

RESOLUTION NO. R08-33

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALOS VERDES ESTATES, CALIFORNIA, GRANTING IN PART AND DENYING IN PART AN APPEAL OF THE ACTION OF THE PLANNING COMMISSION GRANTING APPROVAL OF AN AFTER-THE-FACT REVISED NEIGHBORHOOD COMPATIBILITY APPLICATION AT 4101 VIA PICAPOSTE

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

Section 1. An application (the "Application") for an after-the-fact revised neighborhood compatibility permit for the construction of two chimneys at a single family residence (the "Project") was submitted for the property located at portions of Lots 9 and 10 of Block 16314 of Tract No. 7143 in the City of Palos Verdes Estates, County of Los Angeles, State of California, known as 4101 Via Picaposte, Palos Verdes Estates, California (the "Property"). The Application was approved by the Planning Commission on August 19, 2008, subject to certain conditions.

Section 2. Pursuant to Palos Verdes Estates Municipal Code subsection 17.04.100 E. 2., its meeting of September 9, 2008, the Application was set for a public hearing before the Council for disposition in the manner as on an appeal (collectively, "Council Hearing"). The determination the Application is categorically exempt from the California Environmental Quality Act was not part of the Council Hearing.

Section 3. On October 14, 2008, the City Council conducted the public hearing for the Council Hearing, which hearing was duly and properly noticed. At the public hearing, the Council received and considered the written and oral testimony provided by the owner of the Property and his architect, oral and written staff reports, and documentary evidence, including, but not limited to, site plans, minutes of the Planning Commission meeting, and a photographic presentation.

Section 4. Based upon the evidence presented, the City Council hereby finds and determines as follows:

- a. Each fact set forth in Sections 1 through 3, above, is true and correct.
- b. Each fact set forth in the memorandum for Agenda Item No. 7, Meeting Date 10/14/08 from Allan Rigg to Joseph M. Hoefgen, presented to the City Council on said date, is true and correct.
- c. The west chimney is wholly within the three-dimensional perimeter of the single-family dwelling and not visible to any great extent from areas adjacent to the Property.

- d. The north chimney has a scale that is not in character with the neighborhood because it (i) has a height, size and massing that is not consistent with surrounding structures, (ii) is part of a structure very visible from surrounding areas because it is on a corner, and (iii) is visible from a distance while traveling on the adjacent street.
- e. The use of the interior fireplace being is vented by the north chimney can be accommodated by a venting system less visible than that chimney, as long as that fireplace is not used for wood-burning purposes.

Section 5. Based upon the findings set forth herein, the City Council finds the Project, as conditioned in the conditions of approval which are part of Planning Commission Resolution No. PCR-2008-332 (the “Planning Commission Resolution”):

- 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 Project does not require any grading or removal of major vegetation;
- b. the west chimney is designed and has been installed in a manner reasonably compatible with the existing neighborhood character in terms of scale of development in relation to surrounding residences and other structures, in that the west chimney is substantially within the confines of the three-dimensional perimeter of the single-family dwelling;
- b. the north chimney is not designed and has not been installed in a manner reasonably compatible with the existing neighborhood character in terms of scale of development in relation to surrounding residences and other structures, in that the north chimney is clearly visible from surrounding properties and the public street, adds to the feeling of height and bulk of the single-family dwelling and substantially extends outside of the confines of the three-dimensional perimeter of that single-family dwelling;
- 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 in that the only new window facing the neighbors will be translucent glass; and
- d. is designed and will be developed in a manner to the extent reasonably practicable so it does not unreasonably interfere with neighbors’ existing views, in that the Project will not interfere with the primary view from Appellant’s property.

Section 6. Based upon the findings and determinations set forth herein, as supported by the evidence considered in connection therewith, the City Council finds and determines to:

- a. uphold the Planning Commission’s conditional approval of the Application and the Project as it relates to the west chimney, subject to all the conditions set forth in the Planning Commission Resolution,

- b. overturn the Planning Commission's approval of and deny the Application and the Project as it relates to the north chimney,
- c. order the owner of the Property and his architect to remove the north chimney, as soon as possible, after receipt of all approvals necessary from the City's planning and building departments and make all necessary modifications to the roof, as required by those departments, and
- d. authorize the Planning Director to approve a minor modification to the approved plans for the Property, if he determines the needed modifications to the roof to accommodate the removal of the north chimney meet the intent of the City Council, which accommodation may include the addition of a much less visible venting system for use of the subject interior fireplace for other than wood-burning purposes.

Section 7. 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 28th day of October, 2008.



JOSEPH C. SHERWOOD, JR., Mayor

ATTEST:



JUDY SMITH, City Clerk

APPROVED AS TO FORM:



JUNE S. AILIN, Assistant City Attorney

NOTICE IS HEREBY GIVEN: IF YOU DESIRE TO CHALLENGE THE COUNCIL'S DECISION YOU MUST FILE A COURT ACTION WITHIN NINETY (90) DAYS FOLLOWING THE DATE THIS RESOLUTION IS MAILED TO YOU.

EXHIBIT "A"

NEIGHBORHOOD COMPATIBILITY APPLICATION
NC-1226RII-08

Conditions of Approval
R08-33

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. The north chimney is denied.**

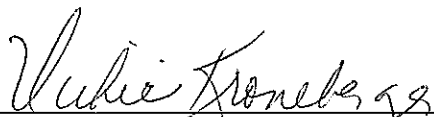
STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS:
CITY OF PALOS VERDES ESTATES)

I, Vickie Kroneberger, Deputy City Clerk for the City of Palos Verdes Estates, California, do hereby certify that the foregoing Resolution **R08-33** 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 28th day of October, 2008, by the following vote:

AYES: COUNCILMEMBERS: Sherwood, Perkins, Humphrey, Rea

NOES: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: Goodhart



Vickie Kroneberger, Deputy City Clerk