



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 11/21/00

AGENDA ITEM 5

WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: Director of Community and Economic Development

SUBJECT: Appeal of Planning Commission Denial of Administrative Variance No. 00-180-12 – Jack & Antonia Hagg (Appellant/Owners) - Request to Retain a Storage Shed 3 Feet from a Side Street Yard Property Line Where a Minimum 10-Foot Setback is Required – The Property is Located at 3692 Roxbury Lane, at the Northwest Corner with Pelham Place (Hayward Highlands Neighborhood/Woodland Estates Area) in the Single-Family Residential (RS-B 10) District

RECOMMENDATION:

It is recommended that the City Council deny the variance, subject to the attached findings.

DISCUSSION:

The applicant requests a variance to retain a 176-square-foot storage shed constructed, without building permit approval, 3 feet from a side street yard property line where a minimum 10-foot setback is required. The appellant's property is located on a corner parcel where a graded landscaped bank approximately 4 feet to 5 feet in height separates the applicant's side and rear yard from the adjacent side street, Pelham Place. An area within the bank was excavated to accommodate construction of the shed. A 6-foot-high grape stake fence screens all but a small portion of the shed but it can be seen from the intersection of Pelham Way and Roxbury Lane.

The Planning Director initially denied the variance request on July 6, 2000. The applicant appealed this decision on July 7, 2000, and the Planning Commission unanimously upheld the Planning Director's decision and denied the variance request on October 19, 2000. The applicant appealed the Planning Commission's decision on October 27, 2000.

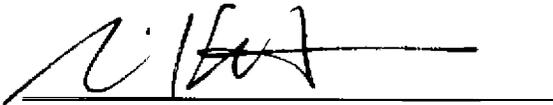
The Planning Commission determined that the requisite findings could not be made to support the requested variance and that the granting of the variance would constitute a special privilege for this property owner. There are no special circumstances applicable to the property that prevent locating a shed outside required setbacks as sufficient area exists within the appellant's rear yard to accommodate the construction of the shed in compliance with the City's accessory structure requirements. In addition, no other similar variances have been granted in the neighborhood.

In his appeal, Mr. Hagg states that the existing landscaping restricts the location of an accessory structure on his property. and that the shed is unobtrusive, does not compromise slope stability, and complies with the CC&Rs of the Woodland Estates Community Association. The Association submitted a letter in support of the variance, stating that the shed is not detrimental to the appearance of the property, that it complies with the CC&Rs, and that it is not constructed within a controlled planting area or within an erosion control area where it would compromise slope stability. However, no study has been performed to determine slope stability. Three neighbors expressed concern to the Planning Commission regarding damage to the slope and the resultant problems of slides and drainage; four neighbors spoke in support of the appellant.

CONCLUSION:

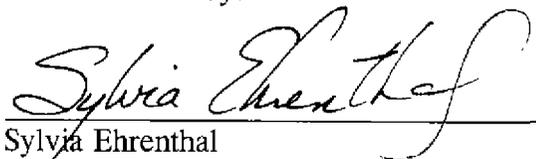
The requisite findings cannot be made to support the requested variance. There are no special circumstances applicable to the property that prevent locating a shed outside required setbacks. Therefore, denial of the variance request is recommended. If approval of the variance is granted, the Building Official will require building permit approval for the shed including an engineered soils report confirming the stability of the bank.

Prepared by:



Richard E. Patenaude, AICP
Acting Principal Planner

Recommended by:



Sylvia Ehrenthal
Director of Community and Economic Development

Approved by:



Jesús Armas, City Manager

Attachments :

Exhibit A – Area

Exhibit B – Findings for Denial

Exhibit C – Planning Commission Agenda Report dated 10/19/00, including:

