



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 12/17/02
AGENDA ITEM 4
WORK SESSION ITEM _____

TO: Mayor and City Council
FROM: Director of Community and Economic Development
SUBJECT: PL-2002-0400-VAR – Continuation of Hearing of Appeal of Planning Commission Denial of Variance to Retain a Storage Room at 26476 Cascade Street – Ernest Armijo (Applicant/Owner)

RECOMMENDATION

It is recommended that the City Council deny the appeal and uphold the Planning Commission's denial of the variance and the exception to the Design Guidelines.

DISCUSSION

At its November 12, 2002, meeting, City Council continued the public hearing in order to allow time for staff to provide additional information related to the variance application. Council members requested the following information:

- The structural condition of the shed and required modifications for its continued use for storage and a workshop;
- The feasibility of adding a roof to the shed, consistent with the design of that found on the house;
- An account of Community Preservation activities in the area, especially for similar structures; and
- Design alternatives to mitigate the visual impact of the shed.

Structural Condition

Planning staff, as a result of a visual inspection, determined that the shed might require reconstruction to meet building code standards. Subsequently, a City building inspector reported that the shed was originally constructed as a carport and the sides were enclosed at a later date, creating the present enclosed structure. The structure appears to be sound with only some minor dry rot on the exterior eaves, which would not be expensive to repair. The inspector notes that the applicant has been using an extension cord to supply power to the structure, which is in violation of the Electrical Code. An electrical permit would have to be obtained and permanent wiring installed.

Adding a Roof

Because the structure was built as a carport with a corrugated aluminum roof, it will not support a hip or gable style roof to match the home. The shed would have to be reconstructed in order to support a more substantial roof.

Community Preservation Action in Surrounding Neighborhood

Community Preservation staff indicates that during this past year there were four reported cases of structures encroaching into the required setback within the immediate area. In two of the cases, property owners corrected the situation. The other two are currently under investigation.

During a site visit on December 6, 2002, staff observed a number of structures encroaching into the required setback. There are carports on Stanwood Avenue, Cascade Street and on Bishop Street each constructed to the property line, one of which is supported by a property line fence. The carport on Bishop Street appears to have been recently constructed. None of these have been reported to the Community Preservation Division.

Design Alternatives

A stucco-type finish or texture could be applied to the exterior walls to make the structure more visually compatible with the home. Removal of the concrete pad between the shed and the sidewalk would allow for additional landscaping to screen the view of the shed from the street. It has been noted that the property owner parks vehicles on this paved area; the Zoning Ordinance prohibits parking except on the adjacent driveway that provides direct access to the garage from a public street.

Other Issues

The City Council questioned how the determination was made that the shed was in the rear yard rather than the side yard. Typically, the narrower ends of a lot serve as the front and rear yards, with the front yard at least 20 feet deep and the rear yard, also 20 feet deep, opposite the front yard. In the case of this corner lot, the Hickory Avenue frontage is the narrow dimension compared to the Cascade Street frontage. Although the residence was originally constructed with its entry and garage doors facing Cascade Street, its setbacks support the determination of a Hickory Avenue frontage. By considering Hickory Avenue the front yard, the home is in conformance with all setback requirements of the Zoning Ordinance, excluding the shed. The aerial photo (Exhibit B) also shows this determination to be consistent with the neighborhood development pattern.

A determination that the front yard is the Cascade Street frontage creates other ramifications. Neither front nor rear yards would be in conformance with the Zoning Ordinance requirements. The shed would still require approval of a variance although to a lesser degree (8 inches rather than 5 feet-8inches). A recently-constructed patio structure on the north side of the home would have to be removed as the required setback for that addition would be 10 feet rather than the 6 feet for a side yard; the residence is located 12 feet from that property line.

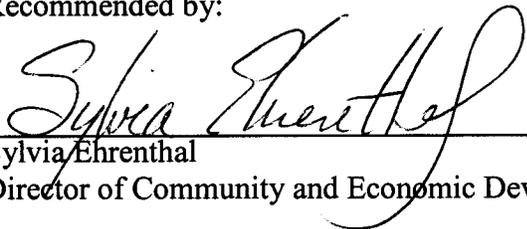
Given that other structures in the area have been brought into compliance through efforts of Community Preservation, and that it is not feasible to add a roof that would be consistent with the Design Guidelines, staff recommends that the variance be denied and the shed be removed.

Should the variance be approved, staff will come back to the City Council with the required findings and recommended conditions of approval. These will include conditions requiring a building permit for the structure and electrical permits for electrical outlets and lighting, removal of the concrete paving adjacent to the driveway and replacing it with landscaping, and a stucco or texture coating to the exterior walls of the shed to match the appearance of the home.

