

**A MEETING OF THE PLANNING COMMISSION
OF THE CITY OF LA CAÑADA FLINTRIDGE,
HELD FEBRUARY 12, 2002**

CALL TO ORDER:

Vice Chairman Engler called the meeting to order at 6:00 p.m.

ROLL:

Present were Commissioners Engler, Gelhaar and Mehranian. Chairman Levine and Director Stanley were absent. Commissioner Brown was expected to arrive shortly. Also present were Assistant City Attorney Steres, Planner Buss, Planner Cantrell and Planning Assistant Gjolme.

Comments were not offered.

**COMMENTS FROM
THE PUBLIC:**

Commissioner Brown arrived at 6:02 pm.

**CONSENT CALENDAR:
Minutes of January 23
and
Resolution 02-05;
approving Modification
01-34; La Bruna, Jr.;
615 Berkshire Avenue.**

Commissioner Gelhaar motioned to approve the consent calendar.

Commissioner Brown asked his colleagues to entertain a continuance of the Resolution. He did not have a problem with approving everything from the driveway forward, but the Resolution also deals with the backstop and a portion of the horse trail area. He noted there were remaining issues with the mesh on the ball diamond and the Trails Council had submitted a letter. He felt it best to deal with the project in its entirety.

Assistant City Attorney Steres advised the Commission of its options. At the last meeting, the multiple requests in the application were separated and motions were made accordingly. Based on that, Staff presented the Resolution under discussion. He further advised that the Commission was not required to act on the instant resolution--action could be postponed to February 26, when the remaining issues would be discussed.

Commissioner Gelhaar amended his motion to continue item B on the Consent Calendar to February 26, and to adopt the minutes of January 23 with one change on the Minutes per Commissioner Mehranian. Unanimous.

PUBLIC HEARINGS:

**MODIFICATION 01-67
(amendment);
BUILDING DEPTH
REVIEW 01-10;
CONDITIONAL USE
PERMIT 336;
NORAVIAN; 1331
JOURNEY'S END DR.:**

Planner Cantrell advised that the sole issue before the Commission was an amendment to the approved Modification, most significantly, condition No. 13. That condition required a 3-ft paved setback from the edge of the roadbed and a landscaped setback of 7 ft. He advised that the reason for this review was that work had proceeded and did not conform to condition No. 13 – i.e.; the magnolia tree in the northwest corner of the site was removed, the fence was installed at less than the 10-ft setback and its posts spacing do not conform to the requirements of the Decorative Fence Ordinance. Planner Cantrell advised that the magnolia tree was removed due to its declining health; the applicant is proposing two, 72-inch box carrotwood trees as replacement, which Staff believes would ultimately provide better screening and a more detailed appearance than the magnolia. Further, the applicant agreed with Staff's recommendation that the total diameter of each replacement tree's trunk be a minimum of 6".

The incorrect placement of the fence occurred, for the most part, when the 3-ft set back from the roadbed was not provided. The fence posts are 7 ft on center, rather than the 10-ft called out in the Decorative Fence Ordinance. Staff believed that the 10-ft minimum standard is meaningless when applied to wrought iron fences and in fact, runs counter to the structural integrity of such fences. Staff recommended that the fence be allowed with its 7-ft spacing and that the Decorative Fence Ordinance requirements be revised.

Commissioner Mehranian asked Planner Cantrell to elaborate on the fence's picket spacing and stated it was disturbing that the requirement for a 3-ft setback from the roadbed was disregarded and that the magnolia was removed.

Planner Cantrell asked that the applicant relate why the 3-ft shoulder was not installed; however, he was now willing to comply, which brings the matter back to when the approval was granted. Regarding the fence issue, "we're only talking about spacing between the posts, which are 2 inches square". He stated it was difficult to envision why posts that slender, whether 5 ft or 10 ft apart, would make a difference.

Commissioner Engler concurred with Staff's evaluation of the fence post spacing.

