

MINUTES

REGULAR PLANNING COMMISSION MEETING

JULY 14, 2003

A regular meeting of the Planning Commission of the City of Rolling Hills Estates was called to order at 7:30 p.m. in the City Hall Council Chambers, 4045 Palos Verde's Drive North, by CHAIRMAN SOMERS.

2. **PLEDGE OF ALLEGIANCE**

CHAIRMAN SOMERS led the assembly in the Pledge of Allegiance to the Flag.

3. **ROLL CALL**

Commissioners Present: Conway, Killen, Zerunyan, Rein, Bayer, Chairman Somers

Commissioners Absent: O'Day

Staff Present: Director Wahba
Assistant Planner Wong
Assistant Planner Tran

4. **APPROVAL OF MINUTES**

A. Planning Commission meeting of June 16, 2003

COMMISSIONER ZERUNYAN moved, seconded by COMMISSIONER CONWAY

TO APPROVE THE MINUTES OF THE REGULAR PLANNING COMMISSION MEETING OF JUNE 16, 2003

AYES: Conway, Bayer, Zerunyan, Rein, Killen, Chairman Somers

NOES:

ABSENT: O'Day

ABSTAIN:

5. **AUDIENCE ITEMS**

None.

6. **CONSENT CALENDAR**

The following routine matters will be approved in a single motion with the unanimous consent of the Planning Commission. There will be no separate discussion of these items unless good cause is shown by a member of the Commission or the public expressed under audience items prior to the roll call vote. (Items removed will be considered under Business Items.)

A. Quarterly Code Enforcement Report.

COMMISSIONER CONWAY moved, seconded by COMMISSIONER BAYER

TO RECEIVE AND FILE ITEM 6A OF THE CONSENT CALENDAR.

CHAIRMAN SOMERS so ordered.

7. BUSINESS ITEMS

- A. PLANNING APPLICATION NO 22-03; APPLICANT: MR. TOM SLOWEY
LOCATION: 24 RANCHVIEW ROAD. REQUEST TO APPROVE A NEIGHBORHOOD COMPATIBILITY DETERMINATION OF A SINGLE STORY HOME WITH AN ATTACHED GARAGE. A MINOR DEVIATION IS REQUIRED TO DECREASE THE FRONT YARD AREA BY 10%. A GRADING PERMIT IS REQUIRED TO ACCOMMODATE THE PROPOSED IMPROVEMENTS.

Assistant Planner Wong summarized the Staff Report (as per written material). He stated that staff recommends that the Planning Commission approve PA 22-03.

The applicant's representative Ms. Rosa Velasquez, stated that they agreed with the staff recommendations.

COMMISSIONER BAYER moved, seconded by COMMISSIONER CONWAY

TO APPROVE PA-22-03.

AYES: Conway, Bayer, Zerunyan, Rein, Killen, Chairman Somers
NOES:
ABSENT: O'Day
ABSTAIN:

Director Wahba stated there is a 20-day appeal period.

8. PUBLIC HEARINGS

- A. PLANNING APPLICATION NO. 20-03; APPLICANT: MR. & MRS. SINCLAIR;
LOCATION: 32 COUNTRY MEADOW ROAD. THE APPLICANT IS REQUESTING APPROVAL OF A NEIGHBORHOOD COMPATIBILITY DETERMINATION APPLICATION FOR THE CONSTRUCTION OF A FRONT YARD BLOCK WALL/FENCE (BUILT AFTER-THE-FACT) WITH A GATE. APPROVAL OF A VARIANCE IS REQUIRED FOR THE WALL/FENCE AND GATE TO EXCEED 24" IN HEIGHT.

Planner Tran gave a staff report (as per written material) and recommended that the Planning Commission -- Open the Public Hearing; Take public testimony; Close the Public Hearing; Discuss the Issues; and Adopt the resolution denying PA-20-03.