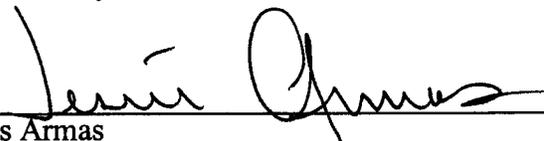
Prepared by:


Norman Weisbrod
Consulting Project Planner

Recommended by:


Sylvia Ehrenthal
Director of Community and Economic Development

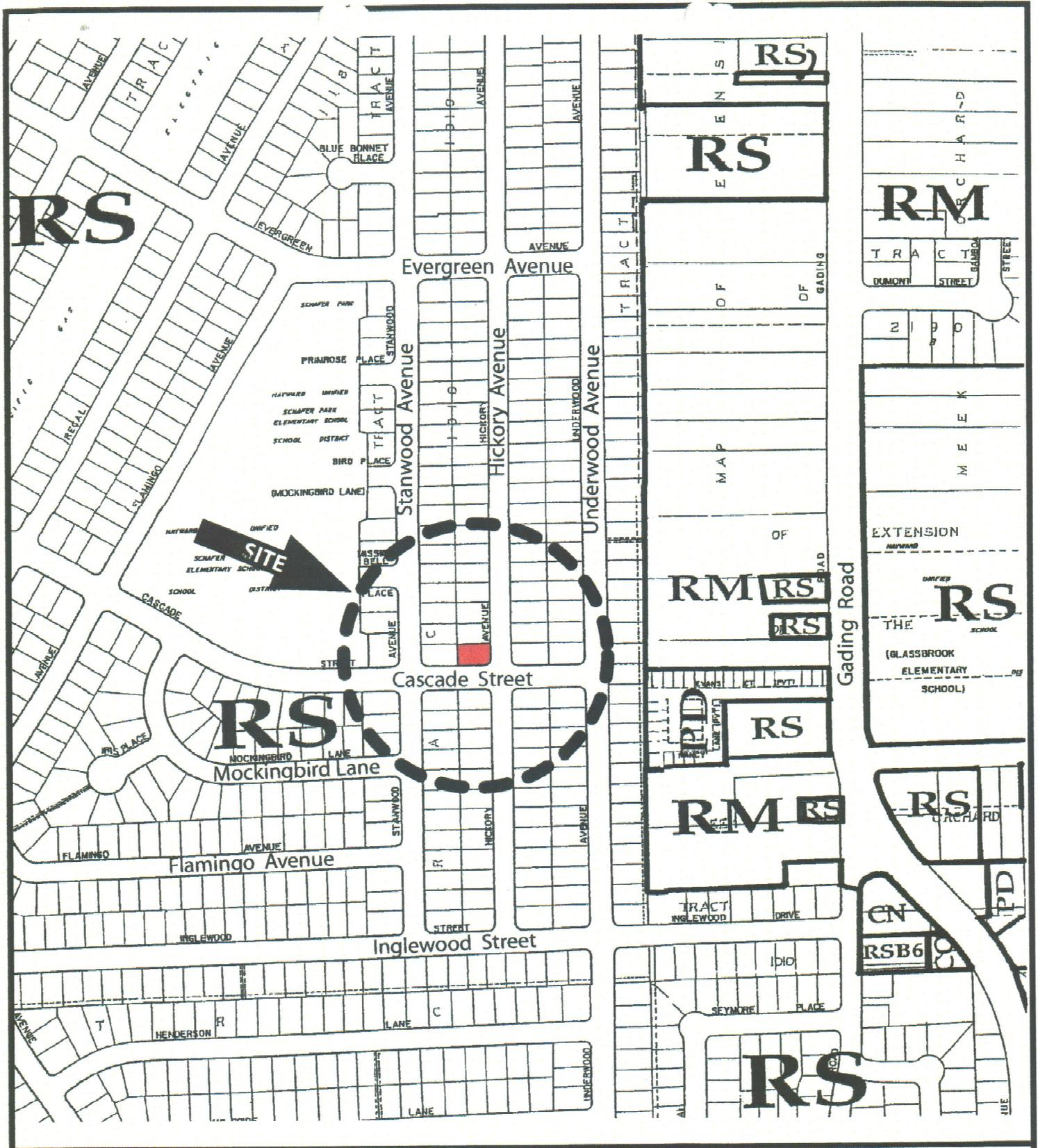
Approved by:


Jesús Armas
City Manager

Attachments:

- Exhibit A. Area & Zoning Map
- Exhibit B. Aerial Plan
- Exhibit C. Findings for Denial
- Exhibit D. Planning Commission Staff Report and Minutes, dated September 12, 2002
- Exhibit E. City Council Staff Report and Minutes, dated November 12, 2002
Draft Resolution

