

# CITY OF LA CAÑADA FLINTRIDGE

**DATE:** September 22, 2015

**TO:** Planning Commission

**FROM:** Community Development Director

**APPLICANT:** Chungsook Lee, 1217 Olive Lane

**SUBJECT:** Overhead Utilities Appeal OUA 15-01

**Request:** Mr. Chungsook Lee is appealing the requirement to underground his utilities. (See Mr. Lee's letter and site plan attached). The current service is from a pole across the shared driveway from the rear yard of 1235 Olive Lane.

**Background:** On June 24, 2014 Second Floor Review 14-03 and Modification 14-03 was approved by the Planning Commission. As required by the Municipal Code, utilities must be undergrounded when constructing a new home. At its last meeting on September 8, 2015 the Commission continued Overhead Utility Appeal 15-01 so that staff could get more information from Southern California Edison.



Staff has contacted Edison as to why they are proposing to underground to Pole C (see attached diagram). The Edison Project Manager stated that the cut within the actual shared driveway will be shorter at Pole C versus Pole B. He also stated that there is more room for their underground equipment at Pole C. Staff also confirmed that the overhead lines to Pole B would be allowed to remain should the Planning Commission approve OUA. When asked if there was an existing overhead easement to Pole B, the Edison representative indicated that if the overhead drop is there longer than 5 years it would be considered an easement.

Staff has also determined that the applicant has an undivided one-third interest in the shared driveway.

**Applicant's Justification:** Mr. Lee has submitted a letter outlining the reason why he should be allowed to continue to use an overhead drop (see attached letter). Most significantly, he needs notarized permission from the other two homes (1215 and 1219 Olive Lane) that share the private road. He has since received approval from the neighbor at 1215 Olive Lane but has been unable to reach the neighbors at 1219 Olive Lane since they are frequently out of the country for long periods of time.

**Staff Analysis:** Adjacent houses on the shared drive have a similar service arrangement. Since only the subject house is new it is subject to the undergrounding requirement.

The applicant has requested the most efficient method for electrical service: continue to run the wires overhead directly from an existing pole to the house as outlined in his attached letter. The reasons provided by the applicant are good reasons given the circumstances. There are three poles along the shared driveway and the applicant is proposing to use the closest one to the front corner of the house (southwest side – labeled “B” on the attached plan).

At the last Planning Commission meeting, the applicant offered to install the underground conduit to Pole B or C and stopping at the property line in anticipation of getting the signature from the neighbor at 1219 Olive Lane.

**Staff Recommendation:** Based on the above discussion, the previous hearing and code requirements, the Planning Commission has three options:

1. Allow Mr. Lee to temporarily connect to the closest pole via an overhead line but require a performance security for a period of time until he receives permission from the neighbor to underground the utilities across the shared driveway.
2. Allow Mr. Lee to temporarily connect to the over-head line but require that he install the underground facilities to his property line in anticipation of receiving permission from the third party to the easement. This option could include a recorded covenant that puts future home owners on notice that the underground line should be connected. A covenant and performance security could also be required for this option.
3. Approve the request and allow Mr. Lee to connect to the closest pole via an overhead line without further action, covenant or performance security.

As to a sunset date for the deposit, Staff is looking for a recommendation on a reasonable time.

Staff is recommending Option #2: That the Planning Commission allow the property owner to temporarily connect to the over-head line but require that he install the underground facilities to his property line in anticipation of receiving permission from the third party to the easement and require the covenant and the performance security.

**Planning Commission Determination:** According to the Municipal Code, the Planning Commission must determine whether this request amounts to a practical difficulty or creates an unreasonable hardship inconsistent with the purpose of the law, and unique to this particular parcel

of property, before being able to waive, modify or delay the undergrounding requirement. In staff's opinion, this means weighing the undergrounding feasibility against the aesthetic and safety impacts of allowing the applicant to use an overhead drop.

