

**DATE ISSUED:** January 20, 2005                      **REPORT NO. PC-05-056**

**ATTENTION:**        **Planning Commission, Agenda of January 27, 2005**

**SUBJECT:**            CONNOLLY RESIDENCE - PROJECT NO. 3760. PROCESS 5

**OWNERS:**            Dr. Foster Carr & David Englert

**SUMMARY**

**Issue(s):** Should the Planning Commission recommend to the City Council to approve an application for a Neighborhood Development Permit and Variance for reduced side yard setbacks with an Easement Abandonment to develop a 4,476 square-foot single dwelling unit with basement, pool, and three-car garage on a 0.22-acre site in the Normal Heights neighborhood?

**Staff Recommendation:**

1.        Recommend that the City Council CERTIFY Negative Declaration No. 3760; and
2.        Recommend that the City Council APPROVE Easement Abandonment No. 182887; and
3.        Recommend that the City Council APPROVE Neighborhood Development Permit No. 6244 subject to denial of the variance request and compliance with the applicable development regulations; and
4.        Recommend that the City Council DENY Variance No. 6245.

**Community Planning Group Recommendation:** The Normal Heights Community Planning Committee voted 9-0-0 on August 6, 2002, recommending approval of the project with the condition that no gas line be permitted to the guest bedroom (Attachment 10). The condition is intended to prevent the guest bedroom from being converted to a companion unit in that it is attached to, but somewhat separate from the main house. This issue is addressed in the Neighborhood Development Permit (Condition No. 37).

**Environmental Review:** A Negative Declaration, Project No.3760, has been prepared for the project in accordance with State of California Environmental Quality Act (CEQA) Guidelines.

**Fiscal Impact:** None. All of the costs associated with processing this application are paid for by the applicant.

**Code Enforcement Impact:** None.

**Housing Impact Statement:** The Mid-City Communities Plan designates the proposed 0.22-acre project site for Open Space and Residential development at 1 to 5 dwelling units to the acre. Based on the existing lot area, only one single dwelling unit would be allowed on the proposed project site, which is currently vacant land. The proposed project would result in one dwelling unit that would be added to the housing inventory of the Normal Heights community. Since the proposed project does not propose the development of 2 or more units, it is exempt from the requirements of the Inclusionary Housing Ordinance.

## **BACKGROUND**

The project site is located at 5242 Cromwell Court within the Normal Heights Neighborhood Element of the Mid-City Communities Plan. The Community Plan designates the site for Open Space and low density residential development at 1 to 5 dwelling units per acre. The vacant 0.22-acre site includes steep hillsides and has three different underlying zones. The portion of the property fronting Cromwell Court is zoned RS-1-7 and includes a previously graded area forming a relatively flat pad area. The middle area of the site is zoned RS-1-1 and includes some previously disturbed slope and fill material while the lower, undisturbed portion of the lot is zoned OR-1-1. The project site and several adjacent properties were previously developed with single-family homes that were destroyed in the 1988 Normal Heights Fire. The surrounding neighborhood is characterized by single-family homes above the adjacent hillsides and canyons with ridge-top development in a variety of sizes and architectural styles. Newer homes in the vicinity that were built after the fire tend to be much larger than the older homes in the immediate area.

## **DISCUSSION**

### **Project Description:**

The project proposes to develop the hillside site with a 4,476 square-foot, two-story single-family home above a partial basement. The development plans also include a pool and spa as well as ornamental landscape and brush management on the adjacent hillside. The project is requesting several discretionary actions including a Neighborhood Development Permit, a Variance and an Easement Abandonment. The Easement Abandonment is necessary to remove an existing sewer

easement located at the front of the site. The easement encumbers development of the property and must be abandoned in order to locate the structure at the top of the slope. The easement abandonment requires City Council approval and therefore, the consolidated project is a Process Five decision. The Neighborhood Development Permit is required to develop the site because the property contains steep hillside and the proposed structure would not provide the required 40-foot setback from the top of the slope. The project is also requesting a variance to deviate from the minimum side yard setbacks in order to build the structure closer to the interior side property lines than would normally be permitted with the strict application of the development regulations. Staff does not support the variance request and the issue is discussed in greater detail within this report.

