CITY COUNCIL AGENDA #___
MEETING OF July 13, 2004

STAFF REPORT

APPEAL OF THE PLANNING COMMISSION DECISION TO DENY A SETBACK VARIANCE AT 1814 OAK KNOLL DRIVE

Honorable Mayor and Council members:

SUMMARY

On October 8, 2003, by a 4-1 vote (1 recused & 1 absent), the Planning Commission adopted Resolution 2003-50 denying a Setback Variance to allow a deck extension to encroach four feet into the required fifteen foot rear yard setback at 1814 Oak Knoll Drive. The Commission reviewed the project at their September 16, 2003 meeting and voted 5-1 (1 recused) to direct staff to prepare a resolution outlining the specific Variance findings for denial made by the Commission based on discussion at that 9/16/03 meeting. A transcript of both the 9/16/03 and 10/8/03 Planning Commission hearings are attached.

On October 20, 2003, Mr. Steven Eckert, project applicant, submitted an appeal of the Planning Commission decision. The appeal was previously scheduled for City Council review at the March 9, 2004 Council meeting. However, prior to the hearing Mr. Eckert requested continuance of the item to prepare additional submittal information for his appeal.

On May 25, 2004, Mr. Eckert presented such additional information in support of his request. Staff has assessed the appeal and recommends the City Council direct the matter back to the Planning Commission for subsequent review because the appeal contains new information not reviewed by the Planning Commission.

BACKGROUND

The subject lot was originally established as part of the Belmont Country Club Subdivision No.1 in 1924. The property was resubdivided in the mid 1970's and the original dwelling was constructed in 1978. The City Council approved a Floor Area Exception to construct a 478 square foot addition for the lowest level of the dwelling which included a family room, bathroom, and study in 1991. In 1993, the applicant received approval of an administrative floor area exception to construct a 98 square foot addition within the middle level of dwelling below the garage and underneath the driveway.

Specific actions relative to the requested Setback Variance prior to Commission action on 9/16/03 and 10/8/03 are as follows:

- On February 19, 2002, by a 5-0 vote, the Planning Commission adopted a Resolution denying the Setback Variance for the deck extension. This resolution was adopted after Commission reviewed the project at its February 5, 2002 meeting and voted 6-0 for denial. Mr. Eckert filed an appeal of the decision on February 28, 2002.

- On May 14, 2002, by a 3-2 vote, the City Council sustained the decision of the Commission denying the Setback Variance.

- In August 2002, Mr. Eckert filed suit against City of Belmont seeking a writ of mandate to set aside the Planning Commission and City Council decision denying the variance. As a result of the court ordered mandatory settlement conference, the City Council agreed to hear the matter again. Mr. Eckert provided new information in relation to variance request to City in April 2003.

- On July 8, 2003, the City Council held a new public hearing and directed the matter back to the Planning Commission for review in light of the new information provided by Mr. Eckert in April 2003.

PROJECT DESCRIPTION

The property has an existing deck which extends six feet off the upper rear level of the residence, leaving the required minimum setback of fifteen feet. The existing deck extends the entire 40-foot width of the residence for a total of approximately 240 square feet. The proposed four-foot extension would add 120 square feet of deck area (360 square feet total for this deck) for the dwelling.

GENERAL PLAN AND ZONING CONFORMANCE

The proposed rear yard deck extension for the single-family residence conforms to the land use designation for the site. The proposal is consistent with the low-density residential general plan designation.

The subject lot is below the minimum zoning standards of 6,000 square feet for the R-1B zoning district. The existing residence also has nonconforming side yard setbacks. However, adherence to Section 9.6.3(a) would allow a continuance of the existing setbacks.

As discussed earlier, the applicant proposes to reduce the rear yard setback from fifteen feet to eleven feet. The R-1B zoning district requires a minimum rear yard setback of fifteen feet. Thus, a variance is required.