Commissioner Gelhaar confirmed where the two replacement trees would be planted and asked if there was sufficient room to move the fence back without affecting the deck just west of the pool.

Commissioner Brown commented that he found the landscape plan extraordinarily difficult to decipher; it appeared that neither replacement tree is proposed for the same location as the magnolia. The replacement tree proposed at less than 10 ft from the house concerned him.

Commissioner Engler referred to the minutes of the prior meeting regarding the landscaping at the east side; podocarpus was proposed and ficus benjamina proposed to be installed. He advised that there is a substantial amount of dirt entering Mr. Russell's property (to the east) as a result of installing fence posts - there is no retaining wall.

Planner Cantrell responded that the landscape installation is not complete and that 36"-box trees would be installed in the northeast corner as called out on the approved landscape plan.

Commissioner Brown remarked that the hedge of podocarpus was not called out on the draft landscape plan.

Planner Cantrell observed that the purpose of this meeting was the amendments to the approved Modification. He assured the Commission that when the project comes in for final inspection, it would be checked for compliance with the conditions.

Vice Chairman Engler invited the applicant to address the Commission.

Franco Noravian, architect representing the applicant, recalled that during the prior meeting, numerous negative comments were made about the existing wall. He and Staff suggested modifications but the Commission found them to be unacceptable and required that the wall be removed. Thereafter, he asked the Landscape Architect how removing the wall would affect the magnolia tree. He was advised that

the tree was dying and that its roots were exposed. Mr. Noravian stated that the conclusion he reached-- that the tree needed to be removed and replaced---was very obvious to him and he did not advise his client of the need to return to the Planning Commission.

Vice Chairman Engler remarked that the conditions required his client to resubmit a landscape plan to the Planning Department.

Mr. Noravian then stated that a condition referred to "modifying" the wall and that "it wasn't clear what *modify* meant".

Commissioner Brown commented that he had come into the meeting very disturbed by the developments of this project and its lack of compliance with the rules and regulations. He added that he was now even more concerned upon hearing that Mr. Noravian was aware that the tree was dead when the approval was given. Commissioner Brown referred to the minutes of the last meeting when counsel for the applicant argued that the tree was the reason they did not want to remove the wall --"now you're telling me that at that time, the tree had already been killed by construction work".

Mr. Noravian explained that the first time he became aware the tree was dying was after the Commission had made its decision and upon speaking with the Landscape Architect outside the Council chambers.

Commissioner Gelhaar remarked that the rationale behind establishing the fence setback was to locate it beyond the tree -- "the Commission was doing everything it could to protect that tree".

Vice Chairman Engler confirmed that Mr. Noravian was the architect of record and as such, accepted responsibility for breach of the conditions.

Mr. Noravian felt that the problem arose because plans were not drawn to reflect the requirements of condition No. 13 and that he, his client and the contractor concluded the intent of the condition incorrectly. He had since drawn a plan reflecting a 2:1 slope with the fence set back 10 ft. Following the landscape architect's caution about planting trees on

slopes, he suggested creating a pad for the tree that would require two walls of approximately 2 feet in height each. The developer advised that it was always his intent to put in the asphalt paving and that the job was incomplete.

Commissioner Brown commented that sprinklers had been installed within the three feet of the newly paved berm. He asked where, in relation to the berm, is the "old" roadbed edge?

Mr. Noravian responded that he was unaware of the berm and had not been on site for approximately a week and a half.

Commissioner Brown commented that where the edge of roadbed "was and is", is critical to the Commission going forward and he found it difficult to understand how there could have been any confusion with the detailed conditions. Commissioner Brown added that the edge of the roadbed is now covered with asphalt and removing it would undoubtedly cause damage. His concern was that there is absolute clarity where the starting datum points are.

Mr. Noravian commented that a recent survey should help in that regard. Responding to a question from Commissioner Brown, he stated that he was not involved in any decision to raise the grade adjacent to the house.

A discussion followed regarding who was in charge and who was responsible for the errors.

