
**CITY OF DANA POINT
PLANNING COMMISSION
REGULAR MEETING MINUTES**

September 25, 2007
7:00-10:42 p.m.

City Hall Offices
Council Chamber (#210)
33282 Golden Lantern
Dana Point, CA 92629

CALL TO ORDER – Vice-Chairman Denton called the meeting to order.

PLEDGE OF ALLEGIANCE – Commissioner Conway led the Pledge of Allegiance.

ROLL CALL

Commissioners Present: Commissioner Michelle Brough, Commissioner Ed Conway, Vice-Chairman Norman Denton, Commissioner J. Scott Schoeffel, and Alternate Commissioner Michael Dec

Commissioner Absent: Chairwoman Liz Anderson Fitzgerald (seat on Commission taken by Alternate Dec for this meeting).

Staff Present: Kyle Butterwick (Director), John Tilton (City Architect/Planning Manager), Todd Litfin (Assistant City Attorney), Erica Demkowicz (Senior Planner), Matt Schneider (Associate Planner), Saima Qureshy (Senior Planner), Kurth Nelson (Project Planner), and Denise Jacobo (Planning Secretary)

A. APPROVAL OF MINUTES

ITEM 1: There were no Minutes for approval.

B. PUBLIC COMMENTS

There were no requests to speak.

C. CONSENT CALENDAR

There were no items on the Consent Calendar.

D. PUBLIC HEARINGS**ITEM 2: A proposal to adopt a Sign Program at property located at 34135 Pacific Coast Highway: Sign Program Permit SPP07-05.**Applicant/Owner: Randall Boone Sign LightingLocation: 34135 Pacific Coast Highway, (APN #682-232-06)Request: Approval of a Sign Program for a multi-tenant commercial building located at 34135 Pacific Coast Highway.Environmental: This project is categorically exempt (Class 1 – Section 15301 – Existing Facilities) from the provisions of the California Environmental Quality Act (CEQA) because it consists of a minor alteration of an existing structure involving no expansion of use beyond existing.Recommendation: That the Planning Commission adopt the attached Draft Resolution to approve Sign Program Permit SPP07-05 located at 34135 Pacific Coast Highway (Attachment 1).**Matthew Schneider** (Associate Planner) presented the staff report.

There being no requests to speak on this item, Vice-Chairman Denton opened and closed the Public Hearing.

ACTION: Motion made (Schoeffel) and seconded (Conway) to adopt Resolution 07-09-25-28 approving Sign Program SPP07-05 for a Commercial Development located at 34135 Pacific Coast Highway. Motion carried 5-0. (AYES: Brough, Conway, Dec, Denton, Schoeffel NOES: None ABSENT: None ABSTAIN: None)

ITEM 3: A Tentative Parcel Map TPM2006-135 and Minor Site Development Permit SDP06-35(M) for a duplex (2-Unit) condominium dwelling with attached garages and corresponding roof decks for property located in the Residential Duplex (RD 14) Zone at 26342 Via California.Applicant/ Branov Homes/Bryan NickelOwner: Capo Bluffs LLCLocation: 26342 Via California (A.P.N. #123-152-44)

Request: Approval of Tentative Parcel Map TPM2006-135, Minor Site Development Permit SDP06-36(M) for a duplex (2-unit) condominium dwelling with attached garages and corresponding roof decks.

Environmental: This project is categorically exempt (Class 3 - Section 15303 - New Construction or Conversion of Small Structures) from the provisions of the California Environmental Quality Act (CEQA) because it consists of the construction of two new attached residential units. The proposed condominium map is categorically exempt (Class 15 - Section 15315 - Minor Land Divisions) because it will result in the division of property in an urbanized area zoned for residential use which will result in fewer than 4 parcels, it is consistent with the General Plan and zoning, no variances or exceptions are required, all services to the parcel to local standards are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent.

Recommendation: That the Planning Commission adopt the attached Draft Resolution approving Tentative Parcel Map TPM2006-135 and Minor Site Development Permit SDP06-36(M).

Erica Demkowicz (Senior Planner) presented the staff report.

