

**CITY OF DANA POINT
AGENDA REPORT**

Reviewed By:	
DH	<u>X</u>
CM	<u>X</u>
CA	<u>X</u>

DATE: JANUARY 11, 2006

TO: CITY MANAGER/CITY COUNCIL

FROM: KYLE BUTTERWICK, COMMUNITY DEVELOPMENT DIRECTOR

**SUBJECT: REVOCATION OR MODIFICATION OF THE APPROVAL OF VARIANCE
 V03-23 AND SITE DEVELOPMENT PERMIT SDP03-52(M) AT 34111
 STREET OF THE BLUE LANTERN.**

RECOMMENDATION:

That the City Council review the Petitioner's justifications for revocation and hold a public hearing to consider revocation or modification of the previously approved application for a Variance and Site Development Permit for a new, single family dwelling. [The Petitioner's justifications for revocation are attached as Supporting Document A.]

ISSUES:

Whether or not to approve the revocation or modification of an approved entitlement for a new single-family dwelling with retaining walls taller than 30 inches on a steeply sloping, 3,887 square foot lot with variances to building height, required stepped back areas for floors above the first story, rear yard setback, and projections into the side and rear setback areas, for property located at 34111 Street of the Blue Lantern.

BACKGROUND:

At the City Council meeting of January 28, 2004, the City Council heard an appeal of the November 19, 2003 Planning Commission approval of a new, single-family dwelling at this address. One of the appellants, Mr. Jack Hamilton, owner of an adjacent property, is now the Petitioner of this request for revocation. At that appeal hearing, the Council resolved to uphold the Planning Commission's approval. Along with upholding that approval, the City Council's Resolution #04-01-28-05 deleted one of the Commission's original conditions of approval that had required the structure to comply with Section 9.05.110(a)(4) of the Zoning Code relative to building step backs from the street. [The minutes of that public hearing are attached as Supporting Document B and the Resolution as Supporting Document C.]

The City Council's approval was subsequently challenged by the appellant/Petitioner in trial court. Over the following nearly two year period, court hearings were held ultimately resulting in an appeals court decision upholding the City's approval. During that period, at its meeting of August 25, 2004, the City Council adopted Resolution 04-08-25-05 amending the original variance findings and conditions of approval. [The minutes of that public hearing are attached as Supporting Document E and the Resolution as Supporting Document F.]

At the present time the property owner/applicant, Mr. James DeCarli, is actively pursuing approval of building and grading permits for the new house with construction plans having been submitted to the City. The Petitioner, Mr. Jack Hamilton, has requested that the City Council revoke the City's approval due to alleged "errors" in the approved plans and "misstatements or misleading statements" in the application documents and Planning Commission and City Council hearings.

DISCUSSION:

The Petitioner's justifications for revocation are paraphrased below for brevity. The document; "Justifications for Revocation of Site Development Permit and Variance" [Supporting Document A] should be referenced for further detail. Included in those justifications is a list of what is described as "significant" errors in the approved set of plans as well as "significant misstatements or misleading statements". His conclusions are a matter of personal opinion based on his analysis of the facts and circumstances of the project.

This report's discussion addresses the technical facts related to the alleged errors in plans and documents and technical subject matter referenced in the justifications for the revocation and does not attempt to render an opinion as to the significance of any errors or "misstatements". It should also be noted that the Petitioner references actions, beliefs and/or statements made by a City staff planner responsible for processing the application that is no longer employed by the City.

The following addresses errors in approved plans as identified by the Petitioner:

Site Plan:

1. Failure to completely and accurately show adjacent properties: It is correct that not all adjacent property's structures were shown on the site plan although, photographs of the surrounding area, including aerial photos, and opportunities to visit the site were provided to the Council prior to conducting the public hearing.

The site plan shows the neighboring house adjacent to the rear of the subject property but it does not include a deck that is attached to that existing house. The Petitioner states that leaving this information off the plan is a significant error in that having shown that condition would have demonstrated that house, coupled with its deck, to be closer to the proposed home than the site plan would indicate. The Council should be aware that the location of structures on adjoining properties would have no effect on the development standards of the subject property.

2. Failure to show the Hamilton house: The site plan also does not show the location of the Petitioner's neighboring house. It is argued that this is significant in that would have had an effect on the Council's decision to approve the project. Again, although not all surrounding structures were shown on the site plan,

photographs of the surrounding area, including aerial photos, and opportunities to visit the site were provided to the Council prior to its decision.

3. Plans are not fully to scale: It is correct that the plans are not drawn fully “to scale”. The labeled dimensions of setbacks would, however, govern the size of the structure’s footprint. For example; even though the rear yard setback for the house, measured with a ruler scales at 10 feet, the labeled setback of 9-feet would govern. Additionally, the fact that the approval resolution approved a 5-foot rear yard setback, in recognition that the proposed rear yard terrace is 5 feet from the rear property line, the house would still be required to maintain the labeled 9-foot setback.
4. Missing utility easement: It is claimed that a utility easement exists on the subject property and that this easement conflicts with the location of the house. Any easements that conflict with the proposed structure would have to be either abandoned or revised prior to final plan check approval of the project. Alternatively, the City would accept an approval letter from the utility having easement rights over the property.
5. Incorrectly calculated lot slope: It is true that the slope of the property was incorrectly depicted as 38%. Nevertheless, the City’s zoning code defines a “hillside condition” to be whenever a lot has a slope of at least 20%. The actual slope of the property, as defined by the code, is actually slightly less than 31%. It is not known how this figure was arrived at.