Applicant, Gary Nicholson, apologized for the mistakes and stated he was "here to take responsibility" and resolve the issues. He advised this was his first project of this magnitude and that he never had the responsibility of following minutes of a meeting and a plan "to the letter". An expert advised him that the magnolia tree was dying and since it is not a protected tree, he removed it with the intention of replacing it. Mr. Nicholson pointed out that it would have saved him a significant amount of money to leave the magnolia in 'as is'. He related that many neighborhood residents told him that the magnolia was 'ugly' and preferred replacement trees. He now realized that he should have contacted Staff before removing the tree.

Mr. Nicholson related his instructions to the paving company and stated, "if they fell short, they will come out and rectify it". The original roadbed edge could be verified by the surveyor pins.

Commissioner Brown recalled that at the prior meeting, the 3-ft setback was determined because the Commission was told that the wall (now removed) was approx 3 ft off the old roadbed. Therefore, the wall was the datum point. The Commission then required an additional 7-ft setback from that point to save the magnolia tree and to widen the corner to preclude visual impairment. He did not think the paving company should be blamed --- "someone's in charge".

Mr. Nicholson accepted responsibility and restated his instructions to the paving company and to Behr Construction were to "go from the old road edge and come in 3 ft ". The surveyor pins are still in the street and he would recheck and make any necessary corrections.

Commissioner Brown stated he was at the point where he wasn't interested in hearing the history and was only interested where the edge of the pavement is going to be and needed that information before he made a decision.

Planner Cantrell stated that the only thing changed from the current staff report is the rolled curb that was poured. He agreed that it was at the edge of the 'old' roadbed and should be evaluated on that basis. He pointed out the importance of "what's on the drawing", and noted that the roadbed can be confirmed by the surveyor pins as well as by measuring the 20-ft right-of-way from the opposite side of the street.

Commissioner Gelhaar confirmed that if the existing berm is at the road edge, the setback should begin there and up 3 ft for the edge of the slope. He asked Mr. Nicholson if the existing slope was 2:1.

Mr. Nicholson felt it was and would recheck to be sure. The area in doubt was the corner nearest the house where the fence returns. He recognized that the fence is incorrectly located and he stated it would be moved inward.

Commissioner Gelhaar expressed concern with what seemed to be a continuing visual impairment around the corner. Mr.

Nicholson felt that when the fence is relocated, that would not be the case.

Commissioner Gelhaar confirmed with Mr. Nicholson that had the magnolia been healthy and remained, the pool decking would not have been affected. Mr. Nicholson reiterated the expert advice that the tree would fall over at some point in the near future.

Vice Chairman Engler commented that Mr. Nicholson continually alluded to expert advice, but the packets did not include an arborist report. Following confirmation that only verbal advice was given, he stated that a written report would have given Mr. Nicholson's position more credibility.

Responding to a question from Commissioner Brown, Mr. Nicholson stated that he first learned that the magnolia would not survive long after the Commission's meeting in November. He advised that his Landscape Architect and an arborist met on site and determined that the tree would not survive since its root system was exposed over a year. Mr. Nicholson felt the neighbors would prefer two, 72-inch-box carrotwood trees with minimum diameters of 6 inches.

In response to a question from Commissioner Gelhaar, Mr. Nicholson reported that he had spoken with several neighbors and left letters on properties regarding the proposed revisions.

Commissioner Brown asked who gave instructions to the fence installers.

Mr. Nicholson responded that he had, when the 'old' roadbed was still there. Upon realizing it was being installed incorrectly, he stopped the work.

Commissioner Brown felt there was an issue of credibility; he noticed on his way to the last Planning Commission hearing that that the tree was gone.

Mr. Nicholson stated that it could have been an issue of misinterpretation between him and the fence installer. He added that Commissioner Brown might have driven by after the fence installer was instructed to stop work.

Vice Chairman Engler instructed Mr. Nicholson that if he wished to continue doing business in this community he needed to familiarize himself with the City's ordinances. He stated his belief that Mr. Nicholson removed the magnolia as a convenience and stated that he should apologize to Staff also.