In response to a question from COMMISSIONER BAYER, Planner Tran confirmed that the wall was still built after the "Stop Work Order" request.

COMMISSIONER CONWAY moved, seconded by COMMISSIONER ZERUNYAN

TO OPEN THE PUBLIC HEARING FOR PA-20-03.

AYES: Conway, Bayer, Zerunyan, Rein, Killen, Chairman Somers
NOES:
ABSENT: O'Day
ABSTAIN:

Mrs. Sinclair, the applicant, said that they did not embark on this project in flagrant disregard of the rules. She stated that they have a two-part project that included changes to the front facade of the house, the front doors and the existing window into French doors and a landscaping project that included the removal of some hardscaping and the construction of the brick wall for which they were applying for a Variance. She submitted both in separate phases to the architectural committee for the homeowners association and was told by the building department that they needed a building permit for the facade of the house but not for the landscaping project because there were no walls over 6' in height. She stated she obtained a building permit for the front facade but did not seek approval for the wall because she didn't know it was needed.

Mrs. Sinclair stated that the staff report correctly states that the wall is compatible with the neighborhood and added that almost 40% of the homes within the ranch have walls greater than 24", and they are seeking the approval of the Variance for their wall as an equal property right.

Mrs. Sinclair stated that on page 3 of the staff report, under the section of Variance, the third paragraph states that the wall in the front yard serves as a security fence and stated that is partly correct but that there are two reasons for the wall -- for security for the property and joint absences, and when she is home alone. She added that the security is a right enjoyed by many of her neighbors and they are applying for the same right.

Mrs. Sinclair continued that page 4 of the staff report references a property at #4 Hillcrest Manor that was recently denied approval for a similar wall. She said that she has viewed the property, and the development and that there are several significant and obvious differences between the two communities. First, #4 Hillcrest Manor is the only property in their development that has a fenced area in front. She said the owner of #4 Hillcrest Manor did not seek or obtain approval and that the neighbors also objected. She said that unlike #4 Hillcrest Manor, they had the approval of their homeowners association, the president and the members of the architectural committee. She stated that they received only one objection, which was a letter from Ms. Alderete at 34 Misty Acres Road. The letter suggested that they were not in compliance with the Ranch CC&Rs, but she stated that they are in full compliance with their CC&Rs.

Mrs. Sinclair continued with page 4 in the staff report section 3, which states that the Variance would be injurious to the property because the wall and the gate detract from open space. She contended that section 3 specifically asks "that the granting of the variance will not be materially detrimental to the public welfare or injurious to the property and improvements in the zoning district in the neighborhood in which the property is located." She felt that the staff report did not address the "materially detrimental" aspect, and added that her neighbors at 30 Country Road have a 6' wall and she and her husband nor the public have not suffered any material detriment nor has it injured or impacted in any way, nor have the walls at 33 and 31 Country Road impacted their property. She asked the Planning Commission to ask staff to state in a revised report how the granting of the Variance would be materially detrimental to the public welfare or injurious to the property.

Mrs. Sinclair said the staff report states that the wall creates the appearance of an overbuilt lot, but it provided no facts, percentages or no measurements in support of its contention. She did not believe the wall is overbuilt and stated there is a requirement in the City for a minimum front yard area of 25' and they have a 26' setback and none of the landscaping is designed to deliberately obscure the opening through the gate to see the front doors and front windows. She stated that staff has not seen the wrought iron gate, which is very open and the front doors are visible. She stated that the topography of the property has one of the steepest grades, left to right and front to back, because of this quirk, their property sits on a flat pad that is elevated about 7' above street level and more than half of the front facade is clearly visible above the wall. She said that the staff report stated that this would set the precedence for other homes with like conditions, but she stated that each application should be viewed based on an individual basis. She stated that the staff report is discriminating against them based on what other property owners may or may not due in the future and their request for a Variance brings them up to the par with the right enjoyed by many of their neighbors.

