MINUTES

REGULAR MEETING OF THE PLANNING COMMISSION, CITY OF HAYWARD, Council Chambers
Thursday, July 18, 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, Caveglia, Sacks, Halliday, Thnay
	CHAIRPERSON	Bogue
Absent:	COMMISSIONER	None

Staff Members Present: Anderly, Conneely, Emura, Looney, Weisbrod

Approximately 9

PUBLIC COMMENT

There were no public comments

AGENDA

1. **Appeal of Planning Director's Denial of Variance Application No. PL-2002-0315 – Maria Cobian (Applicant/Owner)** - Request to Allow Retention of an Accessory Structure with Less Than the Required 5-Foot Setback and a Request to Depart from the Design Guidelines (Roof and Building Materials Required to Match House) – The Property is Located at 744 Douglas Street in the RS (Single-Family Residential) and CG (General Commercial) Zoning Districts

2. **Appeal of Planning Director's Approval of Variance No. PL-2002-0133 – Yvette Martin (Appellant), Lind Wilson (Applicant/Owner) –** Request to Allow an Addition to the Existing House to be within the Side Yard Setback and to Exceed the Maximum Area Allowed to Encroach in the Required Rear Yard – The Property is Located at 449 Balmoral Way in the Single-Family Residential (RS) Zoning District

3. **Tentative Parcel Map 7887 – Asef Habib (Applicant/Owner) –** Request to Subdivide a 32,500± Square-Foot Parcel into Four Single-Family Parcels; and Request for a Variance for Reduced Lot Width - The Property is Located at 741 Folsom Avenue in an RS (Single-Family Residential) Zoning District

PUBLIC HEARINGS

1. **Appeal of Planning Director's Denial of Variance Application No. PL-2002-0315 – Maria Cobian (Applicant/Owner)** - Request to Allow Retention of an Accessory Structure

with Less Than the Required 5-Foot Setback and a Request to Depart from the Design Guidelines (Roof and Building Materials Required to Match House) – The Property is Located at 744 Douglas Street in the RS (Single-Family Residential) and CG (General Commercial) Zoning Districts

Consulting Project Planner Weisbrod described the property and the zoning of the property. The applicant was told the use of the accessory structure as a dwelling unit is illegal. The homeowner had the option to bring the structure into conformance with the side yard setback or apply for a variance. If she would be willing to convert it back to a garage in order to park two cars in it, as well as adding additional cosmetic treatment, staff would support this.

Commissioner Halliday commented on the staff recommendation and the way it was worded She then asked why the bathroom is recommended to be removed.

Consulting Project Planner Weisbrod commented that without removal of the bathroom, there is concern that it could be turned back into dwelling unit.

Planning Manager Anderly added that the bathroom addition encroaches into the rear yard. She noted that the setback issue in relation to the bathroom could not be justified. A 2-car garage is currently required at this site.

Commissioner McKillop asked when the present owner purchased the property

Consulting Project Planner Weisbrod responded that she purchased the property 2-years ago.

Commissioner Zermeño asked whether it would be possible just to leave things as they are.

Consulting Project Planner Weisbrod indicated that they would have to modify the structure as building code requirements are not met and move it 5-feet from the side and rear property line. He noted that the use of the structure as a dwelling is illegal.

Planning Manager Anderly also said that accessory structures are allowed. She noted that this unit is also illegal, because a building application was never obtained. The owner would have to do significant and costly changes to modify it.

Commissioner Sacks asked about the removal of the bathroom, the building or the fixtures.

Consulting Project Planner Weisbrod responded that the bathroom structure would not be difficult to remove as it appeared to have been added to the garage at a later date.

Commissioner McKillop asked whether the hip roof and exterior were required to be modified.

Consulting Project Planner Weisbrod responded that, as it exists, it does not conform to Hayward Design Guidelines which require architectural compatibility between primary and accessory structures.

The public hearing opened at 7:46 p.m.

Peter Langlois, speaking on behalf of the applicant, commented that the intent of the Community Preservation Act was to keep from having illegal units. He explained that it was clear that this would never be approved to be a legal dwelling unit. He added that he would like it to be considered as a legal or non-conforming accessory structure. He commented that they had two options: tear down the walls or apply for a variance. He added that there are other houses in the neighborhood with no garage. He said it is more appropriate as an accessory structure since the owner has a large family who could occupy the accessory structure.

Commissioner Halliday asked whether the applicant plans to rent the unit. Mr. Langlois said it is used primarily for her extended family as well as children's activities, but not as rental or dwelling unit.

Commissioner Caveglia noted that the structure was not built to code and the bathroom is not something a human being should be living in. He then questioned the safety of the unit as a dwelling unit. The safety was his primary concern.

Mr. Langlois maintained that the bathroom was just a convenience since it was outside. He then said he would argue that is was not the intent for Community Preservation to police the City toward tearing structures down, this was based on an anonymous complaint. He added that the owner was willing to abandon the structure as a dwelling unit. In fact the use was dropped immediately.