Mr. Nicholson stated that he began his comments with an apology to everyone.

Commissioner Mehranian stated that everything the Commission studied and discussed "has not happened and there is an issue of what is really there".

Mr. Nicholson commented that what happened was a mistake and not done maliciously.

Vice Chairman Engler opened the public hearing.

Pat Kendall, 1292 Journey's End, thanked the Commission for looking after the neighbors' interests. He did not want the new owners to move in until the project is satisfactorily completed. Mr. Kendall advised of runoff from the project to the street that has not been cleaned and that sand bags are not being used. He further advised that a nearby drainage culvert is in need of cleaning, especially with the rains and mud runoff.

Vice Chairman Engler referred Mr. Kendall to the Public Works department to deal with the culvert and Commissioner Brown felt the runoff, etc. could be handled via a condition.

Jeff Mellstrom, 1347 Journey's End, thanked Staff for its efforts and asked that compliance with conditions be verified. If the front fence is set back, he requested that the end of the cedar fence at the north side of the property, be similarly set back. He then addressed the landscaping on the east side. Draft condition No. 12 requires installation of fast growing evergreens. He suggested that three, 36-inch box size trees be planted, subject to consultation with the most affected neighbor and approval of the Director of Community Development. Regarding replacements for the magnolia tree, he concurred with 72"-box trees, but preferred

oaks rather than carrotwood trees. His understanding was that they require frequent pruning and are susceptible to high winds. Lastly, he reported that the private street is cracked and "full of pot holes" as a result of construction vehicles. Mr. Mellstrom felt the applicant should bear 20% of the cost to repair the road, which he advised was the equivalent of \$38,000.

Mr. Mellstrom then spoke on behalf of Bill Russell, who resides immediately east of the subject site. Mr. Russell's requests were that redwoods or cypress be planted on the east side of the site, that the house be painted a neutral color and that a retaining wall at the north side of the property be constructed per Commissioner Engler's prior comments.

Dan Campolo, 1338 Journey's End, resides directly across the street, stated that the street has been "thrashed"; and felt that 20% of the cost to repair the entire street repair should be borne by the applicant. Addressing the magnolia tree, he confirmed that it was "half dead and completely covered with ivy". He was pleased that the magnolia was gone and stated he had no problem with the fence and berm "as is".

William Bradford, 1332 Journey's End, felt that the newly created berm is on top of the 'old' roadbed. Because the road narrows in that area, he felt moving the berm back would be an improvement.

Terry D'Angona, 1260 Journey's End, reported that the homeowners' association has met with Mr. Nicholson, to discuss damage to the private street by construction vehicles. She reported that Mr. Nicholson did not believe he was responsible "that much" as trucks from other construction projects on Journey's End have contributed to the road damage. Ms. D'Angona further advised that she met with the new owners who would like the fence to remain in its current location to preserve as much yard as possible. The neighbors are amenable to that request and further, would like to be compensated for the road damage.

Bret Read, 1375 Journeys End, thanked the Planning Commissioners for their diligence and knowledge. He noted that this project encompassed two staging areas; he stated it "would be a nice gesture for the builder to offer to repair the street".

Jim Short, 1224 Journey's End, thanked the Planning Commissioners for their efforts and concurred with concerns expressed by neighbors who are more impacted than he is. He suggested that a standard condition should be included in approvals requiring developers to repair streets that they damage. Mr. Short asked the Commission to consider if there is any way the safety of the corner could be maintained and allow the fence to remain. He suggested that the developer contribute \$10,000 to the homeowners' association fund and allow the buyers of the property to move in.

Further comments were not offered and the public hearing was closed.

