



CITY OF HAYWARD AGENDA REPORT

Meeting Date 2/5/04
Agenda Item 1

TO: Planning Commission

FROM: Carl Emura, Associate Planner

SUBJECT: Variance No. PL-2003-0462 – Marlene Milani (Applicant)/ Julio and Rubi Magana (Owners) – Request for a Variance to Allow a Garage with a 14-Foot Front Setback Where 20 Feet Is Required and 3’-6” and 5’-0” Side Yards Where 6’-8” Is Required.

The Project Is Located at 24025 Second Street in a Single-Family Residential (RS) District.

RECOMMENDATION:

Staff recommends denial of the application. If the Planning Commission’s action is to support the application:

1. Find that the proposed project is Categorical Exempt from the California Environmental Quality Act (CEQA) guidelines, Section 15305, Minor Alterations in Land Use Limitations; and
2. Approve the variance request allowing the front and side yard reductions for the garage widening and second floor additions, subject to the attached findings and conditions of approval.

DISCUSSION:

The Planning Commission, on January 8, 2004 directed staff to conduct the necessary environmental review, prepare findings and conditions of approval (see Attachments B and C) and return the application for final action.

The property owner would like to add a 1,236 square-foot two-story addition at the rear of the house. The addition would include a kitchen nook, a family room, a master bedroom, a bathroom and a deck. The residence contains a one-car garage. In order to add an additional bedroom or increase the square footage of the house by more than 50 percent, a two-car garage is required. The owner proposes to widen the garage to comply with the two-garage requirement and is requesting a variance to allow a garage with a 14-foot front setback where 20-feet is required and 3’-6 side yard where 6’-8” is required. In addition the owner requests a variance to allow a 5’-0” side yard setback where 6’-8” is required for a portion of the second floor addition.

Staff does not support the application because the 20-foot setback between the garage and the front property line is meant to accommodate additional parking without cars extending into the

front public right-of-way and hindering the pedestrian circulation. The 14-foot front setback is not sufficient depth to accommodate cars parked in the driveway without protruding into the public right-of-way. The Commission stated that the proposed setback is not a special privilege as several lots in the neighborhood were developed with a garage setback less than 20-feet and the irregular shape and topography are special circumstances that warrant support of the variance.

Should the Commission support the application, staff recommends conditions to mitigate potential conflicts from vehicles accessing the driveway from the heavily-traffic street. These include removal of the gate across the driveway, installation of an automatic garage door, and recordation of a covenant to maintain the garage for parking. A Planning Commissioner indicated that the design of the project could be enhanced. In this respect, the Planning Commission may wish to add conditions of approval requiring enhancing the front of the house by replacing the front door with a more decorative door, replacing the existing porch posts with more substantial posts and decorative rails, adding decorative light fixtures, and replacing the chain link fence with a decorative fence.

Environmental Review:

The proposed project is categorically exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15305, Class 5 (a), Minor Alterations of Land Use Limitations.

Public Notice:

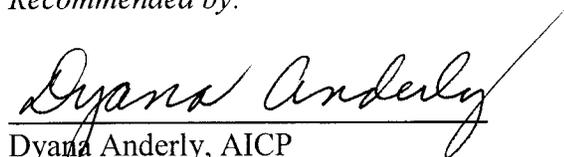
On January 26, 2004, a Notice of Public Hearing for the Planning Commission meeting was mailed to property owners and tenants within 300 feet of the subject property and to all interested parties.

Prepared by:



Carl T. Emura, ASLA
Associate Planner

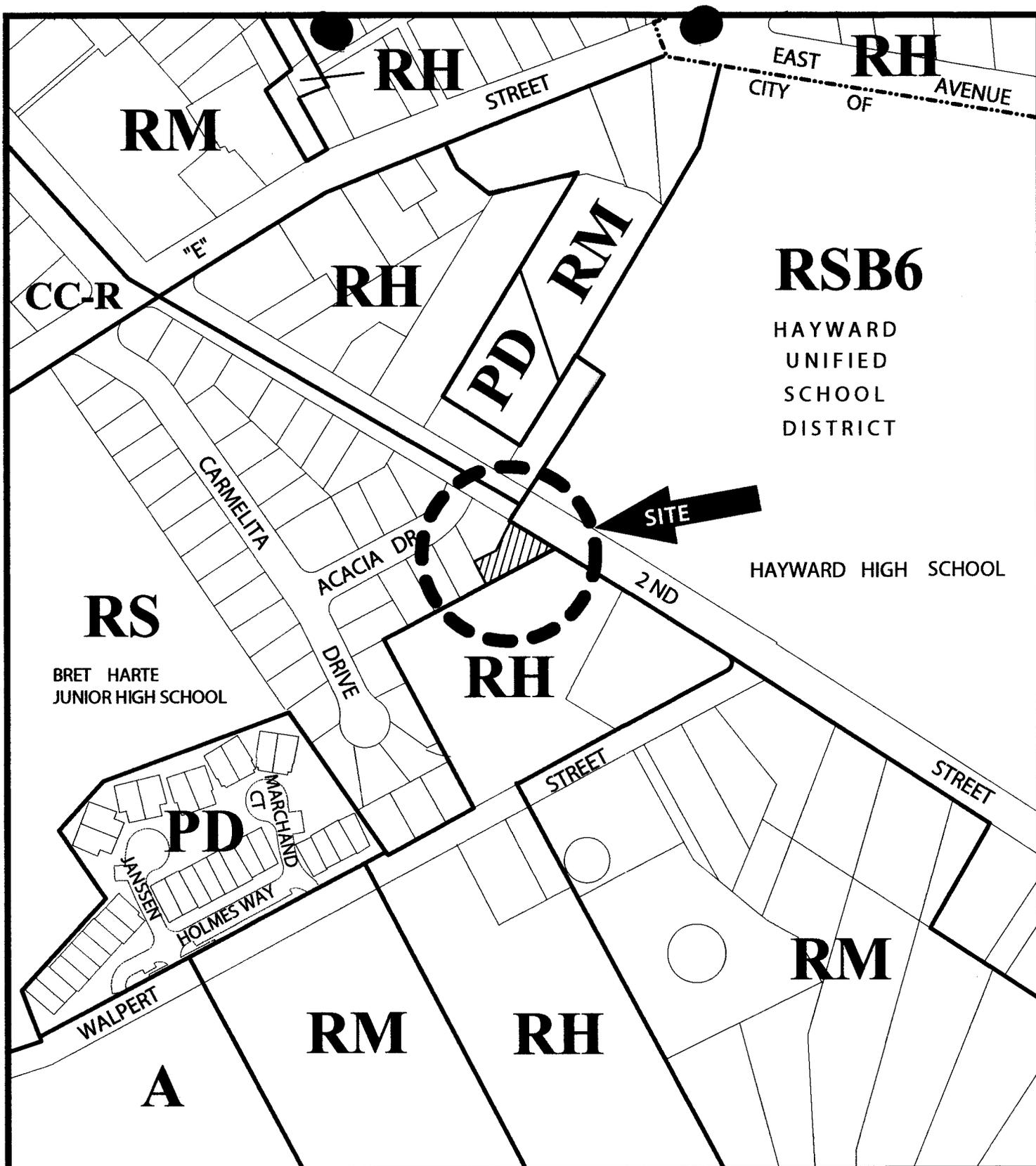
Recommended by:



Dyana Anderly, AICP
Planning Manager

Attachments:

- A. Area Map
- B. Findings for Approval
- C. Conditions of Approval
- D. Planning Commission Agenda Report/Minutes – 1/8/04
Plan



Area & Zoning Map

PL-2003-0462 VAR

Address: 24025 2nd Street

Applicant: Marlene Milani

Owner: Julio & Rubi Magana

A-Agricultural-ABSA,AB10A,AB100A,AB160A

CC-R-Central City-Residential

PD-Planned Development

RH-High Density Residential RHB 7

RM-Medium Density Residential RMB 3.5, RMB 4

RS-Single-Family Residential,RSB4,RSB6



**CITY OF HAYWARD
PLANNING DIVISION
VARIANCE
February 5, 2004**

VARIANCE NO. PL-2003-0462 – Marlene Milani (Applicant) / Julio and Rubi Magana (Owner)– Authorizing a reduction of the front and side yard setback from 20'-0" to 14'-0" and 6'-8" to 3'-6" respectively to allow the expansion of the garage and to allow a portion of the second floor addition to be setback 5'-0" where 6'-8" is required.