ENVIRONMENTAL CLEARANCE (CEQA)

The proposed rear yard deck extension for the single family home is categorically exempt from the provisions of the California Environmental Quality Act by provision of Section 15301, Class 1 (e) (2)(a & b):

> *"Additions to existing structures provided that the addition will not result in an increase of more than 10,000 square feet if:*
>
> *(a) The project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and*
> *(b) The area in which the project is located is not environmentally sensitive.*

The proposed deck extension will not increase the floor area for the dwelling and thus meet the above requirements for CEQA exemption.

VARIANCE ANALYSIS

Nature and Purpose. A variance is a permit to construct a structure not otherwise permitted under the zoning regulations. Variances can only be granted to authorize a use or activity which is otherwise expressly authorized by the zoning regulations applicable to the parcel. Government Code Section 65906. Variances authorize deviations from regulations applicable to such physical standards as lot sizes, floor area ratios for buildings, and off-street parking requirements. As a result of granting a variance, basic zoning provisions are not being changed but the property owner is allowed to use his property in a manner basically consistent with the established regulations with minor deviations which place him in parity with other property owners in the same zone. Variances are, in effect, constitutional safety valves to permit administrative adjustments when a general regulation would be confiscatory or produce unique hardship. As indicated by the court in Hamilton v. Board of Supervisors (1969) 269 Cal.App.2d 64, 66, 75 Cal.Rptr. 106 as follows:

> *"They [variances] exist because it is recognized that, within a zone, there will be individual lots or tracts that, because of peculiar shape, unusual topography, or some similar peculiarity, cannot be put to productive use if all the detailed requirements for that zone are to be strictly applied. Hence administrative and quasi-judicial procedures are established, whereby the owner of such a piece of land may be allowed relatively minor variations from the strict letter of the law. Typical of such variations are those relating to setback lines, proportion of building size to lot area, and similar deviations. The concept is that the basic zoning provision is not being changed but that the owner of the individualized lot is allowed to use it, in a manner basically consistent with the established zone, but with such minor variations as will put him on a par with other property owners in*

> *the same zone whose lots conform in size, shape, topography, etc., to the overall pattern envisaged by the zoning ordinance. The procedures are created to bring the applicant to a substantial parity with other owners in the zone in devoting his property to the basic function of that zone; they are not created to give the applicant a better position than that enjoyed by his neighbors in the zone."*

Statutory Standards. State law provides statutory standards for the granting of variances. Variances can be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity, under an identical zoning classification. Any variance granted must be subject to conditions to assure that the adjustment authorized does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone where the property is located. A variance cannot be granted to authorize a use or activity which is not otherwise expressly authorized by the zoning regulations applicable to the parcel. Government Code Section 65906.

Supplementary Local Ordinance Provisions. The statutory standards contained in Government Code Section 65906 may be supplemented by harmonious local ordinances because state planning and zoning law is intended to provide minimum limitations. Topenga Assn. For a Scenic Community v. County of Los Angeles (1974) 11 Cal.3d 506, 511, note 6, 113 Cal.Rptr. 836.

Most local zoning ordinances incorporate the variance standards in Government Code Section 65906. And since California cities and counties granted variances long before there was any provision for them in the state statutes, some ordinances provide criteria and standards in addition to those contained in Government Code Section 65906. For example, some local ordinances provide that a variance may be granted only if it is compatible or consistent with the adopted general plan and/or the purposes and intent of the comprehensive zoning ordinance. Where local ordinance standards are adopted, they must be consistent with Government Code Section 65906. If local ordinances are consistent with state law, both state and local criteria must be satisfied to justify the grant of variance. Topanga Assn. For a Scenic Community v. County of Los Angeles (1974) 11 Cal.3d 506, 518, note 18, 113 Cal.Rptr. 836.

Belmont's Ordinances Regarding Variances

Belmont Zoning Ordinance Section 14 provides:

SECTION 14 – VARIANCES

14.1 PURPOSE – The hearing body may grant variances to any and all site development standards to prevent or lessen practical difficulties and unnecessary physical hardships inconsistent with the objectives of the Zoning Ordinance which may result, under specific circumstances, from the strict or literal

interpretations of the regulations prescribed therein. The hearing body shall review all requests to variances to site development standards in excess of 10 percent of said standard(s). The Director of Community Development may administratively grant Exceptions to commercial and manufacturing site development standards up to an including 10 percent relief of said standard(s) as prescribed by Section 14.9 herein.