Elevation and Section Drawings:

Inaccurate and deceptive drawings: The elevation and section drawings appear to be drawn accurately although certain portions of the building “in the distance” are left out of both drawings resulting in the appearance of greater stepping back than actually exists. While it may not be standard practice, it is not uncommon for portions of a building that are “in the distance” to be omitted by the draftsman from a section drawing prepared for concept approval.

Floor Plans:

Understated floor area: It is correct that the upper floor, when calculated using the method specified by the City’s zoning code, has been understated by approximately 200 square feet. It is not clear how the architect arrived at the floor area stated on the plans. If the exterior wall thickness was incorrectly omitted from the calculation of floor area, that would account for the discrepancy. Nevertheless, the City’s zoning code specifies that floor area must include the surrounding exterior walls of a building.

The following addresses “Misstatements/Misleading statements” made on the Planning application as identified by the Petitioner:

- A Incorrectly calculated lot slope: As noted above (Site Plan Error #5), the slope of the lot (31%) was overstated (38%) by approximately 7%. However, the

- Council should be aware that the City's zoning code defines a "hillside condition" to be whenever a lot has a slope of at least 20%. The zoning code does not stipulate differing standards for lots with slopes greater than 20%.
- B. Inaccurate lot size and dimensions: It is correct that the house is designed with the plans showing post-lot line adjustment dimensions, yet the pre-lot line figures (lot size and dimensions) were presented in plans and earlier agenda reports. This error appears to have occurred because that lot line adjustment did not record with the County until after the Council's original approval with the adoption of Resolution 04-01-28-05, on January 28, 2004 [Supporting Document C]. The Council recognized the discrepancy in adopting Resolution 04-08-25-05 at its meeting of August 25, 2004 [Supporting Document F].
- C. Inaccurate lot size, shape and slope: Here the Petitioner is reiterating conditions A. and B. noted above.
- D. Deceptive findings: The Petitioner makes a point that that the applicant, in written justifications for the rear yard setback variance, noted that the application of the normal setback standards to his lot would present a hardship with a resulting, overly restrictive buildable area, but then failed to note what the usable building area would be with the granting of the variance. However, the building plans depict that area by showing the location and extent of proposed building in both plan and elevation views and those plans were evaluated during the public hearing process.
- E. Failure to completely and accurately show adjacent properties: The Petitioner is again pointing out that the site plan omitted an existing deck on the property behind the proposed house (Site plan error #1).
- F. False statement about design of house: The Petitioner considers statements that were made relative to how much the proposed house "steps down the hill" to be false. Portions of the structure, primarily the Northeast corner of the house step back as shown in the section and elevation drawings. The remaining portions of the structure do not step and a Variance was granted due to that condition.

"Misstatements/Misleading statements" made at PC and Council meetings:

- A, B, C, D, E, F. Misleading statements based on false data: The Petitioner argues that the application would not have been approved had statements made during public hearings not relied upon the discrepancies previously noted. His conclusion is a matter of personal opinion based on an analysis of the facts and circumstances of the project. The nature of the technical deficiencies has been summarized in this report.

CONCLUSION:

Dana Point Municipal Code Section 9.61.120 stipulates that the City Council may approve the revocation and/or modification of any previously approved application or granted entitlement, after holding a properly noticed public hearing on the matter where any of the following findings are made:

- (1) That the approved application or entitlement was obtained by fraud; or
- (2) That the approved application or entitlement is not being exercised; or
- (3) That the approved application or entitlement has ceased or has been suspended for a period of time and is causing detriment to the public health, safety and welfare or constitutes a public or private nuisance; or
- (4) That the use for which the approved application or entitlement was granted or permitted is being or has been operated or used contrary to the terms or conditions of such approval, or in violation of any statute, ordinance, law, or regulation; or
- (5) If any provision of an approved application or entitlement is held or declared invalid, the approved application or entitlement shall be void and all privileges granted hereunder shall lapse.

NOTIFICATION:

Notice for the appeal was sent to property owners within a five hundred (500) foot radius of the project site. The notice was published in the Dana Point News. In addition, notices were posted at the Dana Point City Hall, Dana Point Post Office, Capistrano Beach Post Office, and Dana Point Library. A copy of the Staff Report was mailed to the Applicant prior to the Public Hearing.

FISCAL IMPACT:

None

STRATEGIC PLAN IMPLEMENTATION:

In compliance with the Strategic Plan to evaluate land use issues to ensure goals, policies and programs of the General Plan reflect the community vision and mission, and the proposed action supports existing Zoning Code regulations.

SUPPORTING DOCUMENTS (Hard Copies Provided):

- A. Petitioner's justifications for Revocation
- B. Minutes of January 28, 2004 City Council Meeting
- C. City Council Resolution 04-01-28-05
- D. City Council Agenda Report – January 28, 2004
- E. Minutes of August 25, 2004 City Council Meeting
- F. City Council Resolution 04-08-25-05
- G. City Council Agenda Report – August 25, 2004