The Project Is Located at 24025 Second Street in a Single-Family Residential (RS) District (APN: 445 0020 026)

FINDINGS FOR APPROVAL

- A. Approval of PL 2003-0276, as conditioned, will have no significant impact on the environment, cumulative or otherwise, and the project reflects the City's independent judgment and is exempt from CEQA review under Section 15305, Class 5a, Minor Alterations in Land Use Limitations.
- B. There are special circumstances applicable to the property in that the property is sloped and irregular in shape.
- C. Strict application of the Zoning Ordinance deprives such property of privileges enjoyed by other properties in Hayward in that homes located on irregularly shaped lots have been granted variances for setbacks and numerous homes in the vicinity have garages setback less than 20 feet from the front property line.
- D. The variance does not constitute a grant of a special privilege inconsistent with the limitations upon other properties in the vicinity and zoning district in that homes located on irregularly shaped lots have been granted variances for setbacks and numerous homes in the vicinity have garages setback less than 20 feet from the front property line.

**CITY OF HAYWARD
PLANNING DIVISION
VARIANCE
February 5, 2003**

VARIANCE NO. PL-2003-0462 – Marlene Milani (Applicant) / Julio and Rubi Magana (Owner)– Authorizing a reduction of the front and side yard setback from 20'-0" to 14'-0" and 6'-8" to 3'-6" respectively to allow the expansion of the garage and to allow a portion of the second floor addition to be setback 5'-0" where 6'-8" is required.

The Project Is Located at 24025 Second Street in a Single-Family Residential (RS) District (APN: 445 0020 026)

CONDITIONS OF APPROVAL

1. The Variance Application No. PI-2003-0462, to allow reduction of the front and side yard setback from 20'-0" to 14'-0" and 6'-8" to 3'-6" respectively to allow the expansion of the garage and to allow a portion of the second floor addition to be setback 5'-0" where 6'-8" is required, is approved by the Planning Commission on February 5, 2003 subject to these conditions of approval and the plans, labeled Exhibit "A".
2. This approval is void one year after the effective date of approval unless a building permit application has been issued by the Building Official. Any modifications to the approved site plan or conditions shall require prior review and approval from the Planning Director.
3. The conditions of approval shall be shown of the plans submitted for a building permit.
4. If a building permit is issued for construction of improvements authorized by the Variance approval, the Variance approval shall be void two years after issuance of the building permit, or three years after approval of the application, whichever is later, unless the construction authorized by the building permit has been substantially completed or substantial sums have been expended in reliance upon the Variance approval.
5. The applicant shall provide a topographic survey of the property upon submitting for a building permit.
6. The garage shall have an automatic garage door opener.
7. The garage shall be kept clear to allow two cars to be parked inside of it. The maintenance of the garage for parking only shall be recorded.
8. The chain link driveway gate shall be removed and access from the street to the

garage shall not be blocked.

9. The portion of the fence, which is southerly of the driveway shall reduced to a maximum of 4-feet in height.
10. Any broken sidewalk along the property frontage that creates tripping hazard shall be removed and replaced.
11. Prior to final inspection/occupancy of the addition, all improvements and conditions of approval shall be completed to the satisfaction of the Planning Director.
12. A 15-gallon street tree (type subject to approval by the City Landscape Architect) shall be planted and maintained between the sidewalk and the curb per the City tree planting detail SD-122. Street tree shall be planted a minimum of 5-feet from any utility.



CITY OF HAYWARD AGENDA REPORT

Meeting Date 1/8/04
Agenda Item 3

TO: Planning Commission

FROM: Carl T. Emura, Associate Planner

SUBJECT: Variance No. PL-2003-0462 – Marlene Milani (Applicant)/ Julio and Rubi Magana (Owners) – Request for a Variance to Allow a Garage with a 14-Foot Front Setback Where 20 Feet Is Required and 3’-6” and 5’-0” Side Yards Where 6’-8” Is Required.

The Project Is Located at 24025 Second Street in a Single-Family Residential (RS) District.

RECOMMENDATION:

Staff recommends that the Planning Commission:

1. Find that the proposed project is Categorical Exempt from the California Environmental Quality Act (CEQA) Guidelines; and
2. Deny the application subject to the attached findings.

DISCUSSION:

The property is a sloping 4,998-square-foot irregularly shaped lot. To the south of the property is an apartment complex and to the north is a single-family dwelling. The existing house is 1,254 square feet (including a single-car garage) with two bedrooms and one bath. The applicant would like to add a 1,236 square-foot two-story addition at the rear of the house. The addition would include a kitchen nook, a family room, a master bedroom, a bathroom and a deck.