Vice-Chairman Denton opened the Public Hearing.

Tom De Simone (Capistrano Beach) felt discouraged about building in the neighborhood. He suggested that the developer should be held to a fine for each worker working beyond days and hours they are not supposed to work. He asked that the developer keep tranquility in the neighborhood.

Larry P. Armstrong (Capistrano Beach) stated that he lives across the street from the project. He added that the project looks good, but he gets no respect when work goes on in the neighborhood.

Bryan Nickel (Del Mar – Owner) stated that he was available to answer any questions.

Vice-Chairman Denton closed the Public Hearing.

Alternate Commissioner Dec stated that the project looks good.

Commissioner Schoeffel agreed with Alternate Dec.

Commissioner Conway stated that the project was a nice addition to the area. He stated that he liked the quality and design.

Commissioner Brough stated that the project looked good but she was concerned about construction work on Sundays.

ACTION: Motion made (Conway) and seconded (Schoeffel) to adopt Resolution 07-09-25-29 approving Tentative Parcel Map TPM2006-135, and Site Development Permit SDP06-36(M) for a duplex (2-Unit) condominium dwelling for property located in the residential duplex (RD 14) zone and addressed as 26342 Via California with the condition added to not work on Sundays. Motion carried 5-0. (AYES: Brough, Conway, Dec, Denton, Schoeffel NOES: None ABSENT: None ABSTAIN: None)

ITEM 4: Coastal Development Permit CDP 07-16 and Site Development Permit SDP 07-29(m) to allow the demolition of an existing home and construction of a new 5,672 square feet single family residence with a three car garage of 917 square feet on a 10,565 square foot lot and retaining walls in excess of 30” in height, located within the appeals jurisdiction of the Coastal Overlay District at 347 Monarch Bay.

Applicant/ C.J. Light Associates
Owner: Darrin Campbell
Location: 347 Monarch Bay Drive (APN 670-151-45)

Request: Request for a Coastal Development (CDP 07-16) and a Site Development Permit (SDP 07-29(m)) to demolish an existing single family residence and construct a new 5,672 square foot residence with a three car garage of 917 square feet on a 10,565 square foot site, within the appeals jurisdiction of the Coastal Overlay District. A minor Site Development Permit is required since the project is proposing retaining walls higher than 30”.

Environmental: The proposed project is found not to have a significant effect on the environment and is therefore exempt from the provisions of California Environmental Quality Act (CEQA) pursuant to Article 19, Section 15303, Class 3 – New Construction or Conversion of Small Structures. The proposed project is for demolition of an existing single family residence which will be replaced with a new single family residence in a residential zone, in an urbanized area. The project is consistent with the exceptions listed in Section 15300.2 of CEQA.

Recommendation: That the Planning Commission approve Coastal Development Permit CDP 07-16 and Site Development Permit SDP 07-29(m).

Saima Qureshy (Senior Planner) presented the staff report.

Vice-Chairman Denton opened the Public Hearing.

Victor Rogel (Fullerton – Applicant's Representative) stated that he was available to answer any questions.

Vice-Chairman Denton closed the Public Hearing.

ACTION: Motion made (Brough) and seconded (Conway) to adopt Resolution 07-09-25-30 approving Coastal Development Permit CDP 07-16 and Site Development Permit SDP 07-29(M) to allow the demolition of an existing residence and construction of a new 5,672 square foot single family residence with a 917 square foot garage on a 10,565 square foot lot located in the residential single family 4 (RSF 4) Zoning District at 347 Monarch Bay. Motion carried 5-0. (AYES: Brough, Conway, Dec, Denton, Schoeffel NOES: None ABSENT: None ABSTAIN: None)

ITEM 5: Coastal Development Permit (CDP06-10) to allow the construction of a 5,456 square foot, two story single-family dwelling and a 1,070 square foot detached garage with a 1,196 square foot second dwelling unit with a bluff edge setback of 25 feet and a Minor Site Development Permit (SDP07-12(M)) and Variance (V07-06) to allow building height to be measured from atop as much as 5.75 feet of fill as opposed to 2.5 feet of fill located at 24692 El Camino Capistrano. (Public Hearing of September 11, 2007 was continued to this meeting.)