Appellant’s Letter to Planning Commissioners dated 7/20/00

Appellant’s Letter of Appeal. dated 7/20/00

Woodland Estates Community Association Letter dated 6/26/00

Exhibit D – Planning Commission Minutes – 10/19/00

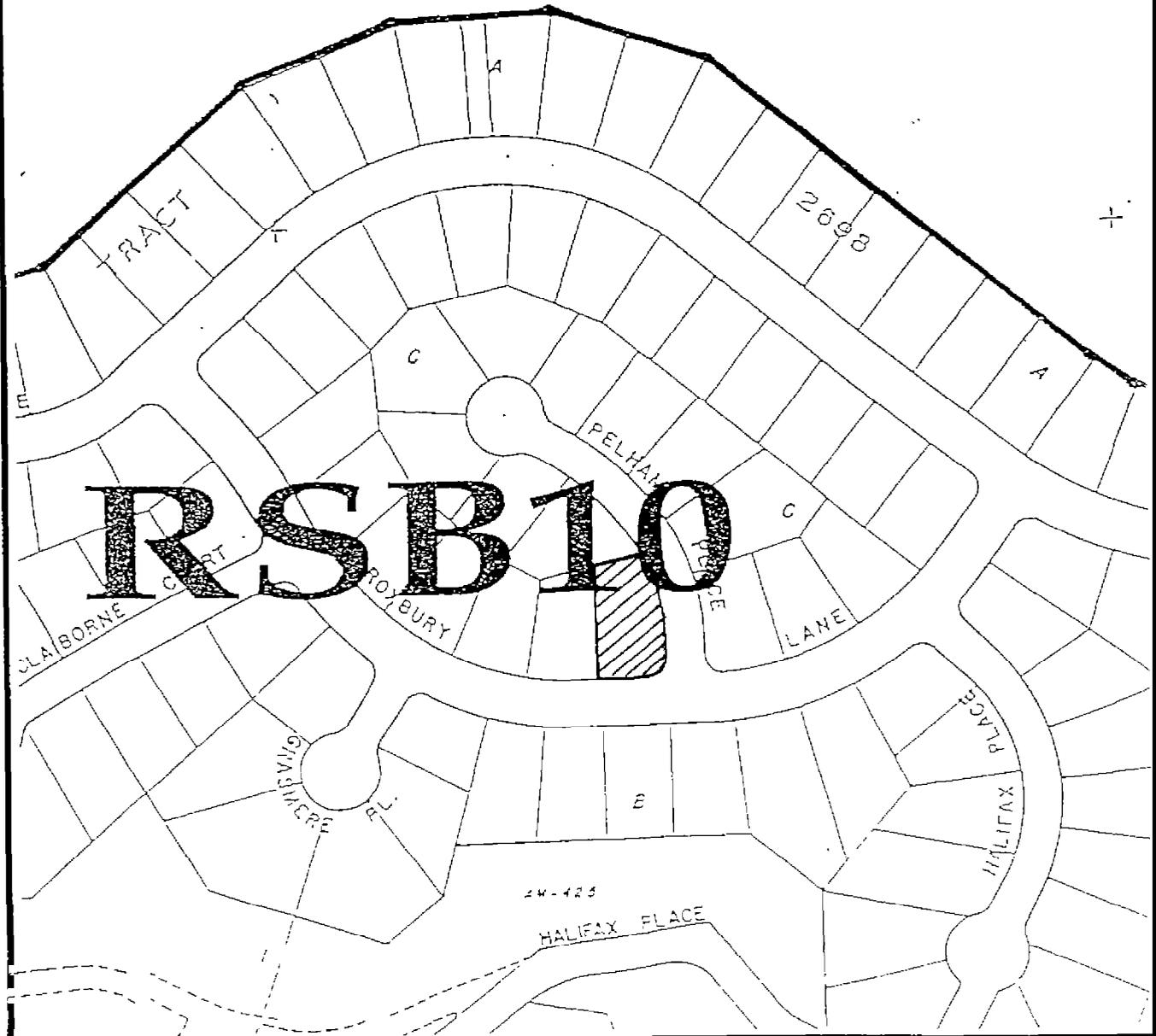
Exhibit E – Appellant’s Letter of Appeal dated 10/24/00

Plans

Draft Resolution

011 10 00

RSB4



Area & Zoning Map
VAR 00-180-12
3692 Roxbury Lane
Applicant/Owner: Jack & Antonia Hagg

VARIANCE APPLICATION NO. 00-180-12
Jack and Antonia Hagg (Applicants/Owners)
FINDINGS FOR DENIAL
November 21, 2000

Request for a variance to retain a 176-square-foot storage shed, constructed without building permits, located 3 feet from a side street yard property line where a minimum 10-foot setback is required,