In order to add an additional bedroom or increase the square footage of the house by more than 50 percent, a two-car garage is required. The City Council enacted this requirement in order to help alleviate the excessive parking on Hayward’s neighborhood streets. It is assumed that significantly increasing the size of a dwelling and/or adding bedrooms may also increase the number of drivers and cars. It is further assumed that 4 cars could be accommodated on the property if the garage is setback 20 feet: 2 cars could be parked in the garage and 2 in the driveway. While this requirement provides many homeowners the opportunity to improve their homes without impacting parking in the neighborhoods, it is not expected that every property is eligible to take advantage of it.

The applicant has a single-car garage that is only 14 feet from the front property line. The applicant proposes to meet the requirements for a two-car garage by extending the existing garage to within 3'-6" from the east side property line. However, because a front yard setback of at least 20 feet is required and a side yard setback of at least 6'-8" is required, approval of a variance is necessary to construct the garage. In addition, a portion of the second floor addition encroaches in the side setback and a variance is required. The second floor addition aligns with the lower first floor bedroom wall, which is setback 5'-0" from the west property line, however, a 6'-8" side setback is required for the second floor addition. The 5-foot setback is non-conforming.

Staff does not support this application because all the findings cannot be made. Though, there are special circumstances applicable to the property (sloping and irregular shape), other properties in the area have not been granted a reduction in the front or side yard setbacks, therefore approving the variance would be granting a special privilege inconsistent with the limitations upon other properties in the vicinity. Staff recognizes that it would not be feasible to enlarge the garage internally without significantly reducing the living room and a portion of the kitchen, however the required 20-foot setback between the garage and the front property line is meant to accommodate additional parking without cars extending into the public right-of-way and hindering the pedestrian circulation. Staff has observed that on-street parking is limited in the area, including in front of the subject property, as many of the tenants in the surrounding apartment complexes park on the street. There is also a weekly parking restriction for street cleaning, further limiting the street parking. Any additional cars, over the two cars parked in the garage, may have to be parked on the opposite side on the street, thereby requiring the crossing of Second Street, a busy arterial street, further contributing to an unsafe situation.

If the Planning Commission is supportive of the variance, appropriate findings and conditions of approval must be adopted and consideration be given to the design of the addition and the privacy of the residents on adjacent properties.

ENVIRONMENTAL REVIEW:

The proposed project is categorically exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15305, Class 5 (a), Minor Alterations of Land Use Limitations.

PUBLIC NOTICE:

On September 1, 2003, a notice describing the variance application was mailed to all property owners and tenants within 300 feet of the subject property and the Mission-Foothills Neighborhood Task Force. A response was received from a neighbor expressing concern on the impact the addition would have on their residence.

On December 29, 2003, a Notice of Public Hearing for the Planning Commission meeting was mailed to property owners and tenants within 300 feet of the subject property and to all interested parties.

Prepared by:



Carl T. Emura
Associate Planner

Recommended by:



Dyana Anderly, AICP
Planning Manager

Attachments:

- A. Area Map
- B. Findings for Denial
Plans

**CITY OF HAYWARD
PLANNING DIVISION**

January 8, 2004

VARIANCE NO. PL-2003-0462 – Marlene Milani (Applicant)/ Julio and Rubi Magana (Owner)– To allow a reduction of the front yard setback from 20'-0" to 14'- 0" and side yard setback from 6'-8" to 3'-6" to allow the expansion of the single car garage to a two car garage and to reduce to the second floor side yard setback from 6'-8" to 5'-0" to align with existing first floor.

The site is located at 24025 Second Street in the Single Family Residential (RS) District, (APN: 445-0020-026).

