

**MINUTES OF A MEETING OF THE PLANNING COMMISSION  
OF THE  
CITY OF LA CAÑADA FLINTRIDGE  
HELD SEPTEMBER 9, 2003**

**I. CALL TO ORDER:**

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

**II. ROLL CALL:**

Present were Commissioners Davitt, Gelhaar, Levine and Mehranian, City Attorney Steres, Director of Community Development Stanley, Planner Cantrell, Assistant Planner Gjolme, Planning Aide Shimazu.

**III. COMMENTS FROM THE PUBLIC:**

No comments were offered.

**IV. CONSENT CALENDAR:**

**A.** M/S/C Davitt/Gelhaar to adopt the Minutes of July 22, 2003 with modifications submitted.  
Unanimous.

**B. Resolution 03-52; denying Modification 03-18; Sardo; 1629 Verdugo Boulevard.**  
Cindy Sardo, owner of 1629 Verdugo Boulevard wished to speak before the Planning Commissioners.

City Attorney Steres responded to a question from Chairman Engler whether it was appropriate to hear the applicant's testimony. Attorney Steres stated that agenda items under, "Comments from the Public" or "Comments not on the Agenda" would be more appropriate. However the applicant is allowed to present her case.

Chairman Engler allowed the applicant to speak.

Mrs. Sardo stated that the Resolution had no evidence to support denial. She was present at the last meeting; however missed the opportunity to make her presentation. Mrs. Sardo stated that no opposition or testimony from her neighboring properties were noted, therefore she was under the assumption that the request would be approved. In fact, the neighbors fully supported the project and were willing to speak before the Commission if need be.

Chairman Engler stated he was not present at the last meeting and could not comment.

Commissioner Levine recalled that the Commission had directed Staff to investigate illegally built structures along Verdugo Boulevard and have those property owners proceed through the system.

Attorney Steres informed the Commission that they could either adopt the Resolution or entertain a motion of reconsideration; a new hearing would be held and the applicant would have the opportunity to present their evidence. However, the applicant must explain why the matter should

be reconsidered to the Planning Commission. If the motion to reconsider is denied, then Mrs. Sardo would have the option to appeal to the City Council.

Mrs. Sardo requested that the Planning Commission reconsider the matter.

Commissioner Gelhaar stated that the applicant does not have to demolish the entire wall; however, it would comply with code if three top layers of blocks were taken down. Otherwise, He would not support the request.

Commissioner Mehranian commented that there is not enough evidence to reconsider and that the wall does not comply with code.

M/S/C Gelhaar/Levine to deny reconsideration and approve Resolution 03-52 denying existing wall and pilasters to exceed the maximum height within the front yard setback. Unanimous.

## **V. CONTINUED PUBLIC HEARING:**

### **A. Hillside Development Permit 03-30; Modification 03-34 (Admin); Variance 03-09; Brestring; 660 Foxwood Road.**

Planner Gjolme recalled that on July 22<sup>nd</sup>, the Planning Commission had concerns with massing and the proposed 6' 6" north side yard setback. The project was revised to reduce the length of the addition by 12 feet, which reduced the total area from 1,600 to 1,240 square feet. Recessing the garage 12 feet had a favorable effect of increasing the front yard setback from 72 to 84 feet. The City Attorney reviewed the Variance and Modification components of the request, and determined that they were no longer required since the entirety of the project complies with the 15-foot height limit for accessory structures. The Setback Modification has been downgraded to Staff level since the encroachment presented by the addition is less extensive than the encroachment demonstrated by the existing garage. The Setback Modification component has been approved by Staff since written endorsement of the project from all adjacent neighbors was obtained. The Hillside portion of the project remains before the Commission. Staff continues to recommend positive Hillside findings and project approval.

Chairman Engler opened the public hearing.

Project Architect, Jay Johnson, stated although the depth of the structure is approximately 60ft, it could not be seen from the street and looks like a traditional 3 car garage. All adjacent neighbors have reviewed the plans and given their endorsements. The property owner has a need for a large garage and believes that it fits the general plan of the community. Efforts have been made to compromise with the Commission by reducing the size of the project.

Commissioner Gelhaar was concerned with the appearance of the garage to the West. He was aware that the current neighbors approved the plans, but, knows the pressure involved in neighborhood relationships. He tried to make his judgment based on concerns of future property owners.

Commissioner Gelhaar visited the neighbors to the West and was unable to contact them. He was able to gain access to their yard and viewed the garage as a two-story structure.

Commissioner Gelhaar cannot support hillside findings for 7 and 8 from the Resolution.

Commissioner Levine had no comments.

Commissioner Mehranian was concerned with the size of the expanded garage and its proximity to the West side property line. She questioned the long term affects of the project.

Commissioner Davitt visited the site and acknowledged the neighbor's support and the applicant's effort to reduce the project. Therefore, he supported Staff's recommendations for approval.

Chairman Engler was not present in the last meeting; however, he requested to add a condition that the garage could never be converted to habitable space.

Commissioner Mehranian concurred with Chairman Engler, stating that she would support the project if the aforementioned condition was added.

Chairman Engler requested Staff to add the standard verbiage for parking and construction delivery in the conditions.

Director Stanley recalled there was disagreement among the Commissioners and he requested a meeting to resolve this issue.

M/S/C Mehranian/Davitt to approve Hillside Development Permit 03-30 with added condition that the structure can never be converted to habitable space. 3 Ayes. Gelhaar and Levine dissenting.

**B. Hillside Development Permit 03-41 (Adm); Modification 03-45; Floor Area Review 03-16; Franke; 3701 Madison Road:**

Planner Gjolme described the applicant's request involved three primary components:

1. Conversion of an existing garage into a media room and maid's quarters.
2. Construction of a new 2-car garage at the northwest corner of the residence, and
3. A 2<sup>nd</sup> floor addition along the north side of the home.