Lance Walter, a partner of Before and After, a passive investment partnership comprised of him and Mr. Stern, advised the Commission that until 30 days prior, he was unaware of the problems. He advised of having canvassed the neighborhood the prior Friday and left a copy of the revised plan in the neighbors' mailboxes. Mr. Walters stated that he would assume responsibility for whatever conditions are imposed "to see that the house is built in a safe and sane way". He thanked the Commission for its comments and thanked Staff for their efforts. Mr. Walter noted that they are very close to completing the house and that it is important for the buyers to move in. He offered to meet with the neighbors and have them talk to people with whom he's conducted business over 30 years. He stated he was willing to do what he could to repair damage to the street and apologized "for what's gone on".

Vice Chair Engler solicited comments from the Commissioners.

Commissioner Brown stated that it was worth noting that the project triggered a Depth Review and that several Commissioners felt the house was too big to begin with. The house "just squeaked under the wire, as did the pool and fence front yard encroachments". He recalled the lengthy hearing when he thought the Commission clearly expressed what the appropriate 'fix' was. He stated that every single point made was ignored and adding to his frustration, he found several discrepancies between the approved landscape plan and what was installed. Commissioner Brown commented that there is typically a certain amount of good

faith between the developers and the Commission; however, these discrepancies seemed rather intentional. He could not support proceeding at this time, given the lack of agreement on the basic issue of where the datum point is. As written, the conditions meet the concerns expressed by the Commission with the exception that he agreed with Mr. Mellstrom that the wood fence needs to be set back. He questioned if the Commission should be more specific with regard to the trees, as the revised landscape plan shows they might block views. It needs to be determined if carrotwood trees are subject to wind or maintenance problems, otherwise, he felt they should be shifted to the north and closer to where the magnolia was located. Commissioner Brown stated that since the rains have washed away the dirt, the damage to the street is rather striking; the pavement is in fairly good shape, but the deterioration begins at the curb. He asked that a condition be added that road be repaired to "first class" condition along the frontage. Along the east property line - what's proposed to be installed is not what was approved at the initial hearing; the landscaping along the northern fence appears to be problematic, as the "proper" size trees were not installed.

Commissioner Mehranian felt that a new landscape plan should be submitted. She stated that what was missing for her was communication of what they are doing and why and a baseline of "before and after" i.e., what happened to the slope when the slope was brought in compared with what was approved. She also believed that the applicant should pay his share of road repairs, but not more than anyone else pays.

Commissioner Gelhaar commented on the long process and stated that he was not prepared to act without a revised landscape plan. He asked that the applicant work with Staff and the neighbors to the north and east and arrive at an agreement as to what plantings are acceptable. He questioned Mr. Nicholson's statement that the existing berm slope is 2:1 and asked that Staff identify where the right-of-way is so that accurate measurements could be taken. Commissioner Gelhaar also asked that story poles be erected to depict the fence location.

Vice Chairman Engler expressed agreement with all statements made by his colleagues. He stated that he was

reluctant to have the Commission involve itself with a private road, but felt it would show good faith if the partners were willing to pay their pro rata share for the repairs.

For the record, Mr. Stern agreed to a pro rata share.

Commissioner Brown confirmed that the Commissioners were not concerned with the fence post spacing. He wholeheartedly agreed that stakes need to be erected to identify the fence location and the road edge.

Following a short discussion with the applicant of his available options, a continuance was requested to March 12.

M/S/C Mehranian/Brown to continue Modification 01-67 amendment to March 12. Unanimous.

Assistant City Attorney Steres reminded the audience that this was the extent of the notice they would receive for the continued hearing and to make note of the date.

**HILLSIDE DEVELOPMENT PERMIT 01-53;
MODIFICATION 02-06;
CHARLES;
3991 HAMPSTEAD RD.:**

Planning Assistant Gjolme reported the applicant's proposal to expand the first-floor of their residence by 423-sf and to construct a new, 1,060-sf, second-floor. The subject site has a 30% average slope and is located on the west side of Hampstead Road, directly across its intersection with Stratford Drive, in the R-1-20,000 Zone.

The 29,621-sf property rises sharply from the street along the entire frontage, to a fairly level pad, which accommodates a 2,000-sf, single-story home.

The project would expand the house along its perimeter at the first floor level. A front porch would be enclosed and extended forward by 15 ft to create a two-story colonnade and covered front porch. The northeast corner would be minimally expanded and a new wooden deck would be constructed. At approximately 18" above grade and unroofed, it is not calculated as floor area.

The focus of the request is the new second floor that would comprise a master suite and office. It would be positioned on the north $\frac{3}{4}$ portion of the home and encroach 5' 6" into the required 20-ft north side yard setback. The most northern portion includes a roofed deck, which would not extend

beyond the first-floor building line, but would allow unobstructed views in to the down slope neighbor's entry and kitchen areas. Since the new deck precludes substantial landscape planting as mitigation, Staff recommended either relocating or eliminating the deck. This would also reduce the amount of encroachment by 50%.

Staff made several site visits and to neighboring homes. The site and immediate area is relatively remote and the house is not visible from short or long-range distances. Staff concluded that the project would not introduce unreasonable bulk nor affect the character of the area. Staff recommended positive findings and project approval.

Responding to a question from Vice Chair Engler, Planning Assistant Gjolme advised that the property down slope is approximately 50 ft away from the project site.

Commissioner Brown confirmed that Staff was suggesting that the second-floor covered balcony be eliminated, rather than the deck.

Project architect, Noel Hart, advised that his client has met with the neighbor who resides down slope from the site and there was no problem with the covered balcony. Answering a question from Commissioner Brown, Mr. Hart confirmed that standing on the porch, one could see into the neighboring yard and doubted that view would extend inside the house.

Joshua Smith, 4005 Hampstead Road, identified himself as the "down slope neighbor". He has a view of the applicants' home and the future second story roofline and it has not been a problem throughout three different property owners. He advised that he was aware of the deck on the applicants' property when he purchased his home. Mr. Smith thanked the Commission for their efforts and Staff for viewing the project site from his perspective and supported the project.

Further commentary was not offered and the public hearing was closed.

Commissioner Gelhaar felt that the project was exceptional and noted that adding landscape screening would only serve to block the views from the applicants' property.

For the record, Mrs. Charles advised that installing landscaping on Mr. Smith's property was discussed with him.

Commissioner Mehranian stated the project was proportionate to the size of the property and home. She did not have concerns with the project as submitted.

Commissioner Brown stated that he did not have a problem with Staff's recommendation and recognized that the balcony was important to the applicant. He concurred with Commissioner Engler that the Commission needs to evaluate submittals based on whoever occupies nearby homes and beyond the current residents, no matter how well they get along. He noted the irony that Mr. Smith could protect his privacy by planting landscape screening on his property. With that assurance, he could support the request.

Vice Chairman Engler concurred and pointed out that the property is well screened by oak trees and that the addition would be unobtrusive.

M/S/C Brown/Gelhaar to approve Hillside Development Permit 01-53 and Modification 02-06 as submitted and eliminating draft condition No. 12. Unanimous.

A five minute recess was taken at this point. The Commission reconvened at 8:21 p.m.

**HILLSIDE
DEVELOPMENT
PERMIT 01-61 (admin.);
VARIANCE 01-15; VAN
SCHOONENBERG;
524 DARTMOUTH PL.:**

Assistant Planner Gjolme advised that an identical request for a house addition was unanimously approved in May 1999. Because the project expired before permits were pulled, the applicant is required to reapply. Assistant Planner Gjolme noted that while the additions to the house remain the same, an 18' x 78' open terrace is now proposed at the rear of the residence. It would not be roofed and therefore is not included in floor area calculations. Two of its sections project over the slope and constitute a new datum point from which a maximum 10-ft height is established.

Responding to a question from Commissioner Mehranian, Planning Assistant Gjolme explained that within the setback, the terrace is reviewed as a “wall” because of its height, appearance and massing.

Don Bryant, project designer, commented on the significant attention given to the details, as the home is a 1923 Paul Williams design. Focusing on those details resulted in his overlooking the one-year extension

Vice Chairman Engler opened the public hearing. Comments were not offered, and the public hearing was closed.

Commissioner Brown observed that the project appeared sensitive to the classic architecture.

Commissioner Gelhaar concurred and added that the project would be a very positive addition the back yard setting. He recommended adding a condition restricting construction vehicles to park on Hillcrest because of the narrowness of Dartmouth Place.

Mr. Bryant advised that it would be useful to have a truck on Dartmouth during demolition of the porch and slab.

The Commissioners agreed that would be acceptable and concurred that the truck would not be there over night or on week ends.

M/S/C Mehranian/Gelhaar to approve Hillside Development Permit 01-61 and Variance 01-15 as submitted, with an added condition to prohibit construction parking on Dartmouth Place with the exception of temporary daytime parking for debris removal. Unanimous.

**PUBLIC MEETING:
MODIFICATION 01-74;
MASSON;
4239 OAKWOOD AVE.:**

Assistant Planner Gjolme recalled that a request for reconsideration of project denial was granted based on the applicant’s advice that critical information was omitted at the initial hearing. The Commission did not consider the project to be intrusive, but a majority denied the request based on the lack of hardship or compelling necessity.

The applicant seeks to construct a new, detached garage which would encroach 2 ft into the required 5-ft, north side

yard setback. The applicant's position is that allowing the project as submitted would provide a view of the back yard pool from the family room.

Staff made three site visits and concurs that some views from the family room would be block if the garage were constructed to meet setback requirements. The contractor erected a mock facade so the Commission could better visualize the difference between a 5 ft and a 3 ft setback. While the difference is minor, Staff felt that a legitimate safety concern was shown. Staff continued to recommend that the garage construction be allowed at 3 ft from the side property line as requested.

Don Deane of Bleu Construction, thanked the Commission for allowing the reconsideration. He felt the mock facade, which he erected, demonstrated that full visibility of the pool would be possible from the family room if the garage were set back 3 ft rather than the required 5 ft. He noted that the neighbor to the north had provided written support and added that when constructed, the garage would be used for vehicles, rather than storage, as is oftentimes the case.

Vice-Chairman Engler stated that he continued to support the request out of concern for maneuverability of cars entering and exiting the garage.

Commissioner Gelhaar stated that he changed his mind and was willing to support the request, based on Vice Chairman Engler's comment regarding the hardship of maneuvering cars. He asked that language be stricken from item 3 of the Resolution which he felt could be interpreted that the City believes allowing the request made for a safe situation. He noted that unless a person was standing in the south half of the family room, the pool is still obstructed from view.

Assistant City Attorney Steres commented that the wording should only remain if that was the basis for support. Two Commissioners thus far, expressed support for the request based on conditions other than safety.

Commissioner Brown commented that he opposed the project initially based on the lack of necessity. His recall was that the only justification given at that time was 'appearance'

and the Commission didn't have the benefit of the mock garage. While a 3-ft setback minimally exposes sight of the pool, that would be true standing anywhere in the house. While it is as "close call", he felt that he could support the request at this time.

Commissioner Mehranian preferred that the required setback be maintained and noted that it appeared the applicant had the support of the majority this time.

M/S/C Gelhaar/Brown to approve Modification 01-74 as requested and striking language from the Resolution as noted by Commissioner Gelhaar. 3 Ayes. No: Mehranian.

**OTHER BUSINESS:
Net Lot Area
determination**

Senior Planner Buss referred to the information provided as requested by the Commissioners and he reminded the Commissioners that this was for informational purposes only.

Assistant City Attorney Steres commented that the information provided by Staff responds to the issue raised by Mr. Kimbrough at a prior hearing. The issue is straight-forward: lot area in the R-1 zone for purposes of development standards does not include the right-of-way. Any development standard, which based on where the lot lines are or what the lot area is, never includes the public right-of-way. This applies whether the right-of-way is dedicated in fee or as an easement to the City. The majority of the City's street dedications are by easements; few are in fee. Many of the streets in the City are not fully improved with parkway, curbs and sidewalks, the actual right of way line is not where the pavement ends in many residential neighborhoods. He added that this item was on the agenda as requested by Mr. Kimbrough, who can speak and argue why he believes the code is wrong and if he wants to put the code on trial, he certainly can, but no determination or decision would be made by the Commission at this point.

Mr. Kimbrough asked if the Commission received the City's position in the form of an ordinance.

Attorney Steres responded that a copy of the Code section was not included; however, the R-1 Code refers to lot size thresholds and sets forth what the floor area ratios are.

Mr. Kimbrough stated that was never a disputed issue. "What the argument is how do you calculate lot size? - that's not in the Ordinance". He added that he and the Commission asked for that last time and it had yet to be provided. He distributed excerpts of California law which state that "the easement belongs to me and I can use it for my purposes other than constructing something in it that would not normally be on public property. I don't want to do that". Mr. Kimbrough informed the Commission that he has lived in the same house for 24 years and he considers his neighbors to be family. When he decided to remain in the community and enlarge his home, he took his two-story design to the Planning Department and was told that he couldn't build it. He subsequently modified his plans to meet the angle plane requirement, setbacks, etc., and filed for a Floor Area Modification, which was followed by a letter from the City stating that his lot was not 8,300+ sf, but 6,900 sf. He then explained that his property is wedge-shaped and is comprised of 110 ft frontage and 45 ft at the rear, which contributes to "setback problems". His current home is 1,381 sf plus a 640-sf, detached garage. His proposal is to put 154-sf on the first floor and 1,049 sf of new second floor, which would follow the first floor building line. Mr. Kimbrough stated "that's not a mansion, there's nothing wrong with that house; it fits the neighborhood". He further pointed out that his neighbors have provided written support of his design. Mr. Kimbrough stated that he was being rebuffed at every turn and Staff insists that he apply for a Variance.

Vice-Chairman Engler advised Mr. Kimbrough that he was willing to allow him to speak as long as he wished but the Planning Commission had to follow the rules.

Vice-Chairman Engler suggested that he at least apply for a Variance and allow the Commission the opportunity to review his request.

Attorney Steres informed Mr. Kimbrough that the Commissioners were telling him there is a process of which he can avail himself, but they cannot take any action without an application before them. Other options include rechecking his calculations or reducing the size of his home.

Commissioner Brown commented that the Commission has consistently applied the lot definition exactly as it's being applied to him. He suggested that if Mr. Kimbrough wanted to challenge that, he needs to exhaust his remedies and proceed through the City's process. No Commissioner is making a judgment on his design, lot or situation and cannot do so until he applies for a Variance.

Mr. Kimbrough stated that he would apply for a Variance.

**COMMENTS FROM
THE
COMMISSIONERS:**

Commissioner apologized to Staff for the lengthy meeting on January 23 and hoped the Commission would not allow that to happen again.

Vice-Chairman Engler recalled there was an unwritten policy to conclude meetings at 11:00 pm.

Commissioner Brown referred to Decorative Fence 01-13 for 777 Georgian Road, Condition No. 3 contains a double negative and the intent should be clarified.

Commissioner Mehranian reported that the property at 4040 Chevy Chase, which is undergoing construction, needs to be inspected for failure to protect oak trees from construction debris.

**COMMENTS FROM
THE DIRECTOR:**

Senior Planner Buss conveyed a reminder from Director Stanley that he has yet to hear from Chairman Levine and Commissioner Engler regarding their availability to meet with the City Manager.

Assistant City Attorney Steres commented on the Journey's End project and the issue that arose regarding damage and repairs to the private road. He confirmed that the Commissioners were aware that it is not an issue for the Planning Commission. It was, however, a good lesson to add a standard condition for future projects on private roads that the street be maintained.

ADJOURNMENT::

M/S/C Gelhaar/Mehranian to adjourn at 9:10 p.m.
Unanimous.