12/11/02



Area & Zoning Map

PL-2002-0400 VAR

Address: 26476 Cascade Street

Applicant: Ernest Armijo

Owner: Ernest Armijo

CN-Neighborhood Commercial

CO-Commercial Office

PD-Planned Development

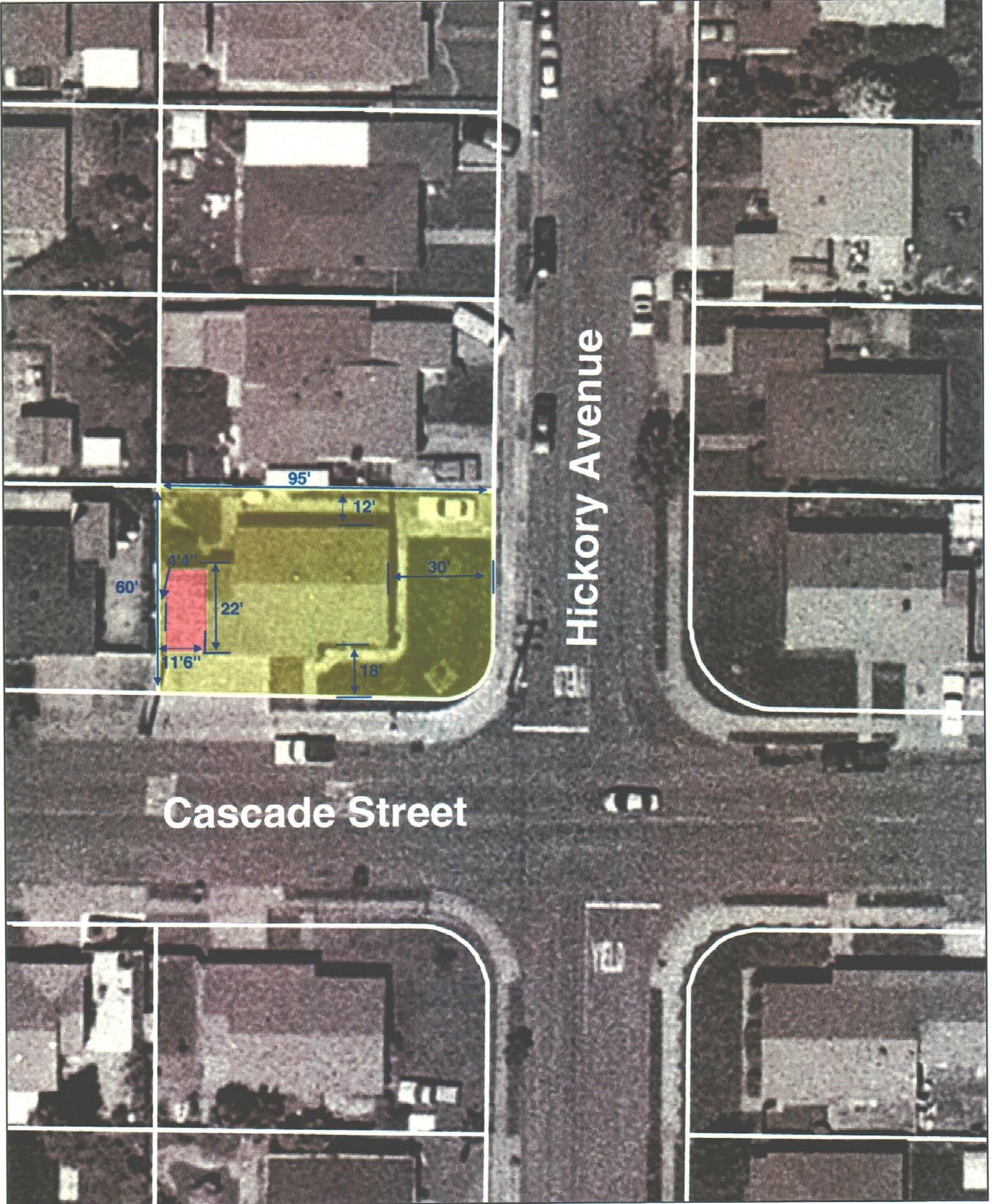
RM-Medium Density Residential

RS-Single-Family Residential, RSB4, RSB6

Aerial Plan

1 Inch = 4800 Feet

EXHIBIT B



Hickory Avenue

Cascade Street

95'

12'

30'

18'

22'

11'6"

60'

4'4"

VARIANCE APPLICATION NO. PL-2002-0523
Sign Designs, Inc (Applicant), Nick Dahya (Owner)
Quality Inn, 25801 Industrial Boulevard
FINDING FOR DENIAL

Findings for Denial – Request to reduce a required yard from 10 feet to 3 allow an existing 14-foot tall monument sign to remain.

- A. The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) Guidelines, pursuant to Section 15311, Accessory Structures, Class 11 (a) On-premise signs.
- B. There are no special circumstances applicable to the property regarding this variance request or the exception in that the property is the Industrial District and received a sign permit that required the sign to be setback 10 feet from the front property line which is required of all monument signs of this height found in this Zoning District.
- C. Strict application of the Zoning Ordinance and the Sign Ordinance would not deprive such property of privileges enjoyed by other properties in the vicinity under the same Industrial District zoning classification in that there is adequate space for the placement of the sign to meet the front and side set back and to meet the requirements as stated at the time of the issuance of the sign permit.
- D. The variance and exception would constitute a grant of a special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated in that variances have not been approved for other properties in the vicinity for a monument sign of this size located 3 feet from the front property line.

MINUTES



REGULAR MEETING OF THE PLANNING
COMMISSION, CITY OF HAYWARD
Council Chambers
Thursday, September 12, 2002, 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 Bogue, followed by the Pledge of Allegiance.

ROLL CALL

Present: COMMISSIONERS Zermeño, McKillop, Sacks, Caveglia, Halliday, Thnay
CHAIRPERSON Bogue
Absent: COMMISSIONER None

Staff Members Present: S. Ehrenthal, N. Weisbrod, R. Patenaude, M. Conneely,

General Public Present: Approximately 200, Overflow room was used.

PUBLIC COMMENT - There was no public comment.