The project site is a hairpin corner lot, located northeast of Inverness Drive and Madison Road, in the R-1-20,000 zone. The request is for a Hillside Development Permit to allow an 877sq. ft. addition to an existing 2-story residence, with the majority of new space devoted to the new garage. In addition, a Setback Modification and Floor Area Review were also requested. The Modification would allow a new garage to encroach 6 feet into the required 12 foot north side yard setback; and allow the 2<sup>nd</sup> floor addition to encroach 6 feet into the required 20-foot north side yard setback.

A new driveway, accessing Inverness Drive, would be in proximity to a large multi-trunk oak tree near the northwest corner of the property. Based on an arborist report, adverse impacts on the tree's vitality are not anticipated. A condition of approval includes tree protection guidelines during all phases of construction. A portion of another large oak would be in proximity to the 2<sup>nd</sup> floor addition, though canopy trimming should be minimal, a condition of approval would require compensatory landscape screening.

Floor Area Review was also requested since the project presented 126sq. ft of area. Staff viewed this as somewhat technical since a majority of the excess area would be comprised of a subterranean maid's room, which would have no visual correlation with the remainder of the home.

Planner Gjolme explained that the neighbor to the north has expressed privacy concerns. Staff believed that it could be addressed through landscaping. The applicant has expressed willingness to provide additional screening if the Planning Commission deemed it fit.

Staff viewed the Modification as the critical component of the request and would remind the Commission that the 2<sup>nd</sup> –floor addition, alone, qualifies only for administrative review. However since the neighbor to the north does not support the project, the Modification is subject to Planning Commission review. The garage presented a 6-foot encroachment into the north side yard setback, Staff believed that adequate screening in place and would be retained. Staff does not anticipate any adverse visual or use impact from the garage. Therefore, Staff recommended positive Hillside, Modification, and Floor Area Review findings subject to the aforementioned conditions.

Commissioner Levine questioned whether trash enclosures were considered structures.

Director Stanley advised that trash enclosures are not considered structures if it is not covered and the height of the walls are below 6 feet.

Planner Gjolme added that the enclosures are approximately 42” in height for the project.

Applicant, Jim Franke, advised that the existing garage, which was built in the 1920’s, had very narrow lots to fit any vehicles. Originally, the request was to build a smaller garage in order to comply with code. However, the applicant was advised by Staff to construct a larger garage.

Mr. Franke was aware of the privacy issue with his neighbors and requested that they be allowed to speak before the Commission so that he could address their concerns.

Chairman Engler opened the public hearing.

Mrs. Sawajkowski, 1115 Inverness Drive, stated that she and her husband have no other objections to the development except the placement of 2 North facing windows. The windows would look directly into their backyard as well as their bedroom. To remedy the privacy issue, the applicant offered to plant a large tree to cover the windows. However, she believed that it would only create an architectural band aid. Once the windows are built, they are permanent. She stated trees can be cut down, diseased, or cause severe damage to the structure. She complained that it would infringe in personal space and disrupt privacy.

Mr. Franke had submitted photographs depicting current view of the neighbor’s backyard from the existing 2<sup>nd</sup> floor bathroom window; the neighbor’s new deck overlooking applicant’s backyard; and landscaping in front of a window to preserve privacy. He suggested with appropriate landscaping, it would accomplish privacy for both parties, and architectural integrity of the home can be accomplished.

Commissioner Gelhaar suggested installing a window on the east side of the home.

Applicant responded that the idea was considered and unfortunately, the roof line is slanted making it difficult to install windows at that location. He stated that it would have to be a triangular window that is 1 foot high.

Director Stanley recommended clearstory windows which have been required on other projects. The windows have to be placed high enough to where line of sight below is not visible. They would allow air circulation and light into the room.

Commissioner Levine suggested reducing the windows to half the size to comply with the windows located to the west.

The Applicant stated that he would be more comfortable making the windows the same size as the 2<sup>nd</sup> floor bedroom.

Commissioner Davitt was concerned with the window overlooking the neighbor's bathroom.

Mr. Franke responded that he already has views into neighboring property from the existing 2<sup>nd</sup> floor and that there will be a net increase of one window.

Responding to a question from Commissioner Levine, Attorney Steres confirmed that the motion will pass on a 2 to 1 vote.

Commissioner Davitt supported the request and can make all the findings including size reduction of the windows and appropriate landscaping for privacy. However, he was concerned with the neighbor to the north being in close proximity to the project.

Commissioner Gelhaar was concerned with the 2<sup>nd</sup> floor 6'-3" encroachment and the location of the proposed garage. He was not convinced it is in the right location and preferred the location of the existing garage. He believed it is along a wider street and a setback modification would not be required.

Commissioner Levine stated that he would likely support the 2<sup>nd</sup> floor addition based on architectural elements of smaller windows. However, cannot make the required findings for the 6-ft setback encroachment by the garage.

Planner Gjolme addressed concerns raised by the Commissioners informing them that the project is qualified as a hairpin lot. Staff came up with a skewed average width of 120-ft from which 12-ft requirement and 6-ft encroachment are derived. If the lot was not considered hairpin, the width of the property along Inverness and at the rear property line would be approximately 100-ft. That would yield a 10-ft requirement and corresponding 4ft, rather than a 6-ft encroachment.

Commissioners Levine and Gelhaar stated that their previous comments remain the same.

Commissioner Levine commented that if he called for a vote, the outcome would likely be a denial. There are concerns with encroachments and suggested the applicant entertain a continuance for a possible redesign.

Mr. Franke requested a continuance however would like to present the Commission how the garage would fit the architecture, and that it would not change the roof line of the structure.

Commissioner Levine responded that tonight would not be appropriate and that the applicant should proceed with the redesign. If the same proposal comes back to the Planning Commission and gets denied, he informed Mr. Franke that he may appeal to the City Council.

Commissioner Gelhaar added that the applicant has the right to continue the matter and talk to the Commissioners individually to work through the process.

Commissioner Levine informed the public that the project will not be re-noticed or advertised.

