

FROM THE PLANNING COMMISSION MINUTES OF SEPTEMBER 9, 2010

11. VARIANCE

V10-0001 submitted by GARY and JANNA STEIN (Agent: Brad Altman) to reduce the front yard setback from 20 feet to 1 foot and side yard setback from 5 feet to 1 foot for a single-story garage on an existing parking pad. The property, identified by Assessor's Parcel Number 016-600-19, consisting of 2.55 acres, is located on the east side of Scenic Drive, approximately 600 feet south of the intersection with State Route 89, in the Meeks Bay area, Supervisorial District V. [*Project Planner: Tom Purciel*] (Categorical Exemption pursuant to Section 15305(a) of the CEQA Guidelines)**

Tom Purciel presented the item to the Commission with a recommendation of denial.

County Counsel Paula Frantz explained that the County typically does not grant building permits over easements due to liability issues of the structure if a utility line broke and repairs were needed to be conducted in that area of the easement. She stated that there have been instances where non-used (inactive) easements have been allowed to be moved, however, in this instance, it is an active easement, although not an open public easement as it was deeded to specific utilities. County Counsel Frantz distributed a handout from the Governor's Office of Planning and Research titled "The Planner's Training Series: The Variance". She stated that Variances are very fact-specific and, therefore, was not convinced that Findings 2.1 and 2.2 could be made.

Brad Altman/applicant's agent thanked staff and Supervisor Santiago on their assistance with this project. He provided the following comments:

- Located on a private road, which part of it is County-maintained, but not the portion where project is located;
- Only one neighbor that accesses past subject parcel;
- Project location is not accessed by Hwy 89, but it does run through the parcel;
- Existing location is not a concrete pad, but actually a wooden structure with a retaining wall, which sits above the house as the area is a steep, down-sloping lot;
- No new excavation as the structure is already within the setback;
- Only the sides and roof would be built onto the existing structure;
- Most logical place to locate garage;
- Not feasible to make garage less deep as it won't change the location of the foundation;
- Locating building off of Hwy 89 would require massive cut/fill and TRPA would not approve anything other than what is already there;
- Findings are inconsistent since Findings 2.1 and 2.2 were made due to the steep slope, but Finding 2.3 was not made due to the steep slope;
- Not making a bad situation worse; and
- Has support from neighbor, Meeks Bay FPD and TRPA.

Mr. Altman presented a short video showcasing the project location.

Pierre Rivas provided detailed information on the existing utility easements and referenced the site plan displayed on the wall which identified the easement locations. Mr. Altman stated that the easements identified on the site plan are not the actual location of the existing utilities. He stated that the location of the road was actually used to run the utilities to the adjacent neighbor.

Mr. Rivas stated that if easements aren't being used, the County will request that it be abandoned. In this situation, these utility companies have declined that option.

Commissioner Pratt stated he would like a more accurate map identifying the actual location of the utilities and clarification that the access to the adjacent neighbor is a driveway and not a road that future development could use as an access point. He wanted confirmation on the utilities locations and that it truncates at that location and won't be extended further. Commissioner Pratt felt that if this is a Variance request, it should be denied. However, if it is a waiver, it should probably be approved but there is not enough information provided to make that decision. He also stated that he was unsure if Finding 2.1 could be made. One additional issue that Commissioner Pratt identified was the act of backing out of the garage. The applicant would be completely unaware of any incoming traffic and it would be the burden of the approaching vehicles to yield.

County Counsel Frantz reiterated what types of Findings for a Variance are needed and that the only process to approve this project would be a Variance. She also stated that the legal documents should identify the actual location of the utilities and also recommended that information should be provided on how many customers would be affected if a utility line broke in that location. County Counsel Frantz stated that the Commission needed to determine if, without a variance, the applicants, due to a unique situation on their parcel, would be denied a reasonable use that others in the neighborhood have. She stated that it should be confirmed if this is an inactive easement, have a map drawn showing the actual, physical location of the utilities and how close it is to the structure, and if the easement truncates at that location. County Counsel Frantz also stated that all facts to make the Findings needs to be in the application as it is the applicant's burden of proof.

It was agreed between Mr. Altman, staff and the Commission to continue the item to allow the following to occur:

- Accurate maps drawn of the actual existing utility locations;
- Mr. Altman's facts on the project, as stated during the hearing, be included in the Findings; and
- Identify number of customers that would be affected if the utility line broke in that location.

No further discussion was presented.

Motion: Commissioner Pratt moved, seconded by Commissioner Heflin, and carried (4-0), to continue the item to the October 14, 2010, meeting.

AYES: Mathews, Heflin, Pratt, Rain

NOES: None

ABSENT: Tolhurst