AGENDA

1. Variance Application No. PL-2002-0400 Ernest Armijo (Applicant/Owner): Request to Retain an Attached Shed that is Situated 4'4" from the Rear Property Line Where a Minimum of 10' is Required; To Allow 33% of the Rear Yard to be Covered Where a Maximum of 20% May be Covered; For and Exception to the City's Design Guidelines which Require that Accessory Structures Match the Primary Structure - The Property is Located at 26476 Cascade Street in the RS (Single-Family Residential) District
2. Referral by the Planning Director - Administrative Use Permit Application No. PL-2002-0262 - Mark Thomas (Applicant)/ Las Vegas Trail Theatre Company (Owner) - Request to Convert an Existing Theater to a Religious Facility with Administrative Offices - The Property is Located at 24800 Hesperian Boulevard in the Neighborhood Commercial (CN) District

PUBLIC HEARING

1. Variance Application No. PL-2002-0400 Ernest Armijo (Applicant/Owner): Request to Retain an Attached Shed that is Situated 4'4" from the Rear Property Line Where a Minimum of 10' is Required; To Allow 33% of the Rear Yard to be Covered Where a Maximum of 20% May be Covered; For and Exception to the City's Design Guidelines which Require that Accessory Structures Match the Primary Structure - The Property is Located at 26476 Cascade Street in the RS (Single-Family Residential) District

Consulting Project Planner Weisbrod described the property and the accessory structures. He noted that staff recommended denying the variance. He commented that staff received five

phone calls in opposition to the variance and two in support. However, staff was unable to find special circumstances to approve the variance.

Commissioner Halliday asked if the front door faces Cascade or Hickory and asked why the designated area is considered the back yard.

Principal Planner Patenaude said the way the subdivision is laid out, the front yard would normally be Hickory. Typically the narrow dimension of the lot would be the front yard, however, the determination of the rear yard is left to the City. To insure adequate open space for this home, it was determined that the front yard is Hickory and the rear yard is the opposite.

Commissioner McKillop asked how long has this structure been there.

Consulting Project Planner Weisbrod stated that the owner said it was there 35 years ago when he bought the house, and there had been no complaints about it in all that time.

Commissioner Caveglia then asked why it was on the agenda for discussion.

Consulting Project Planner Weisbrod explained that there was a complaint made to Community Preservation, apparently from someone in the neighborhood.

The public input portion opened at 7:42 p.m.

Applicant Ernest Armijo said he would do whatever it would take to make it better. He said he needs the shed. He then read a statement from a neighbor, Gloria Kennedy, who could not attend. She said the shed poses no threat to the neighborhood and should not be removed. He then read a statement from neighbors across the street who supported the application as well.

Commissioner Halliday asked about the neighbor living immediately next door to the left on Cascade and whether they had expressed an opinion.

Consulting Project Planner Weisbrod said he had received no response from those neighbors, that house is for sale.

Commissioner Caveglia complimented the applicant for their upkeep of the property. He said he thought this issue was the roof and asked Mr. Armijo whether he was willing to re-roof and make the shed similar to the house.

Mr. Armijo said he would be willing to do that if that is what it takes.

Commissioner Caveglia added that if the applicant was willing to stucco the shed and replace the roof, this was a special case that deserves some consideration

Commissioner McKillop asked of what use is the shed.

Mr. Armijo explained that the shed is only a storage/work area.



Commissioner Zermeño asked whether more landscaping might be placed in front of the fence, to screen the shed from the street.

Mr. Armijo explained that this area is cement.

Danny Rabuco, a neighbor said he has known the applicant for ten years. He spoke in favor and felt that this was a conflict neighborhood problem as there are other houses with the same type of facility in the neighborhood.

Mark T. Bouchard indicated that he was cited by Community Preservation and commented on his violation of side access parking. He felt that this was selective enforcement and discrimination of the City's residents, and he felt that staffs in Planning, and Community Preservation are often in conflict. He said anonymous complaints should not be permitted.

Commissioner Caveglia asked what Mr. Bouchard had done in violation of the City Ordinances. He agreed that this was a different issue.

Harry Deane, a neighbor, spoke in favor of the applicant. He recognized the need for Community Preservation and neighborhood support. He reported that as he walked around the block he noted the most serious problem in the neighborhood is a parking shortage.

Chairperson Bogue closed the public hearing at 8:00 p.m.

Principal Planner Patenaude commented that the structure appears to have been constructed without any building permit. He noted that a permit would need to be applied and that the structure might need to be completely rebuilt to bring it into code compliance and the City requires at least a 5-foot setback. It would be a chore for Mr. Armijo to go through the permit process. He then added, were the variance to be approved, staff would need to bring it back at a future meeting with conditions of approval and findings.

Commissioner Sacks confirmed that the building had been at this location for 35 years. She then asked about legal side parking on the concrete on the side yard.

Principal Planner Patenaude indicated that the parking might be illegal. However, there is the possibility of providing parking within the rear yard, with restrictions.

Commissioner Halliday moved, seconded by Commissioner Sacks, to deny the variance. She noted that she is a proponent of allowing flexibility in the older neighborhoods. However, in this case there needs to be at least a five-foot variance. She said she could not make findings to accept the variance.

Commissioner Zermeño spoke against the motion. He said he felt that since the owner had

already used the shed for 35 years, he should be allowed to keep it. He said that in our older neighborhoods, he felt that there might be room for growth for their properties.

Commissioner Thnay said this was a difficult decision because this structure has been around for 35 years, as well as for a good neighbor's intent. However even if we grant this variance, the shed would have to be rebuilt. Staff indicated that through proper requests, the applicant could apply for a building permit to allow a legal shed to be built under public code. In either way, the cost would be a significant amount of investment.

Commissioner McKillop said approving the variance would probably mean rebuilding the building from scratch. She encouraged Mr. Armijo to plan, get the correct permit and build a new shed that conforms to the yard requirements.

Commissioner Sacks said members constantly wrestle with the problem of how to allow the older neighborhoods to expand their homes. However, she was not willing to approve illegal facilities.

Commissioner Caveglia said he, too, struggled with the issue, and decided that if the applicant is going to have to tear it down anyway, he might as well come back to the Planning Department and build a new one correctly.

The motion carried by the following vote:

AYES:	COMMISSIONERS	Halliday,	Thnay,	Sacks,
		McKillop		
	CHAIRPERSON	Bogue		
NOES:	COMMISSIONER	Zermeño		
ABSENT:	None			
ABSTAIN:	None			

3. Referral by the Planning Director - Administrative Use Permit Application No. PL-2002-0262 - Mark Thomas (Applicant)/ Las Vegas Trail Theatre Company (Owner) - Request to Convert an Existing Theater to a Religious Facility with Administrative Offices - The Property is Located at 24800 Hesperian Boulevard in the Neighborhood Commercial (CN) District

Associate Planner Emura indicated that the Heart of the Bay Christian Center now owns the property. He described the location and their previous location as well as the conversion improvements. The theatre building would give them a total of 30,000 square feet within the building with an addition. They would replant 31 trees that were severely pruned and add a substantial number of others as well. He noted that in the 90's a number of commercial buildings were turned into non-commercial uses within this area along Hesperian Boulevard and La Playa Court. The Southgate Neighborhood Task Force expressed concern that these commercial properties were being converted to non-commercial uses. As a policy, they recommended that the commercial strip along Hesperian Boulevard be retained. The Korean Baptist Church and the San Leandro Elks Lodge comprise 15 percent non-commercial use in this area. The approval of this project would make it 43 percent non-commercial use in the area. He noted that this is an



**CITY OF HAYWARD
AGENDA REPORT**

Meeting Date: 9/12/02

Agenda Item: 1

TO: Planning Commission

FROM: Norman Weisbrod, Consulting Project Planner

SUBJECT: Variance Application No. PL-2002-0400 – Ernest Armijo (Applicant/Owner): Request to Retain an Attached Shed that is Situated 4' 4" from the Rear Property Line Where a Minimum of 10' is Required; To Allow 33% of the Rear Yard to be Covered Where a Maximum of 20% May Be Covered; For an Exception to the City's Design Guidelines which Require that Accessory Structures Match the Primary Structure

The Property is Located at 26476 Cascade Street in the RS (Single-Family Residential) District.

RECOMMENDATION:

Staff recommends that the Planning Commission:

1. Find that the proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15305 (a) Minor Alterations in Land Use Limitations; and
2. Deny the variance and the exception subject to the attached findings.

BACKGROUND:

The property is located at the northwest corner of Cascade Street and Hickory Avenue. The lot has 95 feet of frontage on Cascade Street and 60 feet of frontage on Hickory Avenue with an area of 5,700 square feet.

The property is developed with a single-family home with an attached two-car garage. A storage room that is 11' 6" by 22' (253 square feet) was added to the home alongside the garage without a building permit. The addition is constructed of plywood with a shed type corrugated metal shed roof and windows along the wall facing the rear of the property. Access to the addition is from the attached garage.

The following are the yard requirements for an addition to a home in the RS zoned property:

- Attached addition: A single-story addition may be constructed as close as 10 feet from the rear property line as long as the expansion does not occupy more than 20 percent of the required rear yard.

The home on this property was built 15'10" from the rear property line (20' required) and already occupies 11 percent of the required rear yard. As such, it is a legal nonconforming structure. If the existing room addition were modified to provide a 10-foot rear setback, it would conform to the rear yard requirements for an addition to the home as well as rear yard coverage requirements.

Staff believes that the required findings to approve the variance to the rear yard setback for the room addition as built cannot be made. The parcel is equal in size and shape to other corner parcels in the same tract of homes. The placement of the home on the parcel is also similar to other corner parcels in the vicinity. It would be possible for the property owner to reduce the area of the addition or locate a detached shed elsewhere on the property without the need for a variance.

With respect to the City's Design Guidelines, the exterior of an addition or a detached accessory structure must be constructed to match the design of the home, including the roof material and the exterior wall surface covering. There is no basis for permitting a room addition that is incongruous with the architecture of the home.

Staff received five phone calls in opposition to the variance. The callers' concerns were that other neighbors would want similar sheds and that it is unattractive. Staff also received two calls in support of retention of the shed with the rear yard variance. Both callers commented that this is one of the more attractively maintained properties in the neighborhood.

ENVIRONMENTAL REVIEW

The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15305 (a) Minor Alterations in Land Use Limitations.

PUBLIC NOTICE

On August 30, 2002, a Notice of Public Hearing for the Planning Commission meeting was mailed to all property owners and residents within 300 feet of the project site.

CONCLUSION

It is staff's opinion there are no special circumstances applying to this property that would support the granting of a variance to the rear yard setback for the shed. There is room on the property to construct a detached shed without the need of a variance. Other homes in the vicinity have not been granted variances to reduce the required rear yard for the construction of a shed attached to the home.