The single-family home would be consistent with the land use and density prescribed for the site within the Mid-City Communities Plan and, with the exception of the reduced side yard setbacks, the project would comply with the applicable development regulations of the Land Development Code.

### **Community Plan Analysis:**

The Mid-City Communities Plan designates the proposed project site for Open Space and Residential development allowing 1 to 5 dwelling units to the acre. Development in the vicinity of the subject site is characterized primarily by single and two-story detached homes. The proposed development of a new 4,476 square-foot single-family dwelling meets the recommendation in the Residential Element for encouraging the construction of new market-rate housing.

Although the Mid-City Communities Plan does not specifically address a proposed project's strict adherence to building setbacks, such as the project's variance request, according to the community plan new development should emphasize and reflect neighborhood character in such characteristics as building size, height, setbacks, massing, landscaping, roofs, windows, front porches, street facades, and other architectural details. The proposed single-family structure does mimic and incorporate features of surrounding homes that are located along the Mission Valley rim, which incorporate a diverse mix of architectural elements and building styles.

The proposed development meets recommendations in the Natural and Cultural Resources Element of the community plan for maintaining steep hillsides as well as limiting encroachment into open space areas by proposing much of the development on the flat and level portion of the project site. The proposed residence is also multi-terraced towards the rear of the site in order to emphasize and retain the existing hillside landform.

### **Environmental Analysis:**

An Environmental Initial Study was conducted on the site that determined that the proposed project would not have a significant environmental effect on the property or surrounding area. A biological letter report and a Geological Reconnaissance/ Soils Investigation were reviewed as

part of the Environmental Initial Study. The biological letter report was prepared to evaluate the vegetation communities of the site and the Soils Investigation was conducted to inspect and determine the subsurface soil condition.

Biological field surveys included a sensitive plant species assessment, a general wildlife survey, and impact analysis. The report determined that the proposed project site supports three vegetation communities including Coastal Sage Scrub, non-native grassland, and the remainder of the site is comprised of Urban Developed and Disturbed habitat. No sensitive zoological species were detected during the survey and are not expected to occur on-site. The proposed project site is not located within, nor is it located adjacent to the Multi-Habitat Planning Area (MHPA) of the Multiple Species Conservation Program (MSCP) Subarea Plan. All proposed development would occur in the areas identified as Urban Developed and Disturbed habitat. Direct impacts to these communities are not considered significant and therefore no mitigation was required.

The project is located in a seismically active region of California and, therefore, the potential exists for geologic hazards, such as earthquakes and ground failure to affect the proposed development. According to the City of San Diego's *Seismic Safety Study*, the project area lies within Geologic Hazard Category 53. Hazard Category 53 is characterized as having an unfavorable geologic structure with moderate risk for instability. However, the Soils Investigation determined that the site is underlain by the competent Linda Vista Formation and that the potential for landslides in the area are considered minimal. Proper engineering design of all new structures would ensure that the potential for geologic impacts from regional hazards would be insignificant.

### **Project-Related Issues:**

The only significant unresolved project issue is the requested variance to deviate from the minimum setbacks in order to develop the site with a structure that would encroach into the interior side yards. Staff supports the Neighborhood Development Permit and believes that an appropriately designed home could be developed on the site with no significant impacts to the surrounding neighborhood. Staff also supports the abandonment of the existing sewer easement that encumbers the development of the property. However, staff does not support the requested variance and believes that all of the applicable findings necessary to approve the reduced setbacks cannot be affirmed (Attachment 7). The applicant has provided draft findings in support of the variance for consideration by the decision maker (Attachment 8).

### **Variance**

The proposed development is requesting a Variance to reduce the side yard setbacks in order to accommodate the design and placement of the 4,476 square-foot structure with a basement, pool, and three-car garage on a 9,583 square-foot lot. The minimum side setbacks are established in Table 131-04D (Development Regulations of RS Zones) of the Land Development Code. Since the lot has different zoning designations, the required setbacks for