Commissioner Zermeño argued that bringing the bathroom up to code by replacing the plastic pipes, etc., would make it an expensive project.

Mr. Langlois maintained that it was a much lesser cost option than many of the others. Although he agreed that there is a cost to bringing it up to code. He added that the goal is to have this deemed an accessory structure.

Commissioner Sacks asked how the applicant ended up getting the illegal unit.

Mr. Langlois said it was not disclosed at the time of the sale, and since it was a personal friend, it would be difficult to go after the seller. He commented that it was not their intent to get the variance and then rent it out. He noted that the threat is enough of a deterrent. He added that anything to keep away the City of Hayward would be acceptable to the applicant at this point.

The public hearing closed at 8:01 p.m.

Commissioner Caveglia **moved**, seconded by Commissioner Sacks, to grant the variance with

the Conditions of Approval, except for conditions 6 and 7, requiring a hip roof and the application of siding to match the house.

Commissioner Caveglia added that the home is lovely and in very good shape. However, he noted the illegal structure needs to be dealt with, and again reaffirmed his concern for the safety of any occupants.

Commissioner Sacks commented that this is a reasonable compromise. She said she could understand about the bathroom, particularly since this part of the wall is not up to code.

Commissioner Halliday said she could support the motion, even with leaving bathroom there, although it does invite use as a dwelling unit. She added that apparently a neighbor complained so she would support the motion. She affirmed that both the bathroom and kitchen would have to go. She agreed that the changes on the outside would be too onerous.

Commissioner Zermeño said the motion is fine as far as taking away the roof and the exterior, but it is still asking them to do a garage, and that is not what they want.

Commissioner Thnay added that he is usually wary of structures being erected without permits and then being asked to grandfather them in. He commented that a lot of people use their garage for storage, etc. Perhaps they might be able to expand the house at a future date, legally. This seems to be a good compromise. He would vote for it.

Commissioner Halliday commented that she might agree with Commissioner Zermeño because of the garage door. She said she was not sure the City should be requiring them to do this work.

Commissioner Zermeño said it was a mistake to buy the house as was, not having checked to see if it was legal. However, they are now being penalized for someone else's mistake. He then asked the maker of the motions to accept a friendly amendment not to require a garage door.

Commissioner Caveglia said he would not.

Commissioner McKillop said she could live with this as an accessory structure, which would keep them from having the additional expense.

Chairperson Bogue said he could not support the motion, because of the hip roof. This is a garage. It has not gone through the garage conversion process.

The motion **carried** by the following vote:

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

Chairperson Bogue announced that anyone aggrieved by this action had 10-days in which to appeal.

2. **Appeal of Planning Director's Approval of Variance No. PL-2002-0133 – Yvette Martin (Appellant), Lind Wilson (Applicant/Owner) –** Request to Allow an Addition to the Existing House to be within the Side Yard Setback and to Exceed the Maximum Area Allowed to Encroach in the Required Rear Yard – The Property is Located at 449 Balmoral Way in the Single-Family Residential (RS) Zoning District

Associate Planner Emura described the property and the addition. He indicated that the applicant would like to align the addition to the existing garage. Since the lot has an atypical layout it reduces the amount of developable area in comparison with other single family homes in the area. Staff supports the variance so applicant can extend their property to a similar extent as for others in the neighborhood. A person in the Fairway Park Neighborhood who filed the appeal, has since rescinded it.

Chairperson Bogue asked about the side facing Medinah and why this property would be exceptional for a variance.

Associate Planner Emura said it was atypical. The longer property dimension was the front property line, whereas typical single-family lots have the smaller dimension as the front property line. The longer front property line reduces the developable area.

Commissioner Zermeño asked about the appeal and commented that it seems someone did not like this.

Associate Planner Emura said someone who had his or her variance denied filed the appeal. He noted that they have since withdrawn their appeal. However, staff must process the appeal because it is unknown if someone else might file an appeal if the original appeal was not filed.

The public hearing opened at 8:20 p.m.

Linda Wilson, applicant, asked the Commission to approve the variance. She noted that someone in Fairway Park, whose situation was totally different than this, filed the appeal. She said she realized too late that it was a different situation and she tried to remove the appeal but it was too late.

Chairperson Bogue asked whether it was City policy that the appeal goes through.

Planning Manager Anderly responded that once the appeal has been filed and noticed, others in the area would then have the opportunity to respond as well.

The public hearing was closed at 8:23 p.m.

Commissioner Halliday **moved**, seconded by Commissioner Zermeño, to deny the appeal and approve the variance.

Commissioner Halliday commented that this was a good example of looking at the setbacks in the older neighborhoods. She said they needed to try to come discuss each case in an attempt to make older homes more spacious. She particularly thanked Associate Planner Emura.

The **motion passed unanimously**.