Mrs. Sinclair stated this zoning regulation is 17 years old and Rolling Hills Estates is alone in the its definition of the front yard area because the majority of California cities define the front yard areas as "the parallel area between the forward most property line and the street" not the property envelope within the left and right forward building lines, as the City has adopted. She stated that if their wall is compatible but cannot be approved because of a 17 year old zoning law based on an irregular definition of the front yard under State planning laws, then the zoning ordinance should be revisited and discussed by the property owners of this City.

Mrs. Sinclair also pointed out that the Superior Court of California and the United States have repeated struck down zoning laws that reasonably interfere with the rights of property owners and developers to improve, enjoy and obtain financial benefits from their properties, and she stated that as this City is alone in their definition of the front yard area. She continued with Section 65912, of Article 4, stating that open space zoning of the California planning and zoning law clearly states that "Article 4 is not intended and should not be construed as authorizing this city or the county to exercise it's power to adopt, amend or repeal open space zoning ordinance in a manner which will take or damage private property for public use without the payment of just compensation." She said in effect the staff report contends that the property they paid a

considerable price is open space for the enjoyment of a non-existent public, they live in a private gated community and 40 % already have 4' or higher walls.

Mrs. Sinclair stated that she had asked staff for the basis for the zoning ordinance and they said that the reason was that people wanted to see the front doors and windows of people's homes from the street. She stated that this is clearly an unacceptable reason to restrict the legal use of private property owners and impinge on the rights of property owners and was clearly not the intent of the open space zoning regulations defined in Article 4.

She concluded and respectfully asked the Commission to consider her points and approve her application or adjourn without a decision to a later date to give the Commission the opportunity to consider the points raised about the report and to ask the Planning Staff to prepare a revised or more balanced report in the context of the neighborhood in the Ranch and approve the Variance.

COMMISSIONER ZERUNYAN complimented Ms. Sinclair on her presentation of the land use laws.

COMMISSIONER CONWAY asked about the "Stop Work Order". Mrs. Sinclair responded that they based their discussion on the Homeowners Association discussion, the architectural committee, and the information the Building Inspector gave them, and the impression they would be approved, and they were only one and one-half pillars away from completion.

COMMISSIONER CONWAY asked the applicant to explain the "exceptional and extraordinary" elements of their request. Ms. Sinclair responded that their property has three different levels and is very steep. Additionally, she added that children had entered the property to access the swimming pool. She stated that they had no idea that the wall was in contravention of the Planning Commission requirements.

COMMISSIONER KILLEN asked Staff about the setbacks and the fence, and what was a typical front yard for that community. Director Wahba responded that the minimum about 25' and most are 30', and most front yard configurations are L-shaped.

COMMISSIONER BAYER asked about the other walls in that area and any other Variances that have been approved. Director Wahba stated that prior to 1986 they would not be here having this discussion and the code changed. The existing walls >24" are legal non-conforming if built prior to 1986. He said the code changed because the City was trying to preserve the visible open space within a front yard and not for the benefit of public use, but to have the perception of open space and ambiance that the City is trying to preserve. He stated that this has been contested over the years and the City has been criticized for being more restrictive than what the typical city requires but that we are trying to maintain open three-dimensional space in the front yard. He added that he was not aware of an approval of this type of Variance in the Ranch.

CHAIRMAN SOMERS asked if there was anyone present wishing to speak either in favor or opposed.

COMMISSIONER CONWAY moved, seconded by COMMISSIONER ZERUNYAN

TO CLOSE PUBLIC HEARING FOR PA-20-03.

AYES: Conway, Bayer, Zerunyan, Rein, Killen, Chairman Somers
NOES:
ABSENT: O'Day
ABSTAIN:

COMMISSIONER CONWAY stated that he appreciated, understood and almost supported the interpretation for guidance, but that he was troubled about the "Stop Work Order" not being complied with. He was unable to make a finding for the first Variance and was not persuaded with the argument on the wall for the protection of the neighborhood children from the pool. He stated that he supports Staff's recommendation and was startled with the applicant's discussion of adverse condemnation that was made without reviewing the City's zoning code, should that review have taken place, he stated this issue would not have been before them.