Prepared by:

Norman Weisbrod

Norman Weisbrod
Consulting Project Planner

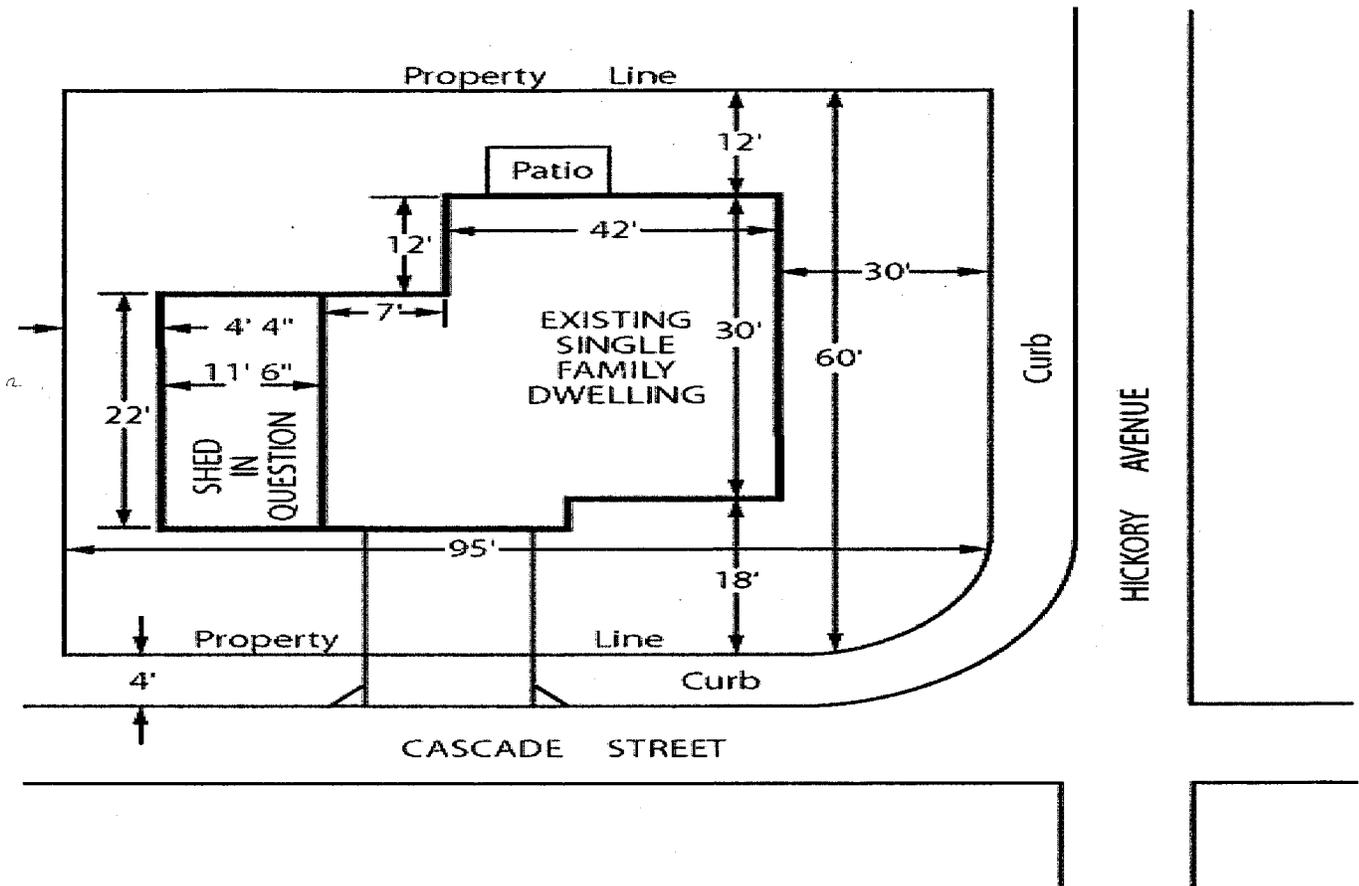
Recommended by:

Dyana Anderly

Dyana Anderly, AICP
Planning Manager

Attachments:

- A. Area Map
- B. Findings for Denial
- C. Site Plan





**MINUTES OF THE CITY COUNCIL MEETING
CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, November 12, 2002, 8:00 p.m.**

It was moved by Council Member Henson, seconded by Council Member Hilson, and unanimously carried to adopt the following:

Resolution 02-162, "Resolution Approving Plans and Specifications for the Police Building Youth Family Services Bureau Addition Project, Project No. 6901, and Call for Bids"

3. Annual Investment Report, Revisions to Statement of Investment Policy and Delegation of Investment Authority

Staff report submitted by Director of Finance and Internal Services Carter, dated November 12, 2002, was filed.

It was moved by Council Member Henson, seconded by Council Member Hilson, and unanimously carried to adopt the following:

Resolution 02-163, "Resolution Accepting the Annual Report on Investment Program and Activity for the City of Hayward, Affirming the Statement of Investment Policy and Renewing the Delegation of Authority to Make Investments to the Director of Finance"

HEARINGS

4. Appeal of Planning Commission Denial of Variance No. PL-2002-0400 to retain a Storage Room; to Allow 33 Percent of Rear Yard to be Covered; an Exception to the City's Design Guidelines – Ernest Armijo (Applicant/Owner) - The Property is at 26476 Cascade Street

Staff report submitted by Consulting Project Planner Weisbrod, dated November 12, 2002, was filed.

Planning Manager Anderly provided the site plan and explained that the Planning Commission had denied the appeal. She noted that the structure had been there since 1976. She commented that to approve this structure, findings must be made to approve its exception to code requirements.

Council Member Henson said he drove through the area and noticed other homes with similar structures, and asked why, since this structure had been there so long, was City staff taking exception to this building.

Planning Manager Anderly stated that there was no proactive effort on the part of staff. This structure was brought to staff's attention via a complaint. This house was constructed in the fifties and could have been in compliance.

Council Member Ward said he met with the applicant and discussed the front yard and side yard setback requirements at the time of construction of the house. He commented that driving through many older subdivisions, there are similar situations.

Council Member Hilson asked if staff had inspected the property.

Planning Manager Anderly indicated that there is a lot of dry rot in the building and it is not in good condition. She commented that a new shed could be built, but in a smaller size.

Mayor Cooper opened the public hearing at 8:51 p.m.

Danny Rabuco spoke on behalf of the applicant and emphasized that after 35 years, there has only been one complaint. He noted that it would be a hardship to raze the shed and rebuild.

D.E. McKenzie said he lives across the street and that this property is one of the better-maintained properties in the neighborhood. He commented that he was not even aware the shed was there until he had been living in his home for two years.

Ernest Armijo, the applicant, stated that he had been singled out by another neighbor, and asked for approval of this structure. He emphasized that he purchased the home in 1966 with that shed in place. He said there is no room in the yard to rebuild a shed of the same size. He said he would not turn in any other neighbors who might have illegal buildings.

Council Member Rodriguez asked how the shed was explained at the time he bought the house.

Mr. Armijo stated that nothing was said about it. He commented that he did not think it was fair to have to destroy it after having had it for 35 years.

Jason Moreno suggested that Mr. Armijo post a bond with the City to pay for the removal of the structure upon the change of ownership.

City Attorney O'Toole said he would advise the Council not to treat different structures differently. In applying the law uniformly, this was an illegal structure. He indicated that if Council was focusing on findings for a variance, they might concentrate on how this can be enforced in court.

Mayor Cooper closed the public hearing at 9:01 p.m.

Council Member Dowling asked about the purpose of the side yard.

Planning Manager Anderly stated that it is for safety, light, air and open space.



**MINUTES OF THE CITY COUNCIL MEETING
CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, November 12, 2002, 8:00 p.m.**

Council Member Dowling asked what kind of precedent would this set for the rest of the community.

Planning Manager Anderly indicated that most exceptions are for corner lots.

City Manager Armas said this might be setting an example and City Council would have to weigh the merits of allowing this exception. He suggested that staff could investigate and provide findings, and effect appropriate safeguards for some of the issues raised. In addition, would be consistency in regulations.

Council Member Dowling said he agreed with Mr. Moreno, if there is any way to agree without setting a precedent.

Council Member Ward said there is confusion as to the front and side yard. He said he would support a variance with conditions to modify the architectural treatment to the exterior of the shed to match the home including the roof pitch and adding the stucco.

Planning Manager Anderly said the roof materials that could be applied, although they might be costly.

Council Member Ward then offered a motion to approve the variance that allows the structure to be retained in the side yard and the applicant be required to architecturally modify the structure so that the exterior treatment goes along the roofline and the exterior wall to be consistent with building materials of the house.

City Attorney O'Toole advised that a building permit might be required, and before granting a variance, Council may wish to have the shed inspected for constructive and safety purposes as it is utilized with some occupation.

With this response, Council Member Ward then withdrew his previous motion and offered a new motion. He moved, seconded by Council Member Rodriquez, to have this item returned to Council, after staff has met with the applicant, with the objective of retaining the structure with modifications to the exterior as previously indicated; and any building code requirements as they relate to a shed must be adhered to by the applicant.

Council Member Henson, asked that staff look at other methods to see if something could be done to make an exception in this case. His concern is that staff is being aggressive in pursuing illegal structures, and City Council has asked them to be aggressive. We would deal with this repeatedly. He then asked to include language in the motion so that staff could use other methods to resolve this type of issues. This was agreed to by both Council Members Ward and Rodriquez.

Council Member Dowling suggested thinking about whether, if approved, many other homeowners might consider asking for the same consideration. He suggested with the improvements, it might be considered a livable structure. He would not support the motion, because of these concerns.

Council Member Rodriquez stated that clearly this building should not be there, but has been there for 35 years. She said there is a reasonable solution. It should be brought back to Council.

It was moved by Council Member Ward, seconded by Council Member Rodriquez, and carried, with a "No" vote from Council Member Dowling, to have this item returned to Council after staff has met with the applicant, with the objective of retaining the structure with modifications to the exterior consistent with the house; and that any building code requirements as they relate to a shed must be adhered to by the applicant.

LEGISLATIVE BUSINESS

5. Adoption of Ordinance Reclassifying Certain Properties Located at Industrial Parkway West and Stratford Road Pursuant to Zone Change PL-2002-0296

Staff report submitted by City Clerk Reyes, dated November 12, 2002, was filed.

City Clerk Reyes reported that this ordinance was introduced at the previous meeting related to the Stratford Village development. Staff placed it under Legislative Business, as the vote was not unanimous.

With no requests to speak, Mayor Cooper opened and closed the public hearing at 9:19 p.m.

It was moved by Council Member Dowling, seconded by Council Member Ward, and carried by the following roll call vote to adopt the following:

Ordinance 02-20, " An Ordinance Reclassifying Certain Properties Located at Industrial Parkway West and Stratford Road Pursuant to Zone Change Application PL-2002-0296"

AYES: Council Members Jimenez, Rodriquez, Ward,
Dowling, Henson
MAYOR Cooper
NOES: Council Member Hilson
ABSENT: None

COUNCIL REPORTS

There were no Council Reports.



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 11/12/02
AGENDA ITEM 4
WORK SESSION ITEM _____

TO: Mayor and City Council
FROM: Director of Community and Economic Development
SUBJECT: Appeal of Planning Commission Denial of Variance No. PL-2002-0400 to Retain a Storage Room; to Allow 33 Percent of Rear Yard to be Covered; an Exception to the City's Design Guidelines - Ernest Armijo (Applicant/Owner) - The Property is at 26476 Cascade Street

RECOMMENDATION

It is recommended that the City Council adopt the attached resolution finding the project categorically exempt from CEQA review and denying the variance and the exception.

DISCUSSION

At its September 12, 2002, meeting, the Planning Commission denied an application (6 Ayes and 1 No) to retain an 11'6" x 22' storage room that was built alongside a garage without a building permit. The storage room is constructed of plywood with a corrugated metal shed roof, whereas the house has a stucco exterior with a hip roof with composition shingles.

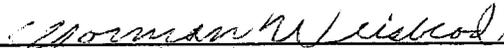
The storage room is 4' 4" from the rear property line where a minimum of 10' is required. The room also covers 33 percent of the required rear yard; the maximum coverage permitted is 20 percent. If the shed were modified to provide a 10-foot rear setback, it would still exceed the maximum 20 percent coverage of the required rear yard. The property contains adequate area to locate either an attached or detached structure that conforms to zoning requirements. The City's Design Guidelines require that additions to single-family dwellings be constructed of materials used in the dwelling and that the design incorporate elements found in the house, such as the roof form. Neither the materials nor the design of the storage room reflects those of the house.

The appellant indicates that the storage room was constructed 35 years ago before he purchased the property, although there is no way to verify the accuracy of this statement. He states that the City's regulations for legal non-conforming structures should enable him to keep the shed as long as he resides at the residence. Legal nonconforming structures are only those structures that were legal at the time they were constructed, which requires a building permit. A search of the files for the applicant's property showed no evidence of a building permit for the storage room.

At the Planning Commission hearing, two neighbors spoke in support of the variance to retain the shed and one neighbor opposed the variance. Several telephone calls had been received by staff from neighbors who objected to the variance.

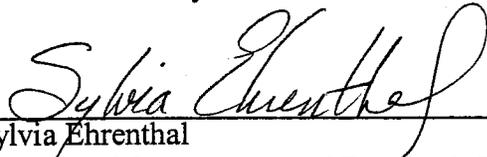
Should the variance be approved, the applicant would have to obtain a building permit and the structure would have to conform to the Uniform Building Code. Because of the room's substandard construction and its deteriorated condition, major reconstruction or demolition of the structure is the most likely outcome. Given these circumstances, the Planning Commission felt that any new construction should conform to the required setbacks and the City's Design Guidelines.

Prepared by:



Norman Weisbrod
Consulting Project Planner

Recommended by:



Sylvia Ehrenthal
Director of Community and Economic Development

Approved by:



Jesús Armas, City Manager

Attachments: Exhibit A. Planning Commission Minutes and Staff Report, dated September
12, 2002
Plans
Draft Resolution

11/5/02

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

**RESOLUTION FINDING THE PROJECT CATEGORICALLY
EXEMPT FROM CEQA REVIEW AND DENYING
VARIANCE APPLICATION NO. PL-2002-0400 AND
RELATED REQUEST FOR EXCEPTION TO CITY'S DESIGN
GUIDELINES**

WHEREAS, there has been presented to the City Council of the City of Hayward Variance Application No. PL-2002-0400 to retain a storage room 4' 4" from the rear property line where at least 10 feet is required; to allow 33 percent of the rear yard to be covered where a 20 percent maximum is permitted and for an exception to the City's Design Guidelines which requires the accessory structures to match the primary structure on property located at 26476 Cascade Street in an RS (Single-Family Residential) District; and

WHEREAS, the Planning Commission denied the variance and the exception at its meeting on September 12, 2002; 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 15305 (a) Minor Alterations in Land Use Limitations.
2. There are no special circumstances applicable to the property regarding this variance request or the exception in that the property is identical in size to other corner parcels in the surrounding neighborhood and the placement of the home on the property is similar to other corner lots in the vicinity.
3. Strict application of the Zoning Ordinance and the City's Design Guidelines would not deprive such property of privileges enjoyed by other properties in the vicinity under the same zoning classification in that there is adequate room at the rear of the home to construct a detached storage shed in conformance with the setback requirements.

4. The variance and exception would constitute a grant of a special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated, in that, variances have not been approved for other properties in the vicinity for an attached shed that extends into the required rear yard setback.

NOW, THEREFORE, BE IT RESOLVED that, based on the foregoing findings, the City Council of the City of Hayward hereby denies Variance Application No. PL-2002-0400 and the request for an exception to the City's Design Guidelines.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2002

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward