

**MINUTES OF A MEETING OF THE PLANNING COMMISSION  
OF THE CITY OF LA CAÑADA FLINTRIDGE  
HELD NOVEMBER 10, 2008**

**I. CALL TO ORDER:**

Chair Gelhaar called the meeting to order at 6:06 p.m.

**II. ROLL CALL:**

Present: Commissioners Hill, Curtis, Cahill, Davitt and Chair Gelhaar

Staff: Director Stanley, Assistant City Attorney Vargas, Senior Planner Buss,  
Planner Clarke, Assistant Planner Lang

**III. PLEDGE OF ALLEGIANCE**

Commissioner Curtis led the salute to the flag.

**IV. COMMENTS FROM THE PUBLIC**

Comments were not offered.

**V. REORDERING OF THE AGENDA**

The agenda reordered to address the Public Hearing prior to the Continued Public Hearing

**VI. CONSENT CALENDAR:** Moved accordingly by Chair Gelhaar/seconded by Commissioner Davitt, unanimous

- A. Minutes – June 10, 2008 meeting: Approved
- B. Minutes – June 24, 2008 meeting: Continued
- C. Minutes – July 8, 2008 meeting: Continued
- D. Minutes – August 5, 2008 meeting: Continued

**VIII. PUBLIC HEARING:**

- A. Floor Area Review 08-01; Arnold/Switzon; 4264 Commonwealth Avenue:**  
Request for Floor Area Review to allow a 262 sq. ft. first-floor addition to an existing single-family residence and a 100 sq. ft. gazebo for a total floor area of 4,857 sq. ft. The request exceeds the 4,500 sq. ft. review threshold for parcels with less than 80 feet of average lot width but is within the maximum allowed for the parcel.

Assistant Planner Lang presents the project. She explains why FAR is required for lots less than 80' wide and more than 4500 sf. Using the projector, Ms. Lang shows the site plan with the nearby structures offsite. She highlights the new areas of the building through the drawings on the screen. Photographs are shown indicating the existing and potential landscape screening from various angles and from the neighboring properties. Ms. Lang ends her presentation with a recommendation of approval subject to conditions as written in the draft resolution.

Chairman Gelhaar notes that the applicant is not there to speak.

Chairman Gelhaar opens the public hearing and requests speakers. No one wishes to speak.

Chairman Gelhaar closes the public hearing and calls for comments from the Commissioners.

Commissioner Curtis agrees with staff, has no further comments.

Commissioner Cahill agrees with Curtis, as do Hill and Davitt.

**MOTION** Commissioner Cahill moved and Commissioner Curtis seconded a motion to approve the project as presented by staff. The motion carried 5-0.

## **VII. CONTINUED PUBLIC HEARINGS:**

**A. Second Floor Review 07-19, Hillside Development Permit 06-26, Variance 07-12 and Modification 07-57; Naccarati; 4344 Purtell Drive:** Request to allow construction of a new 1,769 sq. ft. house (including a 430 sq. ft. garage) and 1,050 sq. ft. of cellar areas on a 6,300 sq. ft. hillside parcel. A Modification is required for retaining walls in the front and side setback and a Variance is required for tandem parking. A Hillside Development Permit is required as the property is a hillside parcel and a Second Floor Review is required as the proposed house has two stories.

Director Stanley initiates the presentation of this continued case from last meeting (October 28, 2008). He notes that the Planning Commission had earlier received a letter from the neighboring property owner, Anita Brenner, and that today, Mr. Naccarati presented the Planning Commission with a response letter.

Director Stanley instructs the Planning Commission to address the merits of the project, not the easement issue. He explains that it is advantageous to get to the merits of the project to determine whether the project can be approved or if it should be denied. If it is to be denied, then the Planning Commission should move to do so. But if the Commission is leaning toward approval, then staff would recommend that the matter be continued for additional review by the City Attorney's office to address the easement issue.

Director Stanley notes several issues raised by the Brenner letter. To begin, he points out several sections of the Zoning Code and states that this lot is legal and developable since it is legally pre-existing. He addresses Flood Plain issues indicating that this property is in Zone X - not a flood hazard area. There is no flood risk on this property.

Director Stanley addresses issues regarding code enforcement, which related only to erosion off the site and sandbagging. The property owner was instructed to remove the sand bags from the public right of way and keep them on his site. The issue was not because of any failure on the site. He explains that all sites in the city must comply with the National Pollutant Discharge Elimination System regulations.