COMMISSIONER BAYER stated that she agreed with COMMISSONER CONWAY and the letter from Mrs. Alderete, which stated that when they change the rules for one person and the next. She was disturbed that the applicant proceeded to complete the project even after a "Stop Work Order" was in place. She said due to the lack of the ability to make the findings, she cannot support it.

COMMISSIONER KILLEN stated he could understand in that neighborhood why they would believe that it would be okay, but it is very difficult to find reasons to allow a Variance, but there had been a conscious effort in the community to keep the buildings open and an incredibly safe community. He stated that he does not see a way to support a Variance, and it must stand on its own merit with our code. He added that if someone wanted to drive a code amendment forward it could be looked at, but as it stands today, they are not a legislative body, and the code states that it has to be open.

COMMISSIONER ZERUNYAN concurred with his colleagues and they must make the appropriate findings for a Variance, especially the first one. He added that there are many non-conforming setbacks in the communities but that the line must be drawn somewhere.

COMMISSIONER REIN stated that he could not make the findings for the Variance based on the circumstance of the property.

CHAIRMAN SOMERS stated that he agrees with all the comments made and that State law does mandate that they must make each one of the findings for a Variance. He added that Ms. Alderete's letter stated it correctly.

COMMISSIONER BAYER moved, and seconded by COMMISSIONER CONWAY

TO APPROVE NO. PA-20-03.

AYES: Conway, Bayer, Zerunyan, Rein, Killen, Chairman Somers
NOES:
ABSENT: O'Day
ABSTAIN:

Director Wahba stated there is a 20 day appeal period.

B. PLANNING APPLICATION NO. 17-03; APPLICANT: MR. STEVEN PHILLIPS; LOCATION: 5224 BLUEMOUND ROAD. THE APPLICANT IS REQUESTING APPROVAL OF A NEIGHBORHOOD COMPATIBILITY DETERMINATION APPLICATION FOR A FIRST AND SECOND STORY HOME. APPROVAL OF A MINOR DEVIATION IS REQUIRED TO EXCEED THE LOT COVERAGE BY LESS THAN 10%. APPROVAL OF THREE VARIANCE APPLICATIONS ARE ALSO REQUIRED TO MAINTAIN A NON-CONFORMING FRONT YARD SETBACK, TO MAINTAIN A NONCONFORMING EAST SIDE YARD SETBACK, AND TO MAINTAIN A NONCONFORMING WEST SIDE YARD SETBACK.

Planner Tran gave a staff report (as per written material) and recommended that the Planning Commission Open the Public Hearing; Take public testimony; Close the Public Hearing; Discuss the Issues; and Continue this application to a date uncertain to allow the applicant sufficient time to work with staff to address the Neighborhood Compatibility concerns and eliminate the Variance applications.

CHAIRMAN SOMERS asked Staff if they had every approved a Variance or construction within 3' of the property line. Director Wahba responded that back in the 1950's fireplaces were allowed to encroach within the required setbacks when it was L.A. County standards, but since the City incorporated and the codes have evolved, they have included chimneys or anything that touches the ground, that in effect becomes the building line.

COMMISSIONER CONWAY commented that in the Staff Report there was a previous permit on file for a Minor Deviation for 38.5% lot coverage and later on the page it was indicated that lot coverage would decrease from 41% to 38%, he asked for clarification.

Planner Tran responded that at the time of the Minor Deviation approval they probably added more hardscape without Staff's knowledge and what was there at the time of the application was more than 38.5%.

COMMISSIONER CONWAY moved, seconded by COMMISSIONER KILLEN

TO OPEN THE PUBLIC HEARING FOR PA-17-03.