FINDINGS FOR DENIAL

- A. Administrative Use Permit PL 2003-0462, will have no significant impact on the environment, cumulative or otherwise, and the project reflects the City's independent judgment and is exempt from CEQA review under Section 15305, Class 5a, Minor Alterations in Land Use Limitations.
- B. There are special circumstances applicable to the property in that the lot is irregular in shape and on a sloping site. However, approval of the variance would create safety concerns. The driveway would not be of sufficient depth to accommodate additional cars without protruding into the public right-of-way and on-street parking is limited in the general vicinity of the property. Any additional cars, over the two cars parked in the garage, may have to be parked on the opposite side on the street, thereby requiring the crossing of Second Street, a busy arterial street, further contributing to an unsafe situation.
- C. Strict application of the Zoning Ordinance does not deprives such property of privileges enjoyed by other properties with similar circumstances in that no other variances have been approved for the reduction of front yard setbacks on properties in the vicinity.
- D. The variance would constitute a grant of a special privilege inconsistent with the limitations upon other properties with similar circumstances in the vicinity and zoning district in which the property is situated in that front yard setback variances have not be granted for other properties in the vicinity.

view of tattoo. Mr. Reyes shop is very customer oriented and artistic. They went together to one of the tattoo conventions. He said he would support the relocation because the environment is better and Mr. Reyes plans to take this art to a higher level.

The public hearing closed at 8:05 p.m.

Commissioner Sacks thanked Mr. Reyes. She said it was important that there were no negative instances reported about the present shop. She added that she was impressed. Mr. Reyes move should be a very positive addition for the street. She then **moved**, seconded by Commissioner Halliday, to approved the staff recommendation.

Commissioner Halliday commented that she also appreciated the comments about it being art and said she understood different people having different points of view.

The motion passed 6:1, with Commissioner Bogue voting "No."

3. Variance No. PL-2003-0462 – Marlene Milani (Applicant) / Julio and Rubi Magana (Owners) – Request for a Variance to Allow a Garage with a 14-Foot Front Setback Where 20 Feet is Required and 3'-6" and 5'-0" Side Yards Where 6'-8" is Required. – The Project is Located at 24025 Second Street

Associate Planner Emura described the property and the irregularity of the shape of it. The applicant is proposing to increase the size of the house by more than 50 percent so a 2-car garage is required. However, he would need a variance for the garage setback and side yard. He described the proposal. Staff recommended denial of the application for variance. He noted that one complaint was received when the original design was submitted with a roof-top deck.

Commissioner Sacks asked about the drawing, which shows an adjacent house. The garage was approximately a foot from the side property line.

Associate Planner Emura noted that there are two garages next door. He checked to see whether there were other variances in the area and found none so the garage along the property line was probably a legal nonconforming structure.

Planning Manager Anderly said staff was looking specifically for variances in the area rather than buildings with or without permits.

Chairperson Zermeño asked about the apartment complex.

Associate Planner Emura said the couple across the street, who were concerned, didn't follow up.

The public hearing opened at 8:17 p.m.

Julio Magana, the applicant, spoke in favor of permission for the variance. He introduced his family and said they need the extra room, adding that he could not afford to buy a bigger home. He said he had compliments from neighbors for keeping up the house and yard. He explained he was really discouraged to try doing anything else.



Commissioner Halliday asked about the car parked where the garage addition would be.

Mr. Magana explained that some neighbors park in their driveways.

Chairperson Zermeño asked about the open space on the second floor and whether his neighbors approved of the plans.

Mr. Magana said it was part of the design. He said his 92-year old neighbor has no problem with the remodel since it makes the neighborhood better.

Vincent Milani speaking for the design firm said the house lot creates special circumstances.

Marlene Milani, project designer, explained that the expansion was designed with the notion of the irregularity of the shape of the lot. She argued that the neighbors enjoy the privilege of their garages already which are setback less than 20 feet. Irregularity of the lot itself does not lend itself to conformity with the requirements. She pointed out the number of non-compliant garages within the neighborhood.

The public hearing was closed at 8:29 p.m.

Commissioner Thnay asked staff about the requirement for the 2-car garage and whether they had talked with the applicant about bringing the size down below 50 percent.

Associate Planner Emura explained that the extra bedroom also triggers a 2-car garage.

Commissioner Sacks asked about the safety concerns and whether it would make a difference if there is either a 1- or 2-car garage.

Associate Planner Emura said he assumed the concerns would be similar since any car parked on the drive would intrude into the public right-of-way.

Chairperson Zermeño asked whether it is an assumption that they would park outside of the garage and not inside the garage.

Associate Planner Emura said it is assumed they would either park on the street or in the driveway. Already there is a lot of traffic on that street with the possibility that they might park on the street if the car does not fit on the driveway.

Commissioner Halliday stressed that although no variance has been approved for the neighborhood, it is clear the other homes were built with the 14-foot setback. The reason they need the variance is that this garage is already there. Because so many in the neighborhood already have this situation, it would not constitute a special privilege. It would be consistent with

what the area has.