Applicant/ Dominy + Associates Architects
Owner: Tom and Maria Vegh
Location: 24692 El Camino Capistrano; (APN 682-203-05)

Request: Approval of A Coastal Development Permit to allow the construction of a 5,456 square foot, two story single-family dwelling and a 1,070 square foot detached garage/1,196 square foot second dwelling unit with a bluff edge setback of 25 feet and a Minor Site Development Permit and Variance to allow building height to be measured from atop as much as 5.75 feet of fill as opposed to 2.5 feet of fill located at 24692 El Camino Capistrano.

Environmental: This project is categorically exempt (Class 3 - Section 15303 - New Construction) from the provisions of the California Environmental Quality Act (CEQA) because the project involves the construction of a new single-family residence not in conjunction with the construction of two or more of such dwelling units. In urbanized areas, up to three single-family residences may be constructed or converted under this exemption.

Recommendation: That the Planning Commission adopt the attached Draft Resolution approving Coastal Development Permit CDP06-10, Variance V07-06, and Minor Site Development Permit SDP07-12(M).

Kyle Butterwick (Director) gave an overview of the meeting of September 11, 2007. He stated that the applicants agreed to the continuance for the purpose of meeting with the neighborhood and the expectation of reaching a consensus. He stated that staff has attempted to respond to numerous questions raised by the public, and from received correspondence. He added that the correspondence has provided additional recommendations for consideration. He stated that this new information raises issues relative to size, scale, proportions and neighborhood compatibility.

Vice-Chairman Denton opened the Public Hearing.

Thomas Vegh (San Juan Capistrano – Owner) stated that the variance is asking for five feet of fill, which is only impacting the immediate neighbor and cannot be seen from the street.

Lew Dominy (Del Mar – Architect/Applicant) stated he was only asking for height of 21 feet at the garage. He stated that not granting the variance but asking to fill lowers the ceiling height and is unfair. He stated that granting the variance would not deprive others of a right to a view.

Andrea Neuman (Dana Point) opposed the project because it fails to conform to the slope of the lot and it impairs her view.

Fred Neuman (Dana Point) stated his concerns about the proposed pool within the bluff top. He added that he is opposed to the project's privacy impacts.

Bob Theel (Dana Point) stated that the fill impacts the neighbor next door. He stated that he has accurately measured the fill and it is 76 inches above the ground. He added that the Commission cannot vote for this project.

Paul Konapelsky (Dana Point) stated that he lives directly across from the proposed project. He opposed the project because of issues with the variance, the height, the fill, the setback and the feasibility of the granny flat. He felt that the most basic criteria has not been met in terms of putting in a granny flat. He added that the project design is dictating the elevation, not necessarily the drainage.

Cortland Ray (Dana Point) stated that the height variance blocks people's view due to the height discrepancy. He felt that the fill is not going to cause water to run to the curb. He stated that the overhangs on the home go within 1-1/2 feet of the property line. He stated that the only reason for the variance is for the view, not the drainage.

Melvin Hoeffliger (Laguna Beach) provided a handout to illustrate a computer-generated view imaging similarities of the two adjacent dwellings. He stated that the project will be looking directly onto his property. He felt that the project gives the neighborhood an industrial look and his privacy is impacted by the project.

Annie Stoeckmann (Dana Point) stated that she was disappointed to hear that there have been no changes suggested to the project. She stated that she was pleased with the Veghs offer to move the garage/granny flat structure back 2-3 feet to meet some aesthetic concerns, but she hasn't heard anything discussed this evening. She felt it was a good starting point.

Paul Douglas (Dana Point – Applicant's Representative) stated that he has reviewed the project with the neighbors and the neighborhood does not want the granny unit. He stated that the neighborhood has to be fair, the Veghs are not built to the setback and it's not bad architecture. He stated that the Veghs offered to lower the pool. He offered to answer any questions.

Lew Dominy (Del Mar - Architect/Applicant) stated that he would also answer any questions.

Tom Vegh (San Juan Capistrano – Owner) stated that he would answer any questions.

Alternate Commissioner Dec asked the Neumans how this project would affect them due to the high fill.

Andrea and Fred Neuman (Dana Point) responded that because the front dwelling unit is elevated it affects everyone on the street because it's a higher structure.

Commissioner Conway referenced an e-mail from Mrs. Neuman indicating that the applicant submitted a prior design that requested sump pump drainage, which was recommended by the applicant's geologist and signed off by the City's third party geologist. He asked that if this is correct what made him change the step down design of the plan and using sump pumps.

Tom Vegh (San Juan Capistrano – Owner) responded that from looking at the plans, the elevation of the roof did not change.

Lew Dominy (Del Mar - Architect/Applicant) added that he had 3-4 meetings as the design evolved with City Staff to conform and best accomplish the City's goals and the Vegh's goals.

Melvin Hoeffliger (Dana Point) stated from looking at the plans, that the current elevation is 138.9 and the new building terrace is at 145.3 finished, that's a 6.4 foot difference from the current elevation.

Kurth Nelson (Project Planner) confirmed that at the back end the fill would be greater, but that is not under the house, so the fill credit does not apply to that portion.

Vice-Chairman Denton closed the Public Hearing.

Commissioner Schoeffel stated that finding a hardship imposed by the property is an uphill battle. He added that the sump pump drainage is feasible, but there's speculation about sump pumps working. He stated that, with respect to the granny flat, he would rely on the City Attorney's advice on that issue as well as the bluff setback.

Commissioner Brough concurred with Commissioner Schoeffel on the granny flat as well as the setback; but found that the variance issue is a tough threshold to meet and did not believe that in this instance that there was sufficient evidence to support granting a variance.

Alternate Commissioner Dec stated that hardship is a strong enough case for the variance. He was concerned for the neighbor on the left who has a very legitimate concern.

Commissioner Conway was hoping for the applicant and neighbors to make headway. He had no problem with granny flat or the setbacks, but the variance showed no proof of hardship. He felt that the real issue is with the height and drainage and the detrimental impact to the adjacent properties.

Vice-Chairman Denton concurred with fellow Commissioner's concerns. He felt that there is no fault with the design of the house except the variance. He stated that approving the garage and granny flat, it is not out of line with the law in terms of the City Attorney's information. He was concerned with the fill at the garage or granny flat. He concurred with the applicant's offer to move it back. He was also concerned about Bob Nichols testimony; heard on September 11, 2007, regarding the sump pumps working well, that while gravity is best way to move water, sump pumps would do just as good a job. He stated that he is struggling with the variance, he would like to hear more testimony.

Commissioner Schoeffel felt that he does not hear a Commission consensus toward favoring a variance.

Commissioner Brough concurs with Commissioner Schoeffel. She would be prepared to accept everything presented, except the variance.

Commissioner Conway concurs with Commissioner Schoeffel.

Alternate Commissioner Dec inquired about the fill credit analysis and, if it is not granted, the applicant would drop down proportionately to run sump pumps from the back of the home to the front.

Kyle Butterwick (Director) stated that the Commission can vote to deny the variance. He added that if the Commission feels this is viable, he recommends to proceed with action or no action definitive to incorporate comments expressed this evening.

Todd Litfin (Assistant City Attorney) stated that whatever happens can be appealed to the City Council, parts of the approval and parts of the denial could be appealed by aggrieved parties.

Vice-Chairman Denton stated that the setback, granny flat and garage meet approval. He added that the struggle is the additional fill which is the variance.

Commissioner Schoeffel stated that he does not object with the fill, it's the height of the building. He stated that the variance is being sought for the increased height.

John Tilton (City Architect/Planning Manager) suggested that approving the project but denying the variance would involve a major design change and the applicant may want to continue the item and redesign the project.

Vice-Chairman Denton re-opened the Public Hearing.

Paul Douglas (Dana Point - Applicant's Representative) asked that the Planning Commission trifurcate this decision and break it into three motions: one for the granny unit, one for the setback, and one for the variance. He felt that the City will not grant the variance and understands that, but he would like to move forward.

Lew Dominy (Del Mar – Architect) stated that if the project will be approved without the variance; it will be pushed down and will look the same except 39 inches lower. He stated that the floor inside will be lower than the floor outside.

John Tilton (City Architect/Planning Manager) responded that 30 inches would not achieve positive drainage to the street and if sumps are used at all, the 30 inches of credit are not allowed.

Lew Dominy (Del Mar – Architect) stated that all that's left is half the site to drain towards the bluff and that is a bad decision.

Tom Vegh (San Juan Capistrano – Owner) stated that nobody is adversely impacted except for his neighbor directly next door, but in that regard he was willing to drop down. He stated that this is an unusual situation because if the pool is dropped to an existing grade, a six-foot fence is still there. He stated that he would benefit if there is fill, which is why he's trying to achieve one level of the home instead of stepping down when coming into the house. He stated that it's a deep lot and would like some more consideration to be given to the project.

Todd Litfin (Assistant City Attorney) stated that the next meeting would have a limited discussion to the extent that the language of the resolution reflects what the Commission decided and any modifications to the resolution. He added that no further public testimony will be heard regarding the merit of the Commission's ruling.

ACTION: Following closing the Public Hearing, Motion made (Schoeffel) and seconded (Brough) to direct staff to prepare a revised resolution to approve the project, but with the denial of the variance request; and to return the resolution to the Commission for final revision and approval. Motion carried 5-0. (AYES: Brough, Conway, Dec, Denton, Schoeffel NOES: None ABSENT: None ABSTAIN: None)

ITEM 6: A request to amend Planning Commission Resolution No.06-04-05-10 for Variance V05-08, Coastal Development Permit CDP05-25 & Minor Site Development Permit SDP05-65m at 34142 Chula Vista.

Applicant/ Raj Idnani
Owner: Usha Gopal
Location: 34142 Chula Vista; APN: 682-245-14

Request: To amend Planning Commission Resolution No.06-04-05-10 with the deletion of the last sentence of Condition of Approval No. 62.

Environmental: The proposed project qualifies as a Class 3 (Section 15303) pursuant to the applicable provisions of the California Environmental Quality Act (CEQA) in that the project involves the construction of a single-family residence and associated retaining walls.

Recommendation: That the Planning Commission recommend that the City Council deny the request for the amendment.

Matthew Schneider (Associate Planner) presented the staff report. He asked for the Commission's recommendation which would go to the City Council for their ultimate decision.

Vice-Chairman Denton opened the Public Hearing.

David Swerdlin (San Juan Capistrano – Applicant’s Representative) stated that the applicants have met all the Conditions of Approval and the recordation is not necessary.

He added four reasons to eliminate the impact of the deed restriction:

1. Future owners will always have full disclosure because of records at the City.
2. CA Real Estate law requires full disclosure.
3. In any real estate deal, any deed restriction brings a stigma putting the property owner at a disadvantage in any transaction including in refinancing.
4. Removal of the deed restriction will eliminate any chance of a foggy interpretation regarding the intent of Condition No. 62.

He stated that the applicants would wish the same rights and privileges as their neighbors. He asked the Commissioners for recommendation to City Council to approve the removal of the last sentence of Condition No. 62.

Steven Coontz (Laguna Beach – Applicant’s Attorney) questioned whether recording the Condition of Approval No. 62 is necessary. He stated that requiring the notice is not necessary because there is potential harm, devaluing the property as a recorded condition. He also stated that the potential buyers can see this as a downside.

Raj Idnani (Dana Point – Applicant) stated that a neighboring property started construction when the old code existed and they received their Certificate of Occupancy, he added that there should be equality. He stated that a neighbor received his variance and he was not required to record anything at the County level. He felt that there should be no recording at the County level and keep things at the City level. He requested recommendation to City Council to delete one line of Condition No. 62.

Usha Gopal (Dana Point – Owner) stated her reasons to request the removal of the need to make a recordation on the deed regarding the restrictions stated on the condition. She stated that she has met compliance with all the requirements, and all that’s being requested is that need for the deed recordation be removed to not cause her any troublesome issues in the future. She stated that this is her personal residence, and if she would need to sell, she would disclose the recordation. She asked the commission to allow the change on the condition.

Clarence Owen (Dana Point) stated that the City’s file request system works well in retrieving records, there is no need to go to the County for records. He stated

that the applicants fulfill all the code requirements. He recommended that the applicants should have their certificate of occupancy and remove last two lines of Condition no. 62.

Samir Idnani (Dana Point) urged the Commission to be in favor of the applicant, who is not asking for a special exception, but rather to rectify an equality that exists, the same rights and privileges that would be granted to others under the current Code. He stated that other properties do not have this condition and where granted their variance, same size of lot but not required to have a variance. He stated that it is unfair, unjust to require the applicants have recordation of this condition therefore on their house.

Raj Idnani (Dana Point - Applicant) stated that he has conveyed to his neighbors that he did not need to hide anything.

Vice-Chairman Denton recessed the meeting at 10:20 p.m. and reconvened the meeting at 10:25 pm.

Vice-Chairman Denton closed the Public Hearing.

Vice-Chairman Denton stated that it was very important to make it very clear to any future buyer that they could not grow the trees and other things above that point, and the Commission was right in putting in this Condition.

Commissioner Brough concurs with Vice-Chairman Denton. She stated that there are a lot of properties out there that have been developed under different codes and to go back and look at all of them would be somewhat of a stretch to ensure fairness. She stated that disclosure is very important to ensure that future property owners and or potential buyers were apprised of any restrictions.

Commissioner Schoeffel questioned whether this variance is needed because the law has changed.

Kyle Butterwick (Director) replied that during that time when the City approved the project; it did not comply with the City height standards, ultimately the City issued the variance, and the fact that the development standards have changed does not have effect on the original project. He stated that the project required a variance and, when granted by the City, remains in place today. He stated that a number of properties were the subject to variances, and over a period of time, many of those properties, presumably today, because of code changes, might indeed comply with the current standards.

Vice-Chairman Denton stated that his issue is whether or not the City would force them to record something at the County level on those properties, and if the City did, would they have the right to come back if the City changed its rules and

ask for that record to be removed from their property. He asked whether it is the same to what is being requested tonight.

Kyle Butterwick (Director) replied that there is a formal procedure to amend the conditions of approval. He added not all people come down to the City to research a record as part of their due diligence. He stated that the purpose of this stipulation is the original approval to make sure to disclose the Conditions and parameters for this approval because it was an arduous process to deliver the final approval.

Commissioner Schoeffel stated that this is a valid entitlement, hence it's a valid Condition, and he recalls the applicant's acceptance with the approval and an acceptance of the condition as well. He recalls this condition being very important. He fully supports the staff recommendation. He asked, what sort of enforcement efforts would the City be prepared to take to ensure compliance.

Kyle Butterwick stated that the City would not issue a Certificate of Compliance until all the Conditions are met. He stated that Staff will enforce that diligently and expects full compliance with all Conditions of Approval before issuing a building final.

ACTION: Motion made (Schoeffel) and seconded (Conway) to recommend that City Council deny the request for the amendment to the conditions of approval. Motion carried 5-0. (AYES: Brough, Conway, Dec, Denton, Schoeffel NOES: None ABSENT: None ABSTAIN: None)

E. PUBLIC MEETINGS

There were no Public Meetings.

F. OLD BUSINESS

There was no Old Business.

G. NEW BUSINESS

There was no New Business.

H. STAFF REPORTS

There were no Staff Reports.

I. COMMISSIONER COMMENTS

There were no Commissioner Comments.

J. ADJOURNMENT

Vice-Chairman Denton announced that the *next regular* meeting of the Planning Commission would be held on Tuesday, October 9, 2007, beginning at 7:00 p.m. (or as soon thereafter) in the Council Chamber located at 33282 Golden Lantern, Suite 210, Dana Point, California.

The meeting adjourned at 10:42 p.m.

Norman Denton, Vice-Chairman
Planning Commission