M/S/C Gelhaar, Davitt to continue Hillside Development 03-41, and Modification 03-45 to October 14<sup>th</sup>. Unanimous.

**C. Tree Removal Request 03-33; Rohan; 2074 Hilldale Avenue.**

Planning Aide Shimazu described the applicant's request to remove an Oak tree of approximately 45 inches, as measured 4-ft above grade, located within the rear yard, 3'6" away from the foundation of an existing one-story home.

The tree is considered mature or scenic and is subject to environmental review. The Negative Declaration indicates that no significant impacts on the environment will result from removal provided that replacement trees are installed. Inspections revealed no damage to the foundation however; the oak roots have caused some buckling to the bricks of the rear patio.

Staff communicated with a structural engineer for the applicant, and was informed that the cost of bridging the roots would be similar to that of removing the oak and rebuilding the foundation. Also, a certified arborist for the applicant states that future root growth could be prevented or delayed by reducing the canopy on a regular basis. Staff determined the best alternative would be to require trimming of the crown and monitoring of the tree's health over time. A second alternative would be to install a footing that bridges the roots in conjunction with periodic canopy reduction.

Staff recommended that the tree removal permit be denied and that life-extending activities for the tree be given an opportunity to exhibit favorable results.

Chairman Engler commented that if the building was constructed slab-on-grade, structural damages from the oak tree would accelerate as opposed to a raised foundation.

Responding to a question from Commissioner Gelhaar, Director Stanley conducted an investigation for cracks on the site, and discovered no signs of buckling or disruption, cracks around the window, dry wall or floor. Also, the house was possibly constructed on raised floors because a crawl space seemed to be apparent.

Commissioner Gelhaar was concerned if any structural engineers investigated the site.

Director Stanley responded that a structural engineer informed him of an alternative to removing the oak tree. The technique is called, "bridging", where the footing is designed to bridge over the roots; this would allow growth room for the roots. Along with the bridging idea, another technique mentioned by an arborist was to reduce the canopy, which would delay the growth of the roots as well. With these options combined, it would buy the owner some substantial time for the room addition. Director Stanley also added that some homes on Beulah and Lyans were required to use these techniques.

Responding to a question from Commissioner Gelhaar, Director Stanley stated that the bridge system is done underneath the foundation. The engineering process consists of removal of the tree, pulling the roots out, and putting slurry in place of where the large hole was created. The cost

incurred would be comparable if including the cost of removing the tree and all the sub work. He stated that either way, the engineer has to work underneath the foundation.

Chairman Engler opened the public hearing.

Property Owner, Melissa Rohan, submitted pictures depicting cracks on the foundation above the steps where the threshold and jam began to separate. She also forwarded documents from the structural engineer.

Responding to a question raised by Commissioner Mehranian, she informed that the new addition to the structure was built 8 years ago. Cracks in the foundation were evident approximately 1 ½ years ago, 6 years after construction.

Commissioner Levine was concerned if the structure was permitted.

Ms. Rohan responded that she was not the developer. The original plans depicted the structure and not the tree. She informed the Commissioners that a city employee inspected and approved the building. She added that the City Tree Ordinance was adopted on November 23, 1993.

Chairman Engler questioned when the addition was done, and if any provisions were taken regarding the root system.

Ms. Rohan responded that the project contractor did not place a bridging system over the roots. In addition, according to the structural engineer, the total cost for the bridging system is approximately \$7,800. The owner stated that she has a bid from a tree arborist to remove the oak tree for approximately \$2,200 plus an additional \$5,000 to repair the damages to the building. She stated that there is a significant difference in costs.

Commissioner Mehranian questioned how old the brickwork was.

Ms. Rohan responded that the brickwork was laid approximately 8 years ago. She added that there were several problematic issues she encountered. A brick mason had cut the bricks in several different locations approximately 1 ½ years ago, however the roots continue to cause uplifting. In regards to pruning, oak trees can only be pruned during the month of July and August, which have passed. Another issued is the slab foundation and impact by the root system. If the root system were to attack that area, the tree must be removed. The Owner stated that she felt a little buckling in the floor. She informed Director Stanley, however, without removing the carpet, it is not evident.

Responding to a question from Commissioner Mehranian, Ms. Rohan stated that the bricks were in tack with the exception of what was around the tree when she moved in. The house was purchased 3 years ago and the owner, who had been monitoring the situation, started to notice buckling in the foundation approximately 2 years ago and the cracks about a year ago.

The Applicant disagreed with the bridging idea. She stated, "*[that] it would only create a band aid on the problem.*" In a year, she will be back before the Commission, requesting for a tree removal. Chairman Engler asked Director Stanley if the property was investigated to place a replacement tree on site.

Director Stanley responded that surrounding properties have trees placed fairly close to the development. He commented that if the subject tree was removed, the Commission might start a trend of neighboring properties requesting tree removals.

Commissioner Mehranian questioned Director Stanley as to the validity of his suggested proposal, i.e. *"I want to know how substantiated this would be versus some other report you may have"*.

Director Stanley responded that his findings were derived from the facts that were presented to him by the engineer.

Chairman Engler expressed concerns as to the perspective health of the tree; which was not addressed in the arborist report. He also questioned whether the tree was considered dangerous.

Director Stanley responded that he assumed the arborist thought it was a healthy tree because the roots continued to grow.

Ms. Rohan commented that the engineer informed her that the tree, being between the ages of 100 to 150 years old, has a root system that is now compacted against the foundation. If any cutting of the roots were to commence, it would leave the tree susceptible to infestation by beetles, thus weakening the tree further and increasing the likelihood of it falling in high winds.

Comments were not offered from the public; Chairman Engler closed the public hearing.

Commissioner Davitt stated after visiting the site and reviewing the reports with suggested alternatives, the fact remains that the tree is uprooting the foundation. He stated that it is a beautiful tree and disliked the notion of having to remove it, however, he would support the replacement with another more advantageously placed tree.

Commissioner Mehranian understood the immediate discomforts of the owner of keeping the tree, however believed that the owner should live with some of the costs in trying to extend its life. She concurs with Staff's recommendations to further explore options of saving the tree before removal.

Commissioner Gelhaar concurred with Commissioner Davitt. He commented that the city allowed the structure to be built near the tree and felt that the Commission should take some responsibility to mitigate the issue. He believed that any costs to prolong the life of the tree would be fruitless. He would approve the tree removal request and stated that 1-3 trees should be placed in La Canada.

Commissioner Levine commented that the health of the tree is not in jeopardy, however believed that the structure is the item of concern. He stated the only way he would approve the extraction of the tree was on the condition that no structure would be built in place of, or within the perimeters of the tree at any time.

Chairman Engler commented that he would approve the tree removal request under the condition that it's replaced with 3-48" inch box trees or the cost is deposited in the tree fund.

Commissioner Gelhaar concurred with Chairman Engler.

M/S/C Gelhaar/Davitt to approve Tree Removal Permit 03-33 with an added condition to replace the oak tree with 3-48" box trees or the cost be deposited in the tree fund.

Attorney Steres advised Commission Levine that the requested condition for not building anything in place of the tree is not appropriate for a tree removal request. The motion passed 3-1-1. Abstain Levine; Mehranian dissenting.

Director Stanley reminded the applicant that the Commission required 3-48" inch box trees for replacements or the option to pay the fee.

Chairman Engler requested Staff to submit appropriate information to the applicant regarding the net worth of 3-48" box trees from Staff's survey.

## **VII. PUBLIC MEETINGS:**

### **A. Modification 03-55; Sands/Kajer; 1730 Bonita Vista:**

Planner Cantrell described the Applicant's request for a Modification to allow a front setback encroachment of 15'2" for a 500-sf one-story addition. After the addition, the house would remain less than 3,000-sf on a lot of nearly 19,000-sf.

The site is located on the south side of Bonita Vista Drive, between Bubbling Well Drive and Alta Canyada Road in the R-1-20,000 zone.

Planner Cantrell noted that the project involves expansion of the bedroom wing. Part of this addition would be at the rear of the house, but the available area is limited by the pool and landscaping. This led to the decision to also expand the bedroom wing to the front, despite the need for a Modification. The applicant has stated that it was preferable to the by-right alternative of building a second story within code limits.

The reduction in the average setback is modest because the bedroom is only 17ft wide. The average front setback for the subject property is 67'6," which would be reduced to an average of 64-ft. Thus, the average setback would continue to considerably exceed the minimum for absolute setback. Project density would barely exceed one-half the code limit and all the setback encroachments would be visible from off-site. However, the addition would not likely be perceivable as anything but an element of variety. This is within a neighborhood with diverse setbacks.

Staff has concluded that the proposal is well-designed in relation to its site and neighborhood. Staff recommends approval.

The Commissioners did not have questions for Staff. Chairman Engler opened the public hearing.

Property owner and architect, Georgia Kajer, stated that the ranch-styled home was built in 1947. She and her husband requested an additional 500-sf to the 1785-sf home: a bedroom and bathroom would be placed in front of the structure and a closet and bathroom to the rear of the property. She stated that, due to the location of the swimming pool, it would be difficult to avoid a 2-story solution. The Owner stated that this would not be appropriate, although they had the opportunity of gaining a significant amount of square footage. With this in mind, the applicant requested the Commissioner's approval of the project. All adjacent neighboring properties have given their consent. She stated the neighbors were happy that the applicant kept the structure as a 1-story home.

Chairman Engler opened the public hearing.

Mr. Mitchell, a neighbor to the west and directly affected by the proposed project, had no objections for the addition, but, was concerned with the sewage connection. He wanted to know the location of the septic system and the cesspool. He understood there are two septic tanks but unsure if they were connected.

Chairman Engler explained that the owner must go to the L.A. County Health Department in order to determine what is needed for the septic system.

Mrs. Kajer indicated the septic system locations, and that they comprise a septic system large enough for an 8-bedroom house.

Responding to a question from Chairman Engler, the applicant stated that she would have to apply for a permit with the County to get an approval.

Director Stanley added that the whole septic tank permit process is done through the building permit stage. The applicant is not able to pull permits without the L.A. County Health Department's approval. She must have sufficient septic systems for the house. In addition, once sewers have been approved, the property would be required to connect to sewers.

There were no further comments from the public; Chairman Engler closed the public hearing.

Commissioner Mehranian complimented the applicant for the size of the addition and maintaining the 1-story level. She supported the project.

Commissioner Davitt concurred with Commissioner Mehranian.

Responding to a question from Commissioner Levine, Planner Cantrell stated that private streets are required to maintain the same setbacks as public streets. However, on a private street, the setbacks are measured from the edge of the road, whereas on public streets, the front property line is usually behind a parkway.

Commissioner Levine commented that he liked what the applicant has done in terms of the addition. The Setback Modifications he approves are projects that can maintain the same line of sight. He found it difficult to support encroachments in the front yard setback. However, he commented that the applicant would not have any problems obtaining four votes from the Commission.

Chairman Engler and Commissioner Gelhaar concurred with the majority of the Commission and commended the applicant for keeping the project as a 1-story home.

M/S/C Davitt/Mehranian to approve Setback Modification 03-55. 4 Ayes. Levine dissenting.

**B. Modification 03-41;Eberhardt; 4224 Shepherd's Lane:**

Planner Gjolme described the project site which is on the east side of Shepherds Lane, two properties northeast of its intersection with Descanso Drive, in the R-1-20,000 zone. The project involves largely compliant 1<sup>st</sup>-floor additions to the existing single-story residence, including a 45-sf bedroom expansion that would encroach into the required front setback near the south side of the residence. The existing 37 foot front setback, which is already below the 39-foot requirement for the lot, would be reduced to approximately 33 feet.

Since the existing residence was built along the front setback line, opportunities for compliant expansion are limited only to the rear. Staff viewed this somewhat as a hardship when considering the minor scale of the addition and its aesthetic and functional benefit. All other code requirements are met by the project. The single-story profile would be retained through the project while total building area would be over 1000-sf below the limit for the subject lot.

Staff would recommend positive Modification findings and project approval.

There were no questions for Staff. Chairman Engler opened the public hearing.

Project Architect, Dave De Angelis, stated he would like to increase the size of an unusually small 10'x10' bedroom. He submitted documentation to Staff and the Commission of all abutting neighbor's who approved the addition. The Architect stated that half of the existing house would be demolished to reconstruct the roof lines. He believed the only issue that came up for review was the 4-ft encroachment in the front yard setback. Considering the scale, the actual review is minor compared to the project. He commented that due to extensive construction, he does not believe the home could convert into a 2-story structure in its lifetime. The front setbacks are unfortunately a product of the house he worked on next door. He pushed the house as far back as possible, and it is currently causing some hardship for the current project.

Director Stanley requested the Architect submit the block and setback information to Staff.

Commissioner Levine commented he did not have a problem with the minimal encroachment on the front yard setback until the Architect mentioned half the house would be demolished. Due to the extensive remodeling of the property, he could not make the required findings.

Commissioners Davitt and Gelhaar, and Commissioner Mehranian concurred with Staff's recommendations and conditions.

Chairman Engler commended the applicant for maintaining a single story structure.

M/S/C Gelhaar/Mehranian to approve Modification 03-41 as conditioned. 4 Ayes. Levine dissenting.

## **VIII. OTHER BUSINESS:**

### **A. HDP 03-18; Kalil; 4170 Commonwealth Avenue:**

Planning Aide Shimazu described an appeal of the Director's approval for Hillside Development Permit that allowed an accessory structure to be partially built on a hillside lot. The city received a complaint in April that a detached accessory structure was being constructed without necessary zoning clearance or building permits. Staff conducted a site inspection and notified the property owner of the violation. The owner immediately applied for a Hillside Development Permit and the Director approved the request under the conditions that only 594-sf section of the structure should have a solid roof and the structure shall not exceed 15ft in height.

The proposed structure consists of 600-sf for an entertainment area with a solid roof, partially enclosed by a masonry wall, and a 364-sf eating/barbeque area with an open wooden trellis, along with a flat roof line with a maximum height of 14'2". The main drainage flows down towards the east meandering through the southern portion of the project site.

The city received an appeal letter from Mr. & Mrs. Elmassian, neighbors to the south at 4158 Commonwealth Avenue. They opposed the project due to the following reasons:

1. The applicant poured new foundation covering the creek, obstructing the canal;
2. The applicant has constructed new trellises on top of the trash enclosure wall within the front and side yard setbacks and pool house without building permits or zoning clearances.

After the appeal was filed, the Department of Fish and Game conducted another investigation and determined that the reason for approval is still valid, and no streambed alteration agreement was required.

Planning Aide Shimazu explained the structure in question will not raise any significant hillside issues. The issues that have been raised by the appellants have been answered by the Department of Fish and Game.

Staff recommended that the Planning Commission support the Director's decision to approve the project as conditioned.

Responding to a question from Chairman Engler, Planning Aide Shimazu stated the original approval was for a 594-sf enclosed area with a solid roof and a 364-sf open trellis area. He also confirmed that all the existing wood framings would be demolished.

Commissioner Levine commented that nothing has changed regarding what was originally proposed.

Chairman Engler commented that he wanted to clarify what was originally approved and aware that the owner confirmed the detached accessory structure was initially not permitted. He requested to see an inspector's report from the applicant.

Responding to a question from Chairman Engler, Director Stanley stated that the property owner does not know if an inspector investigated the site. He informed the Commission that in order to pull building permits, the applicant must go through an approval process. The L.A. County Building Inspector must review the engineering plans to make sure they comply with codes and requirements.

Chairman Engler stated that based on what the applicant told him, an inspector did investigate the site.

Director Stanley commented that if he is a certified inspector, it may be acceptable to use his inspection report depending on L.A County Building Inspector's requirements.

Responding to a question from Commissioner Mehranian, Director Stanley responded that currently, the structure does not have a solid roof in place; it is an open trellis or gazebo. He added that the construction has been halted for a significant period of time. In order to continue, there were requirements the applicant had to follow. The applicant must go through the building permit process, and obtain an approval from the Commission. The project was already approved for a Hillside Director's review and Fish and Game's requirements have been met.

Responding to a question from Chairman Engler, Director Stanley responded that a Deputy Inspector's Report was not submitted because the applicant is waiting for an approval at this point. He stated in regards to Building and Safety, the owner is at risk if he submitted the inspector's report

to the L.A. County Building Inspector. He also added that Staff permits customers who were informed of the risk, may proceed through plan check.

Commissioner Mehranian confirmed with Director Stanley, that the structure was compliant at Hillside Director's level. He stated the structure was a Director's review for a hillside project. The property has no hillside impacts on the neighbors because it sits in a "bowl" where there are no view blockage or privacy issues. He added the structure was located in an appropriate area.

In reference to the letter of approval dated June 23, 2003, Commissioner Levine confirmed that Staff level approval of the proposed project is what the neighbor is appealing.

Chairman Engler questioned whether construction of the new trellis built on top of the trash enclosures was within the 6-ft fence height requirement.

Planning Aide Shimazu explained that the over-height fence is technically a code violation. However, he informed the Commission that currently, nothing has been approved and that the matter will be dealt with at Staff level. He stated that the trellis structure has no relation or relevance to the appeal.

Chairman Engler remarked that it should not be placed in the report due to it clouding the issue.

Commissioner Mehranian found it confusing that the project was permitted with 12 conditions, and then later discovering other violations were not part of the approval. She commented that it made it difficult to obtain a clear view.

Planning Aide Shimazu clarified that the trellises are not part of the original Hillside Director's approval, and that it is a separate matter from the appeal.

Chairman Engler requested to hear from the Appellants for clarification.

John Peterson, Appellant's Representative, stated Mr. & Mrs. Elmassian had purchased their home 10 years ago at 4158 Commonwealth Avenue. The streambed was an important issue when they filed for an application with the City. They were told they had to build their structure 25-ft from the existing streambed.

Responding to a question from Commissioner Levine, he stated he does not have the required documentation with him; however, there were revisions to the plans indicating it.

Mr. Peterson added that he was unsure if the requirements were the same 10 years ago. Based upon the precedent assumed in the building of his client's home, they believed that their neighbor's property was being built in violation of City codes. Therefore, Mr. and Mrs. Elmassian reported the violation. The appellants were not aware that permits were not pulled for building the structure. Their only concern was with the streambed. He believed that the focus should not only be within the Fish and Game's jurisdiction, but with the Planning Commission who needs to address the issue whether or not the structure should be built.

Chairman Engler commented to Mr. Peterson that he has not substantiated the conditions of the 25-ft requirement under which the appellant's house was built. Mr. Peterson clarified that he is not stating there is a 25-ft requirement; he was presenting the concerns of his clients.

Mr. Peterson commented that the Fish and Game issued two separate letters stating that they did not believe the proposed project altered the streambed. However, he believed the Fish and Game did not address many issues and that those questions should be questioned before the Planning Commission gives their final consent. He stated there was a provision in the Municipal Code, which gave the Planning Commission independent jurisdiction to determine whether the project could go forward. Mr. Peterson quoted the following sections from the Municipal Code:

**Section 11.35.020**

- Subsection B - required the existing creek be maintained.
- Subsection G - development should be planned to avoid floods and subsidence to residence and structures near hillside areas as well as down stream of project.

He added the appellant's home is located downstream from the proposed project and near a hillside area.

**Section 11.35.043**

- Subsection C- Water course protection.
- Subsection 1 of C- Blockage of watercourses or streambeds is prohibited and any alteration of such features is discouraged.

In addition to the aforementioned code, Mr. Peterson submitted a photograph of the northeast side of the proposed structure depicting the streambed wall. He stated that the applicant had cut into the existing channel wall 2 ½ to 3 ft in order to pour the concrete slab over the creek. He stated that it is an alteration of the existing wall. Another factor that the Fish and Game did not investigate is the water flow. The streambed fills up approximately 85-90% of the height capacity during a rainstorm or flood.

Responding to a question from Chairman Engler, Mr. Peterson did not have documentation of the streambed's flow rates. However, he stated that he had personal testimony from his client who had witnessed it.

Director Stanley commented in regards to alteration of streams, he stated that the stream in question has been channelized for a number of years prior to construction. He stated that the Fish and Game is the Leading Agency in regards to stream alterations. Any information submitted to Staff from them is accepted. However, flow restrictions are reviewed by the Division of Building and Safety. They make determinations whether or not a hydrology study is required for structures.

Mr. Peterson stated that he had spoken to the Fish and Game and they did not perform an analysis on the flow rate of the stream. They only conducted an investigation as to whether there is a structure.

Director Stanley responded that it is not within the Fish and Game's jurisdiction to make that determination. The Building and Safety will require what they feel is necessary.

Mr. Peterson commented that according to the Municipal Code, it is within the Planning Commission and the Building and Safety's purview to conduct the analysis. Also, if the streambed has potential for flooding, the proposed project can be denied or prevented. He stated that during a storm, since the streambed has been lowered from the slab, it has limited the flow capacity for the stream.

Chairman Engler commented that the flow rate has not been accurately established in a 50 – 100

year rain.

Mr. Peterson concurred with Chairman Engler.

Chairman Engler questioned Staff if they received the consultant's design on the alteration of the streambed.

Director Stanley responded that Staff did not receive the said information.

Chairman Engler suggested Staff to complete the process of obtaining proper documentation from the state, the flow rate of the stream, etc. before presenting it to the Commission.

Director Stanley responded that the Commission needed to make a determination as to whether or not the structure should be allowed in the area. The Building and Safety will ensure that any engineering requirements and the Fish and Game requirements are satisfied. He believed the appellant's comment regarding their home being located downstream has no relevance to the proposed project. Mr. & Mrs. Elmassian's property is located significantly above any flood level. He also added that any structure located near the proposed project would not be affected by any flooding.

Director Stanley stated that the Commission could either uphold or deny the appeal.

Commissioner Gelhaar's opinion to Mr. Peterson was that the channel wall heights do not alter the capacity of the streambed.

Mr. Peterson clarified that his clients are not against the proposed project. Their main concern was that the structure would be built on top of the streambed. He stated that if the project was approved, his clients would request that certain conditions be added to the approval.

Chairman Engler requested to hear from the applicant.

Rodney Khan, Planning/Landscaping Consultant, stated that he was at the site when Betty Courtney, Environmental Specialist conducted her investigation of the streambed. They had spoken extensively regarding the matter and concluded that the proposed project met the Fish and Game's requirements. He pointed out that Commonwealth Street was built over the channel as well. The clearance or opening, based on width and height, is much smaller than the streambed located on Mr. Kalil's proposed project. He stated that the owner acknowledged his mistake of building the structure without a permit and when the City notified him, he immediately applied for a permit. Staff has reviewed and approved the application. Mr. Kalil also submitted engineering and inspection reports to the City. The structure is within its setback requirements and in terms of visibility, its location is very low profile. The owner has been sensitive in terms of the location, landscape, and treatment of the structure. Regarding the streambed alteration agreement, the owner would be willing to sign it if it is located on his property.

Chairman Engler questioned whether all the wood framings would be removed and the masonry walls would be installed.

Mr. Kalil, property owner, stated that masonry walls would eventually be put up. He informed the Commission that the plans will be modified in terms of the structure to reflect what is required from the City.

Responding to the question from Chairman Engler, Director Stanley responded that the applicant was allowed to have approximately a 594-sf covered area, and the remaining portion of the project was supposed to be open lattice work.

Chairman Engler commented that a consultant's determination is required on the plans and that data must be submitted to the Fish and Game for approval.

In reference to the Fish and Game's letter, Mr. Khan stated that he is the consultant being referred to in the letter. He stated in terms of the treatment of the slope, the Environmental Specialist identified a significant "drop off" from one level to another. If a few boulders were placed in that area, it would meet the Fish and Game's requirements. Mr. Khan added that plans would be prepared for Fish and Game's sign off if need be.

Chairman Engler confirmed that storm water flow maintenance is the property owner's responsibility.

Mr. Peterson commented that the Environmental Specialist did not mention that the flow capacity had been analyzed in their approval.

Commissioner Levine responded that no streambed alteration would be required. He quoted the letter from Fish and Game stating, *"The Department determined that no streambed alteration agreement would be required because your project would not substantially divert, obstruct, or change the natural flow or the bed channel, or bank of any river, stream or lake or substantially adversely affect existing fish or wildlife."*

Mr. Peterson commented that if the Planning Commission sees it fit to deny the appeal, his clients request that a few conditions be added. He stated that the existing structure be raised to the height of where the existing creek wall was before it was reduced. In the Fish and Game's Report and the Applicant's July 11, 2003 letter to the City, there were references to reinforcement of the streambed wall. He quoted from the Mr. Kalil's letter to the effect of, *"...it's important that the existing wall was constructed many years ago in the same area where Fish and Game need of reinforcing and upgrading. What we have done and what we propose to complete will prevent the collapse of the wall and erosion of the existing channel."* His clients also request that a properly licensed contractor work on the project and that the approval for the concrete slab inspection be done.

Chairman Engler stated that the Planning Commission has no jurisdiction over the Building and Safety and that the last request based on structural integrity cannot be placed in the conditions.

Commissioner Levine that the Fish and Game had no concerns with the project. However, the property owner has the responsibility to settle issues with their consultant in order to obtain a sign-off from the Fish and Game.

Commissioner Levine commented that, if the Commission decides to uphold the denial, it would be appropriate to include the appellant's request to add a condition- that the streambed wall be repaired, based on the property owner's letter. He also agreed with Mr. Peterson alluding to aforementioned requested condition that code enforcements are part of the Building and Safety's general procedure.

Commissioner Gelhaar concurred with Commissioner Levine.

Commissioner Mehranian would like more information obtained regarding the streambed flow, etc. She would like to uphold the appeal.

Commissioner Davitt believed that water flow, hydrology, etc. is not under the Planning Commission's jurisdiction and that the issue would be checked under the Building and Safety. He supported Fish and Game's findings and concurred with the majority of the Commissioners.

Responding to a question from Chairman Engler, Director Stanley stated that Mr. Kalil must go through the Building and Safety in order to pull permits. During the process, if the Building and Safety feels that it is necessary, they may require engineering data, hydrology report, etc., from the applicant.

Chairman Engler had no comments.

M/S/C Levine/Gelhaar to support denial of appeal for Hillside Development Permit 03-18 with added conditions that the property owner comply with the requirements stated in the July 21<sup>st</sup>, 2003 letter from Fish and Game; the streambed alteration agreement regarding boulders; and the July 11<sup>th</sup>, 2003 letter written by the property owner to prevent the streambed wall from collapsing and erosion of the existing channel. 4 Ayes. Mehranian dissenting.

Chairman Engler expressed disappointment with the City's rules and regulations and the way it was formatted. He requested Staff to investigate the process. Chairman Engler also stated that he somewhat agreed with Mr. Kalil who expressed his confusion of the permit process.

Director Stanley commented that part of the issue was the way the applicant asked the question "...can we build an uncovered gazebo structure out of setbacks". If the applicant does not indicate that they would be building the structure over a stream, Staff would not know unless the information was presented to them.

Chairman Engler understood.

Director Stanley announced that both parties have the right to appeal to the City Council within 15 days.

## **IX. COMMENTS FROM THE COMMISSIONERS:**

### **1. Commissions' concern with the project at 317 San Juan Way:**

Chairman Engler referred to a letter dated August 8<sup>th</sup> written by City Attorney Steres to Architect Jay Johnson, regarding the property on San Juan Way. He questioned the legality of retroactively changing the decision of the Planning Commission. He stated that if the City Attorney can overturn decisions imposed on the property, he felt that there was no need for the Planning Commission.

Commissioner Levine concurred with Chairman Engler.

Chairman Engler commented that if it is legal, then it is the City's responsibility to notify all the previous applicants with similar cases to have the opportunity to modify their determinations. He also asked if the City Attorney considered the repercussions that may occur from concerned neighbors that attended previous hearings, and if they were notified of the changes.

Commissioner Levine questioned whether the City Attorney has the right to overturn the Planning Commission's decision.

City Attorney Steres responded that he did not overturn the Planning Commission's verdicts. He realized the sensitive nature of the issue, and informed the Commission that he carefully conducted an analysis and concluded that the current law is applicable to the current situation. Mr. Steres stated that the neighbors' reactions may or may not be content, based on what they heard that evening.

Responding to a question from Chairman Engler, City Attorney Steres stated that the Commission does not have to review all previous decisions; however, any property owner that might have received greater rights because of the changes can come before the Commission and modify their own property; it is applicable even-handedly across the City.

Chairman Engler asked if the Commission should advise the property owners of their rights.

Attorney Steres stated unless the City decides to, there will be no notices sent out when the law changes.

Commissioner Gelhaar commented there were restrictions placed on the property due to safety concerns.

Attorney Steres stated that the conditions were placed when a discretionary approval was acquired. With the change in code, no modifications, no discretionary approval was required for that project as built on the property, at the time the Planning Commission made the decision.

Responding to a question from Commissioner Levine, City Attorney Steres stated that the only change was the location of the fence. He also stated that the owner was not required to request a new proposal from the Commission unless a discretionary approval was required.

Chairman Engler asked if the applicant could disregard the restrictions placed on the height of the vegetation that could be planted on the property.

City Attorney Steres stated that the conditions of approval are not applicable. He added that when the Planning Commission receives applications, they are considered discretionary approvals. When the law changes, there could be changes to the situation of any property that might have had previous approvals from the Commission.

Commissioner Levine commented that of the seven years he had served the Planning Commission, he had never experienced a situation like this.

Director Stanley clarified that the project was considered a hairpin lot. The Planning Commission's approval was regarding the side yard setback on Carmel Road. Currently, the code has changed and the approval no longer applied. He stated that the applicant must maintain the front yard setback all the way to Carmel Road. Therefore, the Commission's main concern regarding line of sight on that corner, must be maintained, and view obstruction may not encroach.

City Attorney Steres commented that if the project complies with current law, and that it does not have other discretionary approvals, then the applicant could apply under current law. He emphasized the fact that there were no discretionary approvals once the code changed.

Chairman Engler understood and questioned whether Staff notified all the neighbors on Verdugo Road regarding the changes to the project. He stated if not, then he requested Staff to follow through.

Director Stanley stated that Staff had substantial amount of work that takes priority over the issue. He stated when there is time, the matter would be pursued.

**2. Plans submitted are not to scale:**

Commissioner Gelhaar would like to reach a consensus with the Commission regarding the scale issue with plans. He stated that it is required under the ordinance and requested plans to be to scale; they can be reduced from a quarter to an eighth as long as the applicant indicates it on the drawings.

Commissioner Levine preferred smaller drawings rather than full sized-eight sheets. He stated smaller drawings are acceptable, however they must be to scale.

Commissioner Gelhaar concurred with Commissioner Levine.

**3. On-site parking:**

Director Stanley stated that the matter of on-site parking conditions would be discussed in the next meeting.

Director Stanley will email the conditions to the Commissioners.

**3. Chairman Engler's follow-up on previous projects/violations:**

Chairman Engler commented that on 4134 Commonwealth Avenue, the conditions of approval that were placed on the size of the trees had not forth come to the Commission.

He received a complaint regarding a property on Inverness Drive southeast of Dr. Sous from 1200 Inverness Drive. He stated that the neighbor's view was blocked by the fence, preventing them from exiting their driveway safely. He requested Staff to investigate the 6-ft solid grey fence located in the front yard setback.

Chairman Engler requested the project status for Property Owner Mr. Eguchi at 3999 Chevy Chase Drive.

Planning Aide Shimazu stated the project will be heard at the September Public Works Commission meeting.

Chairman Engler stated that Director Stanley informed him that the project does not have to precede the Planning Commission's hearing and that the project will be reviewed before the PRAC Permit is issued.

Director Stanley clarified that Mr. Eguchi must obtain a PRAC Permit prior to Planning Commission review. Otherwise, it is a moot point because the project has not been approved by Public Works to allow the wall in the public right-of-way.

Planning Aide Shimazu commented that the project will be referred to a City Prosecutor due to the property owner's failure to act in a timely manner.

Director Stanley responded to a question from Chairman Engler that the City Prosecutor was also handling the project on 245 Berkshire Avenue. He stated that Mr. Greenberg was given two warnings before he applied for a Setback Modification. However, he continued to build additional walls without an approval. Director Stanley stated that if the requested information is not submitted by the stipulated date, Mr. Greenberg will be reported to the City Prosecutor.

Planning Aide Shimazu also added that the property owner refused to make a deposit for a City Arborist.

Chairman Engler reported noise pollution and skateboarders' misuse of an empty swimming pool located on a lot northeast of Woodleigh and Berkshire. The neighbors have reported the illegal activities to the Sheriff's Department; however, they were unable to investigate it.

Director Stanley stated that the empty pool is not a violation of Building and Safety's code requirements. He also stated that the property owner was notified and Staff is awaiting response. With regard to noise pollution, since no action was taken by the Sheriff's Department, the City Manager will be notified.

## **X. COMMENTS FROM THE DIRECTOR:**

### **A. Due process; discussion of Staff-level approvals when associated with Planning Commission review.**

Director Stanley commented that he reviewed the code and discussed the above issue with the City Attorney. He concluded that when a project has two associated levels of review, i.e. Hillside Development Permit review (Planning Commission level) and Administrative Setback Modification (Staff level), the Staff level review would be examined first at Staff level. If the project was approved at a Staff level review, a condition would be added to delay the approval until the higher level Planning Commission review was approved. Therefore, a due process issue would be avoided. He added that the process was used before; however, he would like to achieve consistency.

Director Stanley stated that any projects that were administratively approved would be presented to the Planning Commission for updates. He gave the Commission a choice as to whether they wanted an Administrative Officer or Staff to notify all the Commissioners. He also mentioned that any of the Commissioners may rotate to take on the role of an Administrative Officer.

Chairman Engler responded that Staff should continue to notify everyone.

Regarding an illegally removed oak tree at 3701 Madison Road, Director Stanley updated the Commissioners that he received a response from property owner, Garrison Leigh that he will pay the appraisal fee of \$15,000 to the City's Tree Fund.

Chairman Engler disliked the fact that the tree would not be replaced and asked if an addition would be built in place of the tree. He asked if the Director had seen the plans for the project.

Director Stanley responded that he had not seen the plans; however, he examined the location of the tree and discovered that it would not interfere with future structures since the removed tree was located within the rear yard setback area. He also commented that the owner would have to maintain the setback requirements.

Director Stanley planned to use the \$15,000 fund to plant an oak tree in front of the property. He stated the funds may be used on public-right-of-way or parkland.

Responding to a question from Chairman Engler and Commissioner Levine, Planning Aide Shimazu stated if the property is located on a hillside and if the owner decides to build a structure, then it would have to come to the Planning Commission. He also stated that all the neighbors have been updated.

Director Stanley added that the most affected neighbor is satisfied with the appraisal fee.

**XI. ADJOURNMENT:**

M/S/C Gelhaar/Engler to adjourn at 9:00p.m. Unanimous.