- A. The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15303(e), *New Construction or Conversion of Small Structure*.
- B. There are no special circumstances applicable to the property regarding this request in that the characteristics of the subject property **are** similar **to** other parcels in the vicinity and that sufficient area exists within the appellant's rear yard to accommodate the construction of the shed and to also comply with the City's accessory structure setback requirements.
- C. Strict application of the Zoning Ordinance would not deprive such property of privileges enjoyed by other property in the vicinity under the same zoning classification in that no other similar variances have been approved in the vicinity.
- D. **The** variance would constitute a grant of a special privilege inconsistent with the limitations upon other properties in the vicinity and the Single-Family Residential zone in which the property is situated.
- E. The variance would compromise the purpose of the zoning district and that a detrimental impact would result in that the location of the shed is located within a required side street yard **setback** area **and** that other **similar** properties may desire similar variance requests that could detrimentally impact the zoning district **and** that approval of many requests could potentially change the character of the neighborhood.



CITY OF HAYWARD AGENDA REPORT

Planning Commission

Meeting Date 10/19/00

Agenda Item 1

TO: Planning Commission

FROM: James V. De Luz, Assistant Planner

SUBJECT: **Appeal of Denial of Administrative Variance No. 00-180-12 – Jack Hagg (Appellant) Jack and Antonia Hagg (Owners):** Appeal of the Planning Director's Action Denying a Variance Application to Retain a Storage Shed 3 feet from a Side **Street** Yard Property Line Where a Minimum **10** foot Setback is Required. - The Property is Located at 3692 Roxbury Lane, at the Northwest Corner of Roxbury Lane and Pelham Place (Hayward Highlands Neighborhood/Woodland Estates area) in the Single-Family Residential – Minimum 10,000 Square Foot Lots (RS-B10) District

RECOMMENDATION:

It is recommended that the Planning Commission find that **the** project is categorically exempt from CEQA, uphold the Planning Director's action. and deny the variance, subject to the attached findings,

BACKGROUND:

The property is located within a single-family subdivision of one and two-story homes located on large lots, most of which are 10,000 square feet or larger. The applicant's corner parcel is irregular in shape and is approximately 10,494 square-feet in area. The parcel is developed with a one-story, single-family residence. Many of the homes in the area, including the home on the subject property, were built with generous side, rear, and side street yard setback areas that exceed typical setbacks in most residential subdivisions. The property is located in the hill area where many yard areas within the subdivision are encumbered by slopes and slope easements that were designed for stability and drainage purposes and to create level useable lots.

The shed in question came to staff's attention via a complaint to the Community Preservation Division. The appellant was asked to relocate the shed and apply for a building permit, and he chose instead to seek approval of a variance.

The requested variance is to retain a 176-square-foot storage shed constructed without building permit approval located 3 feet from a side street yard property line where a minimum 10 foot setback is required. The appellant's property is located on a corner parcel where a graded landscaped bank approximately 4 feet to 5 feet in height separates the applicant's side and rear

yard from the adjacent side street, Pelham Place. An area within the bank was excavated to accommodate construction of the shed, If approval of the variance is granted. the Building Official will require building permit approval for the shed and approval of an engineered soils report confirming the stability of the bank, shed construction, and foundation design prior to building permit issuance. The shed is roofed with heavy tab architectural shingles and is sided with exterior horizontal wood siding to match the applicant's home. The home is sided with white masonite hard board siding that somewhat resembles stucco from a distance. The applicant plans to paint the shed to match his home once the outcome of the variance is determined .

A 6-foot-high grape stake fence is located at the top of bank along the Pelham Place property line and is setback 9 feet from the curb. The fence screens all but a small portion of the shed as seen from the intersection of Pelham Way and Roxbury Lane. Normally a 6-foot fence would be situated at least 10 feet from the side street property line, the same setback as required for the existing shed; however, the fence appears to have been located along the side street property line at the time the subdivision was constructed.

In his appeal letter, Mr. Hagg states that site constraints, namely landscaping, restrict the location of an accessory structure on his property, that the shed is unobtrusive, it does not compromise slope stability, and it complies with the CC&Rs of the Woodland Estates Community Association (see appellant's letter dated 7/2000). The Woodland Estates Community Association has also submitted a letter in support of the variance; see attached letter dated 6/26/2000. The Association stated that the shed is not detrimental to the appearance of the property, it complies with the Association's CC&Rs, and that it is not constructed within a controlled planting area or within an erosion control area where it would compromise slope stability. However, in the opinion of the Planning Director, requisite findings cannot be made that support the requested variance. Namely, there are no special circumstances applicable to the property that prevent locating a shed outside required setbacks as sufficient area exists within the appellant's rear yard to accommodate the construction of the shed in compliance with the City's accessory structure setback requirements. In addition, no other similar variances have been granted in the neighborhood.