14.5 ACTION BY THE COMMISSION – The Commission shall receive, investigate, hear and take action upon every application for a Variance which is submitted in full accordance with the procedures set forth in Section 14.2 herein.

In rendering its decision pursuant to Section 14.5, the Planning Commission must consider all testimony offered and grant a variance only when it finds evidence to support the required variance findings[1] of Section 14.5.1 of the Zoning Ordinance. Each of these findings must be made in the affirmative if the variance is to be granted.

Planning Commission Action

At the conclusion of the public hearing, the Planning Commission determined that it could not make all of the findings required by Section 14.5.1. As discussed earlier, a transcript of both Commission hearings (9/16/03 & 10/8/03) are attached for the Council's review. As indicated in Planning Commission Resolution 2003-50, findings (a), (c), (d) and (e) could not be made. The Resolution provides as follows:

a. The strict or literal interpretation and enforcement of the specified regulations would not result in practical difficulty or unnecessary physical hardship inconsistent with the objectives of the Zoning Plan because Eckert has developed his property with two (2) decks and a patio providing seven hundred twenty-seven square feet (727') of outdoor

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[1] *To grant a variance, all of the findings in Section 14.5.1(a)-(e) of the Belmont Zoning Ordinance must be made in the affirmative. The findings provide:*

(a) The strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary physical hardship inconsistent with the objectives of the Zoning Plan.

(b) There are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property which do not apply generally to other properties classified in the same zoning district.

(c) The strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges enjoyed by the owners of other properties classified in the same zoning district.

(d) The granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zoning district.

(e) The granting of the Variance will not be detrimental to the public health, safety or welfare, or be materially injurious to properties or improvements in the vicinity.

recreational area. This represents a reasonable and productive use of his property.

The purpose of the City's zoning regulations is to "promote and protect the public health, safety, peace, comfort, convenience and general welfare, and to provide a precise guide for the physical development of the City." Belmont Zoning Code Section 4.2.6 requires a 15-foot rear yard. Eckert's current two (2) decks totaling four hundred forty square feet (440') are built out to within 15-feet of his rear property line. Additionally, the ground level patio of two hundred seventy-two square feet (272') provides additional usable space. This area could be expanded further without a variance for additional outdoor recreational space. These decks and patio are constructed in a manner that gives Eckert direct and safe access to outdoor recreational space.

Therefore, there is no practical difficulty or unnecessary physical hardship imposed on Eckert by the strict or literal interpretation and enforcement of the 15-foot rear yard requirement of the Zoning Ordinance. As indicated, Eckert enjoys the use of two (2) decks accessed from the dwelling, and also enjoys the use of a fully improved rear yard patio, providing additional recreational space opportunities. This patio can be directly and safely accessed via finished floor area on the lower level of the dwelling. The size and area of the open space/recreational opportunities provided by these decks and patio are equal to or in excess of the size of other properties' usable outdoor recreational space in the neighborhood. Thus, the strict application of R-1B District regulations would not result in practical difficulty or unnecessary physical hardship inconsistent with the objectives of the Zoning Plan.

While Eckert argues that he should be entitled to a variance because the adjacent property obtained a deck variance, the Planning Commission finds that the two (2) lots are distinguishable. While the adjacent property is approximately the same size and slope, and has a mirror image building footprint, these properties are distinguishable due to floor plan layout of the structures located on each lot, currently existing safe and direct access to the backyard and existing outdoor improvements located on Eckert's property. In granting a variance to the adjacent property, the Planning Commission found that there was no safe access to their rear yard due to the slope of the lot and floor plan layout which left the ground floor of the property as unimproved dirt under floor area. Based upon this lack of access to outdoor living space, the Planning Commission approved a variance to allow total deck space of five hundred fifty square feet (550') for this adjacent property. The Planning Commission finds Eckert's property distinguishable because there is direct, safe access to a fully improved rear yard patio through finished floor area on the lower level of

the dwelling. Additionally, Eckert's property currently contains four hundred forty square feet (440') of deck and an additional two hundred seventy-two square feet (272') of patio for a total of seven hundred twelve square feet (712') of improved, safely accessible and fully usable outdoor recreational space. Therefore, the strict or literal interpretation and enforcement of the rear yard requirements will not create practical difficulty or unnecessary physical hardship to Eckert.

c. *The strict or literal interpretation and enforcement of the specified regulation would not deprive Eckert of privileges enjoyed by the owners of other properties classified in the same zoning district because Eckert has already obtained two (2) Floor Area Ratio Exceptions allowing him a home which exceeds the maximum allowed floor area. Additionally, he has developed two (2) decks built to the maximum size allowed by the Zoning Ordinance and a patio affording him outdoor living space equal to or in excess of owners of properties classified in the same zoning district.*

The privilege to be enjoyed by owners in the applicable R-1 zoning district is productive use of the property as a single-family dwelling with appurtenant uses. One of the appurtenant uses is outdoor recreational space. Eckert has such use of his property. He has fully developed the property and, in the past, been granted two (2) floor area ratio (FAR) exceptions which permitted him to exceed the allowed floor area limitations in development of his home. An FAR exception granted in 1991 allowed for the construction of a family room, bathroom and study on the ground floor level of the property. In 1993, a second FAR exception was granted to allow additional construction on the middle level of his three story home.

Additionally, as indicated in finding (a) attached hereto and incorporated by this reference, he has existing outdoor recreational space equal to or in excess of that enjoyed by others in the same zoning district. Eckert's two (2) existing decks currently meet the R-1B (Single Family Residential) district required 15-foot rear yard setback and provide outdoor space for the property. A fully improved rear yard patio area also provides open space opportunities for the site. He has one hundred sixty-two square feet (162') more usable outdoor space than exists on the adjacent property. Therefore, the strict or literal interpretation and enforcement of the 15-foot rear yard requirement would not deprive Eckert of privileges enjoyed by the owners of other properties classified in the same zoning district.

d. *The granting of the Variance will constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zoning district because Eckert has already received two (2) Floor Area Ratio Exceptions allowing for development of his property in excess of the*

Zoning Ordinance requirements relative to maximum square footage allowed on his lot and already has improved accessible outdoor recreational space in excess of that existing on adjacent property.

Eckert has already benefited by two (2) Floor Area Exceptions to allow increases in excess of the zoning requirements for the size of his dwelling. These approvals (1991 by City Council, and 1993 via an administrative exception) increased the size of Eckert's dwelling from 2,043 sq ft. to 2,619 sq. ft. Because Eckert has already been granted two (2) exceptions to exceed floor area limitations on this small site and has two (2) decks and a patio on the ground level which exceed the outdoor recreational space available to adjacent property, the Planning Commission finds that Eckert has full and productive use of the property. Granting an additional variance to allow encroachment into the required rear yard would therefore constitute a grant of special privilege to this lot which has already benefited from Zoning Ordinance exceptions allowing it to develop to a greater degree than similar property within the zoning district.

e. *The granting of the variance will be detrimental to the public health, safety or welfare, or be materially injurious to properties or improvements in the vicinity due to the loss of auditory privacy that will occur by virtue of a deck extension into the required 15-foot rear yard adjacent to and directly above the rear yard downslope property at 1915 Hillman Avenue.*

The Planning Commission finds that granting the variance for the subject property would result in loss of some auditory privacy for the property directly behind and down slope (1915 Hillman Drive) of the subject site. While the current owners of the downslope property do not object to this application, the Planning Commission finds that encroachment on the required 15-foot rear yard would have negative impacts on auditory privacy which would be detrimental to the public health, safety, and welfare or materially injurious to other properties or improvements in the vicinity based on use of the deck in this fully developed neighborhood.

Belmont's Ordinance Regarding Appeals

SECTION 15 – APPEALS

15.10 ACTION BY COUNCIL – The Council shall hold a public hearing on an Appeal from a decision of the Commission or a review of proceedings upon its own initiation after notice thereof shall have been given as prescribed herein.

> All evidence submitted at such hearing, except original public records or certified copies thereof, may be given under oath administered by the Mayor or the Vice Mayor.
>
> The Council may affirm, reverse or modify a decision of the Commission provided that if a decision for denial is reversed or a decision to grant is modified, the Council shall, on the basis of the record transmitted by the Zoning Administrator and such additional evidence as may be submitted, make the findings prerequisite to the granting prescribed in this Ordinance.

The City Council is required to conduct a public hearing on Mr. Eckert's appeal. Attached to this staff report are the materials reviewed by the Planning Commission, transcripts of the Planning Commission hearings, the Planning Commission Resolution denying the variance, and Mr. Eckert's appeal. The City Council, during its public hearing, is required to receive and consider those materials and any additional evidence submitted prior to the conclusion of the Council's public hearing.

Appellant Submittal of New Information

As discussed earlier, On May 25, 2004, Mr. Eckert presented a CD-ROM to the City which contains new information in support of his requested appeal of the Planning Commission decision.

This new information includes Mr. Eckert's analysis of:

- Planning Commission Decisions on Variances – 1998-2003
- Building Permit History & Photographs – 1816 Oak Knoll Drive (adjacent property)
- Administrative Floor Area Exception (FAE) Approval (May 2004) – 1816 Oak Knoll Drive

Previously submitted appeal information also contained on Mr. Eckert's CD-ROM includes:

- A chronological compilation of documents (staff reports, resolutions, etc.) relating to both Commission and Council review of the requested setback variance.
- Documents related to the approved setback variance for 1816 Oak Knoll Drive (adjacent property), approved Floor Area Exceptions for both 1814 and 1816 Oak Knoll Drive, and the property at 1915 Hillman Drive (adjacent downslope property to the rear of 1814 Oak Knoll).

Staff has provided the index of information included in Mr. Eckert's CD-ROM as part this report (See Attachments).

In his comments to the Council on May 25, 2004, Mr. Eckert indicated that the Administrative FAE granted at 1816 Oak Knoll Drive was a new action related to his request. Staff believes that it is necessary, for the proper processing of this appeal, that all evidence be presented and examined. The examination of new evidence may be undertaken by either the City Council on appeal or through a referral back to the Planning Commission. Staff believes that a referral back to the Planning Commission is the appropriate procedure because they are appointed to evaluate these types of issues which require further examination.

FISCAL IMPACT

None.

RECOMMENDATION

Direct the matter back to the Planning Commission for its review, consideration, and action on Mr. Eckert's application.

ALTERNATIVE

1. Continue the matter with direction to staff to bring the matter back to the City Council for hearing of the appeal including full presentation of the additional appellant submittal material.

PUBLIC CONTACT

1. The City Council is required to hold a public hearing on an appeal of a Planning Commission decision as per Section 15.10 (Appeals) of the BZO. The City placed a public notice display ad in the local newspaper of general circulation (San Mateo Times) for a minimum 10-day period beginning on July 3, 2004, for the scheduled public hearing by the City Council on July 13, 2004. The City also mailed the appeal hearing public notice to all property owners within 300 feet of the subject site and other interested parties to inform such persons of the scheduled appeal hearing.

2. Appellant was also informed of the appeal hearing.

ATTACHMENTS

I. Appeal Application
II. Appellant CD-ROM Index – May 25, 2004
III. September 16, 2003 Planning Commission Staff Report and Agenda Item Transcript
IV. October 8, 2003 Planning Commission Memorandum, Resolution Denying the Setback Variance, and Agenda Item Transcript

Respectfully submitted,

Carlos de Melo Principal Planner	Craig A. Ewing, AICP Community Development Director	Jere A. Kersnar City Manager

PLEASE NOTE:

Attachments I, II, III, and IV are not included as part of this document – please contact the City Clerk's Office at (650) 595-7413 for further information on these attachments.