and Conditions of Approval.

**BACKGROUND:**

The applicant is proposing to build a single family home on a vacant site located in the Panorama Heights Area. The project will require grading in excess of 500 cubic yards on slopes exceeding 30% to fill much of the front of the site in order to create a 30' wide driveway leading at zoning-code permitted slopes to a three-car garage. In addition, the project will include over-height retaining walls to support the vehicular driveway, to a maximum height in the front and (left) side setback of 22', plus a 3.5' tall guardrail, or 25.5' total. There is a vacant lot on this side.

In addition, the project includes grading and constructing walls for a SECOND 30' wide driveway to lead to a second lot which the applicant contemplates to create in the future. At that side of the property, abutting an existing single family dwelling, walls in the front and side yard setbacks would be constructed to a maximum height of 12', plus a 3.5' tall guardrail, or 15.5' total.

No element of the approval of this project shall be construed to indicate approval of any proposed subdivision. Should the planned subdivision never occur, the applicant will have a second driveway leading nowhere, the applicant understands that risk, and is willing to proceed nonetheless and construct the entirety of this plan now.

The project thus requires a site development permit for grading; and a use permit for over-height walls (Sections 7-9-139 and 7-9-137.5(f) of the Orange County Zoning Code).

It should be noted that the walls will project considerably into the public street right of way. Comments from the County's traffic engineer indicate no further widening is planned. A public property encroachment use permit will be required, and there can be no advance assurance it will be granted. No element of the approval of this project shall be construed to indicate approval of any such proposed public right-of-way encroachment.

### **SURROUNDING LAND USE:**

The project site has a single family home to its west, also taking access off Circula Panorama. Placement of its garage on a bridge rather than fill allowed this home to be constructed without a discretionary permit.

<b>Direction</b>	<b>Land Use Designation</b>	<b>Existing Land Use</b>
Project Site	R1-10,000 "Single Family Residential"	Vacant
North	R1-10,000 "Single Family Residential"	Single family dwelling
South	100-E4 "Small Estates"	Vacant
East	R1-10,000 "Single Family Residential"	Vacant
West	R1-10,000 "Single Family Residential"	Single family dwelling

### **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 300 N. Flower, at the subject site, 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 various reviewing Orange County Divisions and to the North Tustin Advisory Committee (NTAC), which unanimously approved the project on August 18, 2004 (Exhibit 3). All issues raised by divisions of the County, including the Orange County Fire Authority, have been addressed through recommended conditions of approval with which the applicant concurs.

### **CEQA COMPLIANCE:**

A Negative Declaration (PA040051) was prepared for this project to address requirements of the California Environmental Quality Act (CEQA). This document became final without appeal on 9/27/04.

Appendix A contains the recommended finding to this effect. Conditions have been recommended to address a number of the mitigation measures, in the areas of grading and drainage, water quality protection, sight distance at the street/driveway intersection, construction noise, and cultural/scientific resources.

## **DISCUSSION/ANALYSIS:**

The applicant is proposing to build a new single family home on a vacant lot of approximately 29,000 square feet, created in 1960. The site has slopes down from the road over 30%, and will require grading in excess of 500 cubic yards, particularly to fill in the front with a large driveway; therefore, approval of a site development permit is required. The project includes related retaining walls ranging in height up to 22 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 and partly located in side yard setbacks where walls cannot exceed 6 feet in height, each element requiring approval of a use permit. On the east side, where a vacant lot is adjoined, the walls would be constructed to a maximum height of 22', plus a 3.5' tall guardrail, or 25.5' total, about 1.5' from that side property line. On the west side, where a single family home is adjoined, the walls would be constructed to a maximum height of 12', plus a 3.5' tall guardrail, or 15.5' total, again about 1.5' from that side property line.

While these types of retaining walls are fairly common in the area, the Zoning Administrator will be asked to make his finding that this particular over-high wall will not impact the neighborhood.

The specific wording of the required finding is that: “the location, size, design and other characteristics of the wall will not create conditions or situations that may be objectionable, detrimental or incompatible with other permitted uses in the vicinity”.

The proposed project will meet all other code requirements applicable to the construction of a single family home in the R1-10,000 (Single Family Residential) zoning district, including the 35' height limit. The practice for interpreting the height limit “envelope” requirement in the Zoning Code is that a structure’s height is measured from the average of all finished grade elevations 5' from the front wall (toward the street), as compared to the average of all finished grade elevations 5' from the rear wall (toward the back of the lot). It should be noted that the height limit is met here only because of the incorporation of the retaining walls at both the front of the lot and immediately below the proposed house. Absent these walls, the home as an overhigh structure would itself not be permitted.

It is fair to state that the neighborhood is almost characterized by homes on steep lots, accessed either by elevated driveways, driveways on artificially elevated grades, driveways that enter into garages sunken into upslopes, driveways that cross multiple properties, or driveways that meander through up or down curves in an effort to reduce steepness. The proposed driveway arrangement would not be atypical of the area, since there are those varieties of means of addressing the steepness of building sites, and is far from unprecedented.

Staff recommends approval of this project, subject to the findings and conditions of approval listed in Appendix B of this report.

**RECOMMENDED ACTION:**

The Current Planning Services Division recommends the Zoning Administrator:

- a. Receive staff report and public testimony as appropriate and, subject to required findings; and
- b. Approve Planning Application PA04-0061 for a site development permit for grading and a use permit for overhigh walls, to support development of a new single family home, subject to the attached Findings and Conditions of Approval.

Respectfully submitted,

J. Alfred Swanek, Staff Planner  
CPSD/Site Planning Section

**APPENDICES:**

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

**EXHIBITS:**

1. Applicant's Letter of Explanation/Justification
2. Environmental Documentation
3. North Tustin Advisory Committee (NTAC) meeting minutes.
4. Set of Full Scale Plans (Site Plan, Floor Plans and Elevations).

**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.