ENVIRONMENTAL REVIEW:

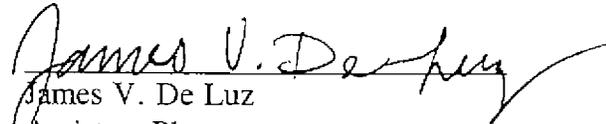
The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15303(e), *New Construction or Conversion of Small Structures*.

PUBLIC NOTICE:

On October 6, 2000. a Notice of Public Hearing was mailed to every property owner and occupant within 300 feet of the subject site, as noted on the latest assessor's records. Notice was also provided to the former task force members of the Hayward Highlands Neighborhood Plan, interested parties and to the Woodland Estates Neighborhood Association. Previously a notice seeking general comments regarding the variance was mailed to all the above individuals

and organizations when the appellant submitted the variance request. Later a Notice of Decision informing the public of the Planning Director's decision to deny the variance was mailed to all the same individuals when the Planning Director administratively denied the variance. Numerous telephone inquiries were received both in opposition to and in favor of the variance request and other inquiries were received from interested parties seeking general information regarding the variance.

Prepared by :


James V. De Luz
Assistant Planner

Recommended by :


Dyana Anderly, AICP
Planning Manager

Attachments :

- A. Area Map
- B. Findings
- C. Appellant's Letter to Planning Commissioners dated 7/12/00
- D. Appellant's Letter of Appeal dated 7/2000
- E. Woodland Estates Community Association Letter dated 6/26/2000
Plans

July 2000

RECEIVED

From: Jack & Antonia Hagg
To: Member, Hayward Planning Commission
Subject: Utility Shed Variance #2000-180-12

JUL 07 2000

PLANNING DIVISION

My name is Jack Hagg and I live at 3692 Roxbury L.(Woodland Estates) Hayward and we are applying for a variance for a utility shed we built on our property.

In the past year we put up a utility shed on our property in order to meet our needs for additional storage space for garden tools and other equipment.

We placed it at a site that would eliminate the forced removal of 20 to 25 year old bearing fruit trees, such as apple, plum, apricote and established rose garden, plus a vegetable garden area. My lot is large by today's standards, however due to two sloping areas it reduces the amount of usable space.

It is our hope that the planning commission give favorable consideration to a well built but simply a utility shed that we built with the aid of my son and grandson.

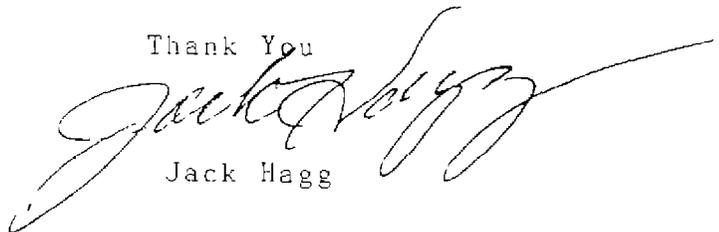
We have not built this shed on any soil erosion or control planting areas. My son, a journeyman carpenter in Alameda & Contra Costa Counties for the past 28 years helped me construct this shed to meet building code requirements. He builds houses for a living.

The shed is of low profile and barely discernable from the street. It constitutes no bad appearance from what my neighbors tell me. We have lived on Roxbury for the past 27 years following my retirement from the U.S. Navy and subsequent retirement from Kaiser Center Oakland,

Thank You

c-4

Jack Hagg



ATTACHMENT C

July 2000

RECEIVED

From: Jack Hagg, 3692 Roxbury Ln, Hayward
To: Planning Dept. City Of Hayward
Subject: Appeal of Variance

JUL 07 2000

PLANNING DIVISION

I, Jack Hagg, property owner at 3692 Roxbury Ln. hereby appeal the decision of the Planning Director denying my variance application 00-180-12. The basis of my appeal is:

- 1) The shed is unobtrusive, it is barely visible from either Roxbury Ln. or Pelham Pl. and it is located behind a 6 ft fence.
- 2) Because of established landscaping and other site improvements location of the shed within the other areas of the rear yard would be prohibitive.
- 3) It (the Shed) complies with the CC&R'S of Woodland Estates Home Owners Association.
- 4) The location will and is not comprising the slope as it is not an engineered slope as per the records on file of the Woodland Estates subdivision.