3. **Tentative Parcel Map 7887 – Asef Habib (Applicant/Owner) –** Request to Subdivide a 32,500± Square-Foot Parcel into Four Single-Family Parcels; and Request for a Variance for Reduced Lot Width - The Property is Located at 741 Folsom Avenue in an RS (Single-Family Residential) Zoning District

Development Services Engineer Gaber made the presentation. He noted that the proposal is to subdivide this lot into 4 lots for custom homes. He noted that this is not the final site plan, but a request to subdivide as well as a variance from 50-feet to 47-feet. Staff recommended approval of both.

Commissioner Zermeño asked whether separated garages were a requirement.

Development Services Engineer Gaber said the applicant proposed them. It is one possible configuration.

Commissioner Halliday asked whether consideration was given to ignoring the front two lots and having just the two back lots.

Development Services Engineer Gaber said the Zoning Code requires a minimum amount of footage on the street. Rear houses need to own the property up to the public street.

Commissioner Caveglia commented that since this is a subdivision, would the Commission be seeing the final house designs.

Planning Manager Anderly responded that normally it would be waived if the homes were designed to meet all the zoning regulations.

Commissioner Caveglia noted that the posting on the property indicated that the house would be retained with three others around it.

Development Services Engineer Gaber said the applicant had originally tried to design the project to retain the existing house.

Commissioner McKillop reaffirmed that the Commission would not see the homes.

Planning Manager Anderly stated that they would not, unless the Commission were to require

seeing them or if the plans do not meet the design guidelines.

Commissioner McKillop then asked about the large walnut trees on the property.

Development Services Engineer Gaber stated the current proposal shows all would be saved except for one in front.

Commissioner Sacks asked about the historical significance of the house.

Commissioner Zermeño asked whether there would be a replacement tree planted for the removed tree, and also what if the house is historical.

Planning Manager Anderly said staff would research the issue.

The public hearing opened at 8:34 p.m.

Asef Habib, owner, said at first, he was not willing to remove the house. However, he has since been convinced to remove it. His initial proposal was to build three new houses and remodel the existing house. He said he was told to remove it for a subdivision.

The public hearing was closed at 8:36 p.m.

Commissioner Caveglia **moved**, seconded by Commissioner Halliday, to approve the staff recommendation with findings and conditions of approval.

Commissioner McKillop said she would like to see the site and house plan at a future date. She then asked for a friendly amendment to the motion. This was approved.

Commissioner Zermeño asked staff to try to find out the historical significance to the house. If it has any, perhaps the three houses could be designed around it.

Chairperson Bogue said he was not impressed with the condition of the home. He also noted that the schematic plan on the street at the property was different. He said the plans before the Commissioner were much better. The placement is better. He added that he was more supportive of the current plans.

Commissioner Zermeño commented on the initial proposal to keep the house. Although it is in bad shape, it might become a point of pride of Hayward. He then added that if you can't fit in the driveway snaking around, he would vote against it.

Commissioner Caveglia commented that he would like to be able to keep the house, but, in his opinion, it is past keeping. He thought it would be impossible to keep and allow people to live in.

Commissioner Sacks said she had to agree with Commissioner Caveglia. Her head was telling her if this were an historical building they would have heard from somebody. She added that there would also be an opportunity to appeal.

Assistant City Attorney Conneely commented that prior to application of demolition permit, there would be a determination of historical significance.

Planning Manager Anderly said there would be an opportunity to move it in place. It might be a representative of few remaining historical examples of the era.

Commissioner Thnay thanked staff, and wondered if there was a possibility of building the garage toward the back as this would be more traditional. He added that overall, unless it's a famous house, it should not be saved since this is a good plan.

Commissioner Zermeño commented that now that he was made aware of the checks and balances before the home is destroyed, he would support the motion.

The **motion passed unanimously.**

ADDITIONAL MATTERS

4. Oral Report on Planning and Zoning Matters

Planning Manager Anderly commented that the City Council approved the Berry Avenue project. She noted that staff would meet with the neighbors in the area within the next two weeks to discuss the project and their concerns.

5. Commissioners' Announcements, Referrals

Commissioner Sacks discussed the meeting she attended the previous night for the annexation study in the Mission/Garin area. She was impressed with the turnout and the caliber of the questions.

Commissioner Halliday commented that she was in a meeting for the 880/92 Interchange. There will be a further hearing on this project, Wednesday night at 5 p.m. at Centennial Hall.

Chairperson Bogue mentioned that he and Commissioner McKillop also attended the Mission/Garin meeting.

Planning Manager Anderly noted that the next Planning Commission meeting, July 25, would be devoted exclusively to Blue Rock Country Club. The plans are voluminous and not easily mailed, however, they would be available in the Planning Division Office and at the Library.

MINUTES

- June 20, 2002 – Commissioner Caveglia read his changes. The minutes were then approved.

- June 27, 2002 - Approved

ADJOURNMENT

The meeting was adjourned by Chairperson Bogue at 8:54 p.m.

APPROVED:

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Barbara Sacks, Secretary
Planning Commission

ATTEST:

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Edith Looney
Commission Secretary