Attachment: Applicant's Background Information including site plan (dated July 28, 2015)  
Applicant's Map submitted at the September 8, 2015 Planning Commission Meeting

cc: Kyong H Sean & Chungsook Lee / 3974 Pennsylvania Avenue, #113 / La Crescenta CA 91214  
Kyong H Sean & Chungsook Lee / 1217 Olive Lane / La Canada Flintridge CA 91011  
Yan Xie 1219 Olive Lane / La Canada Flintridge CA 91011  
Donald E & Karen Bishop / 1227 Olive Lane / La Canada Flintridge CA 91011  
Johnson & Cunningham Trust / 1215 Olive Lane / La Canada Flintridge CA 91011

Under Section 7.32.010 – Undergrounding of utilities required – “The Director of Community Development shall, as a condition precedent to the issuance of any building, electrical or plumbing permit, require all utility services located within exterior boundary lines of any lot or parcel of property to be installed underground if:

- A. The property is to be developed with a new or relocated main building;
- B. A residential building or use is converted to any nonresidential use or purpose;
- C. The remodeling, alteration or addition to an existing commercial building involves an expense totaling within any twelve (12) month period a sum equal to or greater than twenty-five (25) percent of the market value of such commercial building prior to such work being performed. The director of community development may refer to available records of the county assessor's office to assist him in ascertaining the market value of the building.

For purposes of this chapter, ‘main building’ means a building in which is conducted the principal use of the lot or building site on which it is located.

For purposes of this chapter, ‘commercial building’ means a building in which is conducted any use which is nonresidential, excluding uses accessory to residential use, and home occupational uses. (Ord. 198 § 1, 1991)”

Section 7.32.030 of the Municipal Code – Waiver, modification or delay – states: “It is the intention that all the utility facilities of developments described in this chapter be placed underground. If it is determined that practical difficulties or unreasonable hardships inconsistent with the purpose of this section and unique to a particular parcel of property would result from the literal application of this chapter, the Planning Commission may waive, modify or delay the application of any undergrounding requirement imposed pursuant to this chapter upon written application of any affected property owner. The Planning Commission shall notify the applicant of its decision in writing by mail. If the Planning Commission determines to delay the installation of the required underground utilities, it may require a recorded agreement guaranteeing the future performance of the work together with adequate performance security enforceable by the city in the form of a cash deposit, bond, letter of credit or other instrument satisfactory to the city attorney.”

*This action is not subject to “noticing” under the Municipal Code, and need only be placed on the agenda for the Planning Commission to take action. As a courtesy, however, staff has sent the neighbors at 1215, 1219, and 1227 Olive Lane a copy of the staff report.*



**RESOLUTION NO. 15-**

**A RESOLUTION OF THE PLANNING COMMISSION  
OF THE CITY OF LA CAÑADA FLINTRIDGE  
GRANTING THE APPEAL AND A TEMPORARY WAIVER OF THE  
REQUIREMENT TO UNDER-GROUND UTILITIES  
AT 1217 OLIVE LANE  
AS REQUESTED BY  
Chungsok Lee**

WHEREAS, a request by Chungsok Lee has been received for an Overhead Utility Appeal to allow the continuation of overhead utility service rather than undergrounding, said request incorporated herein by reference; and

WHEREAS, the Planning Commission, on September 8, 2015 and September 22, 2015, held a public hearing and conducted a review of the request; and

WHEREAS, the Commission reviewed the project and determined that no significant environmental impacts would result from the project, which is Categorically Exempt from the California Environmental Quality Act, under Section 2.5(c)(4)(utility extensions) of the City of La Cañada Flintridge Guidelines for the implementation of CEQA; and

WHEREAS, the Planning Commission has reviewed the facts contained in the staff memo dated September 8, 2015 and September 22, 2015, regarding the application for an Overhead Utility Appeal at 1217 Olive Lane, and heard and considered the testimony of the applicant and the public; and

WHEREAS, based on the evidence presented by the application materials, staff report, and public testimony, the Planning Commission finds the following:

**Section 1:**

*Findings:*

Strict application of Municipal Code Section 7.32 regarding the under-grounding of utilities results in practical difficulties or unnecessary hardships inconsistent with the general purpose of the Section 7.32 regulations and standards because without the waiver there would be no electrical service serving the property.

Section 2:

NOW, THEREFORE, be it resolved that the Planning Commission grants the temporary waiver for the under-grounding of utilities at 1217 Olive Lane, subject to the conditions listed in Exhibit "A", attached to this resolution.

**PASSED, APPROVED AND ADOPTED** this 22<sup>nd</sup> day of September, 2015.

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Chair of the Planning Commission

ATTEST:

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Secretary to the Planning Commission

**EXHIBIT "A"**  
**CONDITIONS OF APPROVAL**  
**OVERHEAD UTILITY APPEAL**  
**1217 Olive Lane**

1. Compliance with and execution of all conditions listed herein shall be necessary prior to obtaining final building inspection clearance and/or prior to obtaining any occupancy clearance. Deviation from this requirement shall be only by written consent of the Director of Community Development.
2. This waiver is granted for the temporary location of overhead utilities to Pole B as depicted in the attached diagram, labeled Overhead Utility Appeal 15-01. The temporary waiver shall terminate upon receiving written authorization from each of the property owners at 1215 and 1219 Olive Lane to underground the utilities and subsequent installation thereof.
3. Within ninety days of the date of this resolution or prior to obtaining a building permit, whichever is earlier, the applicant and property owner shall file with the Secretary of the Planning Commission written acknowledgment of the conditions stated herein on forms provided by the Planning Department.
4. This approval shall be vested within 12 months of the date of this resolution. This waiver will be vested once the temporary over-head connection is made to Pole B.
5. All applicable requirements of any law, ordinance, or regulation of the City of La Cañada Flintridge shall be complied with.
6. This waiver is subject to the applicant paying all fees, deposits and assessments to the City of La Cañada Flintridge, as established by policy, ordinance or resolution of the City Council prior to occupancy or initiation of use. This includes payment for contracted staff services as invoiced to the city.
7. In the event the City determines that it is necessary to take legal action to enforce any of the provisions of these conditions, and such legal action is taken, the applicant agrees to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the City, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the City should otherwise agree with the applicant to waive said fees or any part thereof. The foregoing shall not apply if the permittee prevails in the enforcement proceeding.
8. The applicant shall defend, indemnify, and hold harmless the City and its officers, agents, and employees from any claim, action or proceeding against the City or its officers, agents, or employees to attack, set aside, void, or annul the waiver of the requirement to under-ground the utilities. The City shall promptly notify the applicant of any such claim, action, or proceeding and shall cooperate fully in the defense.

9. The waiver granted by the Planning Commission does not constitute a building permit or authorization to begin any construction. An appropriate permit issued by the Southern California Edison and/or the City's Division of Building and Safety must be obtained prior to connecting to Pole B.
10. All prior conditions for Second Floor Review 14-03 and Modification 14-03 are still in effect.
11. The applicant shall install the infrastructure for future under-grounding as presented at the September 8, 2015 Planning Commission meeting (diagram attached).
12. The applicant may temporarily connect via overhead connection to Pole B (diagram attached) but must obtain written authorization of the each of the property owners 1215 and 1219 Olive Lane for future under-grounding within two years. The planning Commission shall review this waiver after two years of the date of this resolution to determine if the property owner has made a good faith effort to contact the property owner(s) of 1215 and 1219 Olive Lane. At the end of two years the Planning Commission can decide to permanently waive the under-grounding requirement or if the review period. A performance security shall be paid by the applicant or a letter of credit shall be provided to the City.
13. A covenant shall be recorded placing future property owners on notice that the underground line should be connected. The covenant shall be in a form approved by the City Attorney and the Director of Community Development.