Director Stanley addresses the issue of floor area. He states that the lot area definition excludes certain parts of a lot for calculation of usable area for hillside lots. The easement issue does not apply to this lot for noted reasons in the code, however, the neighbor's driveway does count since it is paved and being used as a driveway.

He states that the application does need to be corrected to indicate the true property owner and that he is the agent for the true owner and can act on his behalf.

Director Stanley states that the geology and hydrology studies were reviewed by the City Engineer's office and were found to be sufficient for this preliminary review through the Planning Commission. This is the process and accepted practice for hillside development permits. Once the project is approved by Planning Commission, Building & Safety will require additional information specific to the foundation construction drawings/plans. This will come later at the Building Permit stage of the approval.

Director Stanley indicates that staff stands by the environmental review for the project, a Negative Declaration was prepared indicating that the project would not produce any significant environmental impacts.

Director Stanley notes that Mr. Nacarati's attorney's letter addressed a number of issues brought up in the Brenner letter including an extinguished easement, zoning ordinance and the prohibition of a road over 20% slope, flood plain and state of development (better developed than undeveloped); ownership and representation (now correct).

Chairman Gelhaar has Director Stanley reiterate the flood plain status of the property. Director Stanley also responds to a question regarding the application and whether the property owner must restart the application process due to the ownership question. Director Stanley states that the City Attorney says that this is just a correction to the application and does not stop the current process.

Chairman Gelhaar asks the Commissioners if they have any questions or if they need Planner Clarke to address any issues. No Commissioners indicated desire for any further staff comment.

Chairman Gelhaar opened the Public Hearing and asked if the applicant wanted to speak.

As the applicant approaches the dais, Commissioner Davitt interjects a question as to whether the Planning Commission should hear or address any issues relating to the easement or if the Commission should not even hear testimony on the easement. Director Stanley responds that no one should be prohibited from testifying on any of the easement or other issues, but when the Planning Commission begins its deliberation, the easement should not factor into its initial findings. If the Planning Commission is leaning toward denial based solely on the merits of the project, then that action should proceed. However, if the Planning Commission is leaning toward approval, then staff would request that the Planning Commission hold that action in abeyance and give staff a continuance to further investigate the easement issues. Commissioner Curtis reiterates that the Planning Commission should continue the matter if so inclined. Director Stanley affirms.

[6:30 p.m.] Mr. Paulo Naccarati, the applicant, indicated that he had nothing to add from the last meeting and was there for questions.

Commissioner Cahill asks if the judgment against Naccarati means that their (Brenner) easement across his property is good, and that Naccarati is saying that the easement is not valid.

Alisa Goukasian, attorney for Paulo Naccarati, moves to the podium and responds that the issue was never determined on its merits. Position of applicant is that there is no easement, it was extinguished by law.

Assistant City Attorney asks the speaker the status of the appeal.

The attorney responds that she is not the attorney for the appeal. Mr. Naccarati, in the background, indicates that they are in negotiation.

Mr. Torres, adjacent neighbor, states that the easement runs with the land for road purposes and is for road purposes. It has been used on a regular basis. It has been used for clearing the slope of their lot. It was used last week for the west slope to clear the sumac. We have been doing this since 1976. This contradicts the staff's earlier comments.

There has been only one judgment for the case and it was to extinguish the easement. Rather than go to trial, the parties agreed to a stipulated judgment. There were preconditions associated with the judgment that Mr. Naccarati had to agree to prior to January 31, 2008. By its terms, if the preconditions were not met on time, the settlement agreement would be extinguished, which would entitle Brenner/Torres a judgment in the case; and by merger at bar that meant there could be only one judgment in Brenner/Torres favor for money damages and attorney's fees. This made the

extinguishment of the easement moot and the judgment in their favor - the easement still exists. The city does not have the right to interfere with the easement. He says that staff ignoring the easement is problematic for the city. He finally states that he has the right to not have the easement interfered with in any way.

Commissioner Curtis asks if Mr. Torres will supply the city with additional material if City Attorney wants. He indicates yes, although everything should already be there.

Ms. Anita Brenner testifies that only certain parts of the legal activities is subject to confidentially agreement. She has lived there since 1976 and has used the easement all this time. She goes on to say that all the issues raised in the Naccarati letter were raised in the complaint. The complaint resulted in a judgment in our favor. The status of the appeal is that the record on appeal has been received by the court of appeal. About two days ago she received notice that the court would be setting briefing dates. She states that Mr. Naccarati has taken the position that the easement is for a road only, but it is for ingress and egress also. She says that this property is in Flood Plain D and requires insurance. There is landslide danger. We had to be out of our home for months because of the landslide. The Initial Study did not identify the landslide issue, therefore the engineering study did not take into consideration these issues. The study only looked at three places and did not account for slope stability issues and water flow across the lot. She asks the Planning Commission to reconsider the sufficiency of the geology reports. [The time signal indicates that she is out of time and ends her comments.]

Chairman Gelhaar asks the Commission if they have any questions for the speaker. Indicating none, he asks if there is anyone else to speak.

Alisa Goukasian responds for Naccarati. She speaks to the issue of the easement and whether it exists or not, and that there is no declaration as to whether there is an easement yet. She illustrates that the site cannot be used for road because of steepness. She reiterates that the improvement of the site will mitigate the flood issues.

Chairman Gelhaar notes no other speakers and closes the Public Hearing. [6:50 p.m.]

Chairman Gelhaar requests that staff once again outline their desires for limitations on the Planning Commission.

Director Stanley states that he would want the Planning Commission to look at the merits of the project exclusive of the easement issue. If the Commission wishes to deny the project based on the Zoning Ordinance, then all discussions related to the easement is moot and the Commission should act to deny. However, if the Commission is leaning towards approval of the project based on the Zoning Ordinance findings, etc., then staff would request that the matter be continued for further City Attorney investigation on the easement matter.

Commissioner Davitt states that he has seen the case earlier. There are lots of issues of slope and flood, etc., that have been reviewed. He relies on staff to provide the base information, and relies on the staff base information. He does not want to focus on the legal issues. He states that he likes the design of the house but would remove the balcony at the top. He can make the findings and therefore could support the project.

Commissioner Hill states the legal issues are not for the Planning Commission. He assumes that the easement is a non-issue for Planning Commission purposes. He states that he cannot support any of the Variance findings. He also cannot support most of the Hillside Development Permit findings because the house doesn't fit the lot, it is too big.

Commissioner Cahill recollects the original house design and that this design addresses most issues. He agrees with Commissioner Davitt and is not concerned with the easement or the flood plain; the size is okay and he can support the request.

Commissioner Curtis states he is supportive of the house. He would like to have seen the total overall height reduced to 28' but he can live with it and would support the project.

Chairman Gelhaar agrees with the last two speakers and states that the upper balcony should be removed. He could make the findings. He has an idea for neighboring driveway using different color materials, grass-crete and/or cobblestone to protect. He states that the Planning Commission is leaning toward approval on a 4-1 straw vote, and states that staff is looking for a continuance.

Commissioner Curtis interjects that if staff will return with conditions that there may be covenants that address garage space and keeping it free for vehicles, that the cellar without a lightwell never be used as a bedroom or that a lightwell be installed, and finally that on condition #3 (acceptance of conditions) take affect earlier in the process.

Chairman Gelhaar asks for continuance date? Director Stanley volunteers January 13, 2009.

#### MOTION

Commissioner Cahill moved and Commissioner Davitt seconded a motion to continue the matter to January 13, 2009. The motion carried unanimously.

[7:02 p.m.] Commissioner Davitt leaves the dais and departs the meeting.

**IX. OTHER BUSINESS**

**A.** Discussion of upcoming dates for second Planning Commission meetings. Director Stanley reiterates that the second meeting in November and second meeting in December are cancelled.

**B.** Report of results of recent Administrative Decisions:

a. HDP 06-65 (Amendment), Chung/Johnson, 3828 Keswick Road

b. HDP 08-49, Healy/Risha, 521 Inverness Drive

c. HDP 08-45, Fiedler, 5037 Merita Place

Chair Gelhaar - states outcome of Administrative hearings that took place today. They were all approved.

**X. COMMENTS FROM THE COMMISSIONERS**

Commissioner Curtis asks about potential appeals. Director Stanley indicates there are none.

**XI. COMMENTS FROM THE DIRECTOR**

None

**XII. ADJOURNMENT: 7:03 p.m.**

A handwritten signature in blue ink that reads "Fred Burr". The signature is written in a cursive, flowing style.

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Secretary to the Planning Commission