Planning Manager Anderly explained that the present ordinance provides for a 2-car garage. There might be grounds for findings, but the additional parking has a typical requirement for a 20-foot setback for safety reasons. This is only 14-feet from the property line.

Commissioner Halliday stated that they already have the 14-foot garage setback. Although they may be trying to create too big of a house for the area, she said she was inclined to allow the variance. She stressed that it is a problem applying new rules to existing neighborhoods. The City of Hayward will suffer if the administration takes the position of no expansion. She noted that this would not be granting special privileges. They have done the best that they can. She **moved**, seconded by Commissioner Thnay, to direct staff to come back with findings for approval.

Commissioner McKillop said she had to struggle with this issue but would be supportive of requesting that staff come back with findings for approval.

Assistant City Attorney Conneely said the Commissioners must weigh the evidence to justify the granting of the variances. They might also direct applicant to work with staff.

Commissioner Thnay said he agreed with Commissioner Halliday. As the architect showed, 14-ft setback is common to the area. An extension on the garage should take a car away from parking in the street. He added that he would like to see more architectural interest in the plans themselves. For this variance there are special circumstances, including the shape of the lot. He said he thought a new garage would help.

Commissioner Sacks said she would vote against the motion. In looking at the 19 properties which are noted to have a shorter drive-way, she was focusing on those homes which could need 2-car garages as well as the rest of the homes on the street, were they to all expand their properties. It does not make good sense. We have to say no at some point and encourage other modes of transportation.

Commissioner Halliday asked whether it would be possible to create a condition that nothing will intrude on the sidewalk.

Planning Manager Anderly said that there should be no need to do that since parking over the public access and right-of-way is already against the law.

Chairperson Zermeño encouraged the members to vote in favor of this motion. He emphasized that the additional space is a need for the family and not a luxury. This will help keep the family together and residents in the City of Hayward. He said it is fair to assume they would park inside the garage. Again he emphasized that he supported the motion and encouraged others to do the same.

Commissioner McKillop said she would support the motion since, after looking at all the lots, this one is the most irregular.

Commissioner Bogue added that he had toured the rear yard of this property and it is the most



unusual piece of property in that area. With the apartment complex is next door, he wondered whose privacy is being affected. He said he would support the motion. He also asked whether it would come back for final approval.

Assistant City Attorney Conneely explained that, because of the wording of the motion directing staff to bring back findings for approval, it would be rescheduled.

The motion passed 6:1, with Commissioner Sacks voting "No."

4. ~~Conditional Use Permit Application No. PL-2002-0098 / Variance No. PL-2002-0099 – Robert Lavassani (Applicant/Owner) – Request to Construct a Restaurant With a Bar and Operate a Night Club and to Allow a Reduction in the Front Setback From 20 Feet to 14 Feet – Request for a Parking Exception to Waive the 15 Percent Tractor/Trailer Parking Requirement and To Reduce the Parking Requirement From 72 Spaces to 67 – The Property is Located at 1705 West Winton Avenue~~

~~Associate Planner Emura made the staff report describing the properties in the area adding that staff does not support the variances but does support the use permit for the bar and nightclub and banquet facilities. He showed a sketch designed by staff placing the restaurant in the corner of the property adding that no variances would be needed were they to go with this sort of design. He noted two phone calls opposing the restaurant and bar earlier. With this last notification they received four letters from neighbors opposing the bar and the nightclub. Commpre has also come out in opposition. He added that a member of the Hayward Police Department was available for questions.~~

~~Chairperson Zermeño asked about staff's objection to the tower.~~

~~Associate Planner Emura explained that the tower is out of proportion to the rest of the building. He suggested it flare out more, and maybe be wider. The dominant feature should be the entryway.~~

~~Commissioner Sacks asked whether the same architecture would be used to locate the building in the corner of the lot.~~

~~Associate Planner Emura explained that it is logical to push it toward that corner so it would accomodate more cars.~~

~~Planning Manager Anderly explained that it would have no affect on the design, just the square footage.~~

~~Chairperson Zermeño asked about a letter objecting to the location of a restaurant in this area.~~

~~Associate Planner Emura said although it is zoned industrial, that could include a full service restaurant which would be a nice feature in the area. Staff supports it, feeling that there is a need for~~