AYES: Conway, Bayer, Zerunyan, Rein, Killen, Chairman Somers

NOES:

ABSENT: O'Day

ABSTAIN:

The applicant, Mr. Steven Phillips commented that he had hoped everyone had an opportunity to read his letter of comments in response to the Staff Report. He discussed the issue with the eaves and his concern for extending beyond the setback lines, and the second item was the location of the front wall on the second story and tried to keep the ranch style simple. They brought some renderings that they had completed over the weekend. He discussed the basement plans.

COMMISSIONER CONWAY asked Mr. Phillips to discuss the exceptional and extraordinary conditions of the property and not the improvements, and discuss the basements usage. Mr. Phillips responded that his lot size is one of the smallest in the neighborhood and he has a smaller footprint and to avoid making the structure a huge building, they are proposing a basement. He commented that the basement was to be used as a storage area and a play room for his children.

COMMISSIONER CONWAY asked Staff if the applicant resubmitted a revised application to eliminate the basement and there would be no Variances, but a separate application for a basement at a later time, would a requirement for a Variance be necessary at that time. Director Wahba responded that this issue had not been tested.

Mr. Phillips final comments were that they have tried to heavily landscape the property.

Ms. Janet Landis, a neighbor discussed the view issue and wanted to preserve the view issue and asked that she not be restricted.

Ms. Laurie Hathaway, a neighbor stated that she supports the project.

COMMISSIONER CONWAY moved, seconded by COMMISSIONER ZERUNYAN

TO OPEN THE PUBLIC HEARING FOR PA- 17-03

AYES: Conway, Bayer, Zerunyan, Rein, Killen, Chairman Somers

NOES:

ABSENT: O'Day

ABSTAIN:

COMMISSIONER KILLEN commented that the basement is an issue and they would need to shore up the walls and there were waterproofing issues and he was not in support of the basement as a Variance and discussed other possible options.

COMMISSIONER CONWAY stated that he could not make a finding for the Variance. He discussed the continuing issue of the 50% rule and absent the findings for the Variance, he was in support of Staff.

COMMISSIONER REIN discussed the basement and its potential problems. He concurred that the findings for a Variance could not be justified.

COMMISSIONER ZERUNYAN concurred that the findings for the Variance were absent.

CHAIRMAN SOMERS commented that he would have preferred to see a second story and understood the smaller lots issue and could not make the findings for a Variance.

COMMISSIONER BAYER agreed with the other Commissioners and stated that some additions stand out and discussed examples in the neighborhood.

COMMISSIONER BAYER moved, seconded by COMMISSIONER CONWAY

TO CONTINUE THE APPLICATION TO THE NEXT MEETING OF AUGUST 4, 2003, WITH THE UNDERSTANDING THAT THE VARIANCES WOULD BE ELIMINATED.

AYES: Conway, Bayer, Zerunyan, Rein, Killen, Chairman Somers
NOES:
ABSENT: O'Day
ABSTAIN:

9. COMMISSION ITEMS

COMMISSIONER CONWAY asked about the applications for Conestoga Drive. Director Wahba responded that the application was just received and the silhouette would be going up soon.

10. DIRECTOR'S ITEMS

None.

11. MATTERS OF INFORMATION

- A. Park and Activities Actions (June 17, 2003)
- B. City Council Actions (June 24, 2003)
- C. City Council Actions (June 25, 2003)
- D. City Council Actions (July 8, 2003)

COMMISSIONER CONWAY moved, seconded by COMMISSIONER ZERUNYAN

TO RECEIVE AND FILE ITEMS 11A THROUGH 11D.

CHAIRMAN SOMERS so ordered.

12. ADJOURNMENT

At 8:45 p.m. CHAIRMAN SOMERS adjourned the Planning Commission meeting to the meeting of August 4, at 7:30 p.m.

Judith Trujillo
Minutes Secretary

Douglas R. Prichard
City Clerk