

RESOLUTION NO. R 08-23

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF PALOS VERDES ESTATES, CALIFORNIA,
VACATING RESOLUTION NO. R 05-11 AND
DENYING AN APPEAL OF THE ACTION OF THE PLANNING COMMISSION
GRANTING APPROVAL OF GRADING AND NEIGHBORHOOD COMPATIBILITY
APPLICATIONS AT 2317 VIA ACALONES

The City Council of the City of Palos Verdes Estates does resolve as follows:

Section 1. On January 31, 2005, applications for grading and neighborhood compatibility permits for a new single family residence (the "Application") were submitted for the property located at Lot 19 of Block 1638 of Tract No. 7330 in the City of Palos Verdes Estates, County of Los Angeles, State of California, commonly known as 2317 Via Acalones, Palos Verdes Estates, California (the "Property").

Section 2. The Application was considered by the Planning Commission on February 15, 2005. At the conclusion of said hearing, the Planning Commission determined that the Application was categorically exempt from the California Environmental Quality Act ("CEQA") and approved the Application, subject to specified conditions.

Section 3. On March 2, 2005, an appeal of the Planning Commission's approval of the Application was filed by Diana Gdowski (the "Appellant"). The determination that the Application is categorically exempt from CEQA was not appealed.

Section 4. On April 12, 2005, the City Council conducted a public hearing on the appeal, which hearing was duly and properly noticed. At such hearing, the City Council received and considered an oral staff report and documentary evidence, including, but not limited to, site plans, a photographic presentation, and minutes of the Planning Commission meeting, and received and considered oral testimony from the Appellant's representative, the representative of the Property owner, and others. The City Council further received and considered information regarding environmental review of the Application and the determination that the Application is categorically exempt from CEQA. The City Council determined that the appeal should be denied and the Application should be granted, subject to certain conditions in addition to those imposed by the Planning Commission. On April 26, 2005, the City Council adopted Resolution No. R 05-11 denying the appeal and granting approval of the Application subject to the additional conditions.

Section 5. Appellant filed a lawsuit in Los Angeles Superior Court, challenging the City Council's decision regarding the appeal, *Gdowski v. City of Palos Verdes Estates*, Los Angeles Superior Court Case No. BS 096771. Final judgment after appeal to the Second District Court of Appeal has been entered and a writ of mandate has been issued requiring the City Council to (a) set aside its approval of Resolution No. R 05-11 and its decision to approve the Application, and (b) reopen the public hearing on the Application and conduct a fair hearing on

the Application in accordance with the law, addressing those issues that the City Council, in its discretion, determines to be appropriate, consistent with the opinion of the court of appeal.

Section 6. On July 8, 2008, the City Council conducted a public hearing on the appeal, which hearing was duly and properly noticed. At such hearing, the City Council received and considered an oral staff report and documentary evidence, including, but not limited to, site plans, a photographic presentation, and minutes of the Planning Commission meeting of February 15, 2005, and received and considered oral testimony from the Appellant's representatives, the owner of the Property, and others. The City Council determined that the appeal should be denied and the Application should be granted, subject to certain conditions in addition to those imposed by the Planning Commission.

Section 7. Pursuant to the writ of mandate, the City Council hereby rescinds Resolution No. R 05-11 and its decision to approve the Application. Said resolution shall be of no further force or effect.

Section 8. Based upon the evidence presented, the City Council hereby finds and determines as follows:

- a. Each fact set forth in Sections 1 through 6 above is true and correct.
- b. Each fact set forth in the memorandum for Agenda Item No. 7, Meeting Date July 8, 2008, from Allan Rigg to Joe Hoefgen (the "Memorandum"), presented to the City Council on said date, is true and correct.
- c. At the July 8, 2008 public hearing, Appellant's representatives stated that the Application should be referred back to the Planning Commission for review because there has been a change in the review standards that gives closer scrutiny to gross floor area. There has been no change in the standards, only a change in terminology from "apparent floor area," the term in use in 2005, to "gross floor area," the term in use now. The concept, which is used to understand the size of a home, has not changed. There is no finding required by the Neighborhood Compatibility Ordinance regarding gross floor area or apparent floor area.
- d. The structure proposed by the Application is appropriate in its size when compared to other homes in the neighborhood, especially when its larger lot size is considered. The building coverage and lot coverage are below the maximums permitted by the City's municipal code. Due to the larger lot size, a larger house is not unreasonable.
- e. As designed, the ridge height of the structure as seen from the street side was only approximately seven feet and was approximately the same as the ridge height of the structure on the property immediately to the west of the Property. With the imposition of additional conditions set forth below, the ridge height of the structure as seen from the street side will be only approximately six feet and it will be lower than the ridge height of the structure on the property immediately to the west of the Property.

f. The siting of proposed structures on the Property minimizes the impact on the privacy of properties adjacent to the Property which front on Via Del Monte and the north side of Via Acalones while also minimizing the impact on the views from Appellant's property and other properties located on the south side of Via Acalones. This is not a rural area and privacy will not be absolute in any case.

g. The Property is currently a vacant lot. Any structure built on the Property will have an impact on views and privacy. The proposed structure has been designed with a view corridor by having the living room remain a single story and Appellant will retain a significant portion of her existing views of the city lights and ocean.

h. The siting of the proposed structures on the Property also helps minimize the grading required and the risk of surcharge on the properties fronting on Via Del Monte. Grading and drainage concerns would be further reduced by elimination of the swimming pool from the plans.

Section 9. Based upon the findings set forth herein, the City Council finds that the Application, as conditioned by the conditions of approval attached hereto as Exhibit A, which conditions are incorporated herein by this reference:

a. Is designed and will be developed to preserve to the greatest extent practicable the natural features of the land, including the existing topography and landscaping, since the amount of grading is the amount necessary to effect the project in a manner consistent with the neighborhood, and the project has been sited on the Property so as to balance the conflicting view and privacy impacts of the neighbors;

b. Is designed and will be developed in a manner which will be reasonably compatible with the existing neighborhood character in terms of scale of development and relation to surrounding residences and other structures, since the size is within that anticipated by the City's neighborhood compatibility guidelines, the structure height at street level is lower than the adjacent property, and the building coverage and lot coverage are below the maximums permitted by the City's municipal code;

c. Is designed and will be developed in a manner which will preserve to the greatest extent practicable the privacy of persons residing on adjacent properties, since the structure on the Property has been positioned to minimize such impacts, the conditions imposed will minimize such impact, and the development of a vacant lot will always affect privacy to some extent;

d. Is designed and will be developed in a manner to the extent reasonably practicable so that it does not unreasonably interfere with neighbors' existing views, since any development on the Property, which is currently vacant, will affect views, the project has been designed with a view corridor, and portions of the Appellant's view which will be obscured by the structure on the Property are currently obscured by foliage;

e. Will not unreasonably change the natural contours of the land because the changes are those reasonably required to effectuate construction of the proposed structures;

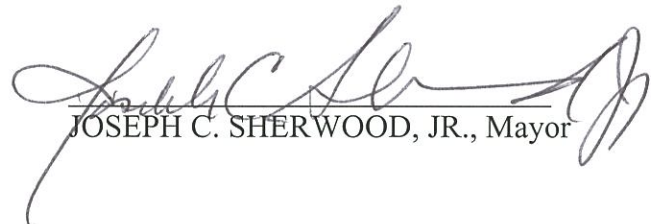
f. Will not create a hazard to the immediate or adjacent property since the grading will be done in accordance with accepted standards, the swimming pool will be eliminated from the project and no other issues were raised regarding the potential for any hazard being created by the grading; and

g. Will not unreasonably interfere with the use or enjoyment of property by other persons in the City through its proposed grading because the swimming pool will be eliminated from the project and no other issues were raised regarding the potential for the proposed grading to affect others.

Section 10. Based upon the findings and determinations set forth herein, as supported by the evidence considered in connection therewith, the City Council finds and determines that the appeal of the Planning Commission's approval of the Application should be denied and the grading permit and neighborhood compatibility application shall be approved subject to the conditions of approval attached hereto as Exhibit A.

Section 11. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED, APPROVED AND ADOPTED this 22nd day of JULY, 2008


JOSEPH C. SHERWOOD, JR., Mayor

ATTEST:



JUDY SMITH, City Clerk

APPROVED AS TO FORM:



JOSEPH W. PANNONE, City Attorney

EXHIBIT "A"

NEIGHBORHOOD COMPATIBILITY AND GRADING APPLICATION

NC-1151/GA-1346-04

Conditions of Approval

R08-23

1. This approval is granted for the land or land use as described in the application and any attachments thereto, and as shown on the plot plan submitted, attached hereto as Exhibit A.
2. All buildings, fences, signs, roadways, parking areas, and other facilities or features shall be located and maintained as shown on the approved plans.
3. All buildings and structures shall be of the design as shown on the approved plans.
4. Compliance with and execution of all conditions listed herein shall be necessary prior to obtaining final building inspection clearance and/or prior to obtaining any occupancy clearance. Deviation from this requirement shall be only by written consent of the Director of Planning.
5. All requirements of any law, ordinance, or regulation of the State of California, City of Palos Verdes Estates, and any other governmental entity shall be complied with.
6. This approval is subject to the applicant paying all fees and assessments to the City of Palos Verdes Estates, as required by Ordinance.
7. In the event the City determines that it is necessary to take legal action to enforce any of the provisions of these conditions, and such legal action is taken, the applicant shall be required to pay any and all cost of such legal action, including reasonable attorney's fees, incurred by the City, even if the matter is not prosecuted to a final judgment or is amiably resolved, unless the City should otherwise agree with the applicant to waive said fees or any part thereof. The foregoing shall not apply if the permittee prevails in the enforcement proceeding.
8. The applicant shall defend, indemnify, and hold harmless the City and its officers, agents, and employees from any claim, action or proceeding against the City or its officers, agents or employees to attach, set aside, void, or annul approval of this application. The City shall promptly notify the applicant of any such claim, action, or proceeding and shall cooperate fully in the defense.
9. An approval granted by the Planning Commission does not constitute a building permit or authorization to begin any construction. An appropriate permit issued by the Department of Building and Safety must be obtained prior to construction,

- enlargement, relocation, conversion, or demolition of any building or structure within the City.
10. The owner shall provide for the planting of trees in the parkway adjacent to the site of the building in accordance with the recommendation of the Public Works Director or authorized designee.
 11. The owner shall provide for the improvement of streets, alleys, walks, and drainage courses adjacent to the site of the building in conformance with standards and specifications of the City and plans approved by the City Engineer.
 12. All pool/spa equipment and air conditioning units shall be contained in sound attenuating structures, subject to the approval of the City Engineer.
 13. The owner shall provide a “Knox box” universal gate lock, if applicable, accessible to the police and fire departments. Applicants are advised to contact 1-800-552-5669 with any questions.
 14. All non-standard encroachments shall be removed from any Parkland adjacent to the subject property, unless specifically approved otherwise by the Planning Commission.
 15. The height of all new fireplace chimneys shall be the minimum allowable per the Building Code and the height of the chimney cap shall not exceed 30”.
 - 16. City standard curb and gutter shall be installed per construction plans prepared by a registered Civil Engineer and approved by the City Engineer.**
 - 17. The entire cellar floor level shall be eliminated, including laundry room, wine cellar, and crawl space.**
 - 18. The ridge height of the house and garage shall be reduced by one foot without additional grading.**
 - 19. The swimming pool is not approved.**
 - 20. Landscape screening shall be planted at the rear property line and maintained at approximately 15 feet in height.**

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS:
CITY OF PALOS VERDES ESTATES)

I, Vickie Kroneberger, Deputy City Clerk for the City of Palos Verdes Estates, California, do hereby certify that the foregoing Resolution **R08-23** was duly and regularly approved and adopted by the City Council of the City of Palos Verdes Estates at its regular meeting of the City Council on the 22nd day of July, 2008, by the following vote:

AYES: COUNCILMEMBERS: Sherwood, Perkins, Humphrey, Goodhart

NOES: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: Rea



Vickie Kroneberger, Deputy City Clerk