JACK HAGG

WOODLAND ESTATES COMMUNITY ASSOCIATION
2494 OAKES DRIVE
HAYWARD, CA 94542
TEL: 510-727-0635

ATTN: James V. DeLuz, Project Planner
City of Hayward Planning Division,
777 B Street
Hayward, CA 94541
Phone # 5 10-W-3212
Fax #510-583-3649

The Board of Directors of Woodland Estates Community Association has met and had substantial discussion regarding the request of Woodland Estates Resident Jack and Antonia Hagg of 3692 Roxbury Lane, Hayward, to grant a variance to the set back required for the shed constructed on his property .

We have reviewed the CC and R's of the said property and the shed in question is not constructed on any cross hatched soil erosion or control planting areas per the plat drawing of the CC and R's.

Therefore the Board has approved the City of Hayward's plan to grant the Hagg's a variance provided the shed complies with all the City Building Code requirements.

The board also agreed that the shed was not detrimental to the appearance of the property.

If you have any questions please call.

Sincerely,


6-26-2000

Noel R Pinto
Member of the Board
Woodland Estates Community Associations.

MINUTES



**REGULAR MEETING OF THE PLANNING
COMMISSION, CITY OF HAYWARD, Council
Chambers
Thursday, October 19, 2000, 7:30 P.M.
777 "B" Street, Hayward, CA 94541**

MEETING

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m. by Chairperson Caveglia, followed by the Pledge of Allegiance.

ROLL CALL

Present: COMMISSIONERS Bennett, Bogue, Fish, Halliday, Sacks, Williams, Zermeño
CHAIRPERSON Caveglia
Absent: COMMISSIONER None

Staff Members Present: Anderly, Conneely, Garcia, Looney, McClellan

General Public **Present:** Approximately 30

PUBLIC COMMENT

There were no public comments.

AGENDA

1. **Appeal of Denial of Administrative Variance No. 00-180-12 - Jack Hagg (Appellant) Jack and Antonia Hagg (Owners):** Appeal of the Planning Director's Action Denying a Variance Application to Retain a Storage Shed 3 feet from a Side Street Yard Property Line Where a Minimum 10-foot Setback is Required - The Property is Located at 3692 Roxbury Lane, at the Northwest Corner of Roxbury Lane and Pelham Place {Hayward Highlands Neighborhood/Woodland Estates area) in the Single-Family Residential - Minimum 10,000 Square Foot Lots (RS-BIO) District
2. **Administrative Use Permit No. 00-150-28 - Whalen & Company [Bonnie Medina-Jawad] for Metricom (Applicant), PG&E (Owner):** Request to Attach a Telecommunication Antenna Facility to a PG&E Transmission Tower - The Property is Located at 1620 Highland Boulevard, Northerly Side at the Point Just Before the Street Closure and Barricade Structure Accessed from Mission Boulevard in an A (Agricultural) District

PUBLIC HEARINGS

1. **Appeal of Denial of Administrative Variance No. 00-180-12 - Jack Hagg (Appellant) Jack and Antonia Hagg (Owners):** Appeal of the Planning Director's Action Denying a Variance Application to Retain a Storage Shed 3 feet from a Side Street Yard Property Line

Where a Minimum 10-foot Setback is Required - The Property is Located at 3692 Roxbury Lane, at the Northwest Corner of Roxbury Lane and Pelham Place (I-Iayward Highlands Neighborhood/Woodland Estates area> in the Single-Family Residential – Minimum 10,000 Square Foot Lots (RS-B10) District

Planning Manager Anderly described the property and the application. She noted that the property owner was appealing a denial by the Planning Director. She added that the Commission would have to find special circumstances, among other things, in order to reverse the denial.

Commissioner Williams commented that no other owners in the area have asked for a similar variance. He then asked what it would take to be acceptable.

Planning Manager Anderly explained that the shed would have to be considerably smaller than this one, and still at least 10-feet from the property line.

Chairperson Caveglia opened the public hearing at 7:39 p.m.

Jack Hagg, 3692 Roxbury Lane, said he had been given some bad advice.

Noel Pinto, 28974 Halifax Place, member of the Board of Directors of the Woodland Estates Homes Association, said there is another shed in the neighborhood also within the 10-foot setback. It is a greenhouse on the corner of Cromwell. He added that the Board met and decided to recommend that this variance be approved since it is not detrimental to the neighborhood.

Commissioner Bogue asked whether it would be acceptable to have structures like this throughout the Woodland Estates area.

Mr. Pinto said there should not be a problem with that.

Commissioner Bogue then asked about the topography.

Mr. Pinto said the Board had looked at this and determined that it is not built on a soil erosion zone.

Commissioner Sacks asked why the Board would go along with this since the applicant never went to anyone for permission before building.

Mr. Pinto said, apparently the applicant did not have the proper advice. He added that the Board met, looked the property over and since they had previously agreed to the greenhouse, they agreed to approve this building. He indicated that all of the homes have fences around



them, whether they are required or not.

Dean Colarchik, 3691 Roxbury Lane, who lives directly across the street from the applicant, said he had no objection to the shed since it was very well constructed.

Bob Perry, 26876 Pelham Place, neighbor and a construction supervisor, commented that there **have** been **five major** slides in the area due to homeowner error. He explained the types of **slopes** and that the integrity of this slope has been impeded. He **then** asked who **would** be liable for any damage that may occur. He added that utility access and easements are required. He then indicated that everyone in the neighborhood has a copy of the Association CCR's, which this structure clearly violates. **He** then responded to further Commissioner questions and explained the seriousness of the engineered slopes.

Celeste Perry, 26876 Pelham Place, added her comments relative to the CCR's for the Association. She indicated that building a shed would not normally be a problem for a level lot **but** that this lot has a slope into which the shed was built. She added that the appearance of the structure is not the concern.

Marilyn Jumper, 3676 Roxbury Lane, another neighbor, said she lives at the lowest point in the development and recently incurred water problems under her house. She never has had standing water problems before, even with the massive rainstorms experienced in the area.

Gabriel Crotti, 3699 Roxbury Lane, who lives across the street from the applicant, said this site is not Oakes Drive as far as the slope. He asked whether this is really a crucial issue.

John Ostarello, N/A, said he drove by to see the shed and it is not really visible. It is fairly substantial and seems to have adequate drainage. He added that the slopes and slides were all on Oakes Drive. He indicated that even the experts do not seem to have the answers. Even the people **who** write the CC&R's do not know what the City requires. In this case, the Board realized that it was done so they approved it.

Merrill Brown, 27044 Halifax Place, said he built the first house in the area. Mr. Iagg asked him about materials **for** the project. He thought the permit was through the Association. He said he had the inspectors review the project, plans and expense.

Chairperson Caveglia closed the public hearing at 8:17 p.m., and then commented that allowing this appeal would be granting a special privilege.

Commissioner Fish moved, seconded by Commissioner Halliday, to deny the appeal and variance and to uphold the Planning Directors decision. He added that it is important to keep

setbacks consistent in a neighborhood.

Commissioner Halliday said this was a very tough decision, which **was** not done lightly. **She** noted that she is hoping that during the General Plan process, the **City Council** and Commission members will be able to develop guidelines for older neighborhoods. In this instance, she said, she did not want to set a precedent. Common sense says you have to get permits for a structure this size, especially when you cut into a slope.

Commissioner Zermeño wondered who would be liable if there were a slide and damage and it was found the shed was at fault.

Assistant City Attorney Conneely said liability would be addressed in an executive session.

Commissioner Zermeño then suggested that the reason Homeowners Associations have **CC&R's**, is for consistency in the neighborhood.

Planning Manager Anderly added that generally, to be able to construct a building of this **size** and complexity, one would know a building permit is required.

Chairperson Caveglia said you have **to** assume people **who** know how to build something this size would also know to ask.

Commissioner Zermeño stressed that liability is an issue with this structure and its location.

Commissioner Williams said he was initially undecided about the issue but if the Commission supported the variance, the owner would still have to get a soils **test**. He expressed concern about cutting into the slope, and noted the reason this issue was brought **to** the attention of the City was as a result of a complaint. He added that we must abide by our ordinances. He would support the motion.

Commissioner Sacks said it was unfortunate that it got this far without the right parties being involved. She indicated support for the motion and quoted section **d.** of the Findings for Denial saying that this would constitute a special privilege to the applicant.

Commissioner Bogue said **he**, too, would support the motion. He said cutting into the slope is in violation of both the Homeowner's CC&R's as well as the City's Zoning Ordinances. He expressed concern that the building sits in the slope.

The motion for denial of the variance passed unanimously.

2. **Administrative Use Permit No. 00-150-28 - Whalen & Company [Bonnie Medina-Jawad] for Metricom (Applicant), PG&E (Owner) :** Request to Attach a

RECEIVED

OCT 27 2000

24 October 2000

PLANNING DIVISION

To: Hayward city Council
City Hall
777 B Street
Hayward, Calif. 94541

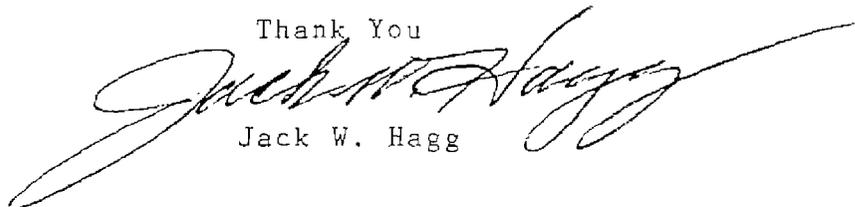
cc: Mayor, City Council,
City Manager, and
Dept. City Attorney
& Planning Manager
Fwd: 10/27/00 ml

From: Jack & Antonia Hagg
3692 Roxbury Ln.
Hayward, Calif. 94542

Subject: Appeal of a denial of variance #00-180-12

We are officially requesting a hearing about the denial from the planning commission of our request for a variance on 19 Oct. 2000. We are requesting this, in order for us to acquire some material in rebuttal to the objection to our utility shed. It is our estimate that approximately 60 days may be required to accomplish this and hopefully less.

Thank You



Jack W. Hagg

DRAFT

HAYWARD CITY COUNCIL 

RESOLUTION NO. _____

Introduced by Council Member _____

RESOLUTION DENYING VARIANCE APPLICATION
NO. 00-180-12 OF JACK AND ANTONIA HAGG
(APPELLANT/OWNERS)

WHEREAS, there has been presented to the City Council of the City of Hayward Variance Application No. 00-180-12 to retain a 176-square foot storage shed constructed, without building permit approval, three feet from a side street yard property line, where a 10-foot setback is required, on property located at 3692 Roxbury Lane, at the Northwest corner with Pelham Place (Hayward Highlands neighborhood/Woodland Estates area) in a Single-Family Residential (RS-B10) District: and

WHEREAS, the Planning Director initially denied the variance request on July 6, 2000, and the Planning Commission unanimously upheld the Planning Director's decision and denied the applicant's appeal at its meeting on October 19, 2000; and

WHEREAS, the matter was appealed to the City Council within the time and manner provided by law; and

WHEREAS, the City Council finds and determines that:

1. The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to section 15303(e), *New Construction or Conversion of Small Structure*.
2. There are no special circumstances applicable to the property regarding this request in that the characteristics of the subject property are similar to other parcels in the vicinity and that sufficient area exists within the appellant's rear yard to accommodate the construction of the shed and to also comply with the City's accessory structure setback requirements.
3. Strict application of the Zoning Ordinance would not deprive the property of privileges enjoyed by other properties in the vicinity under the same zoning classification in that no other similar variances have been approved in the vicinity.
4. The variance would constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and the Single-Family Residential zone in which the property is situated.

5. **The variance** would compromise the purpose of **the** zoning district **and** that a detrimental impact would result in that the location of the shed is located within a required side street yard setback area and that other similar properties may desire similar variance requests that could detrimentally impact the zoning district and that approval **of many requests** could potentially change the character of the neighborhood.

NOW, THEREFORE, BE IT RESOLVED that, based on the foregoing findings, the City Council of the City of Hayward hereby denies Variance Application No. 00-180-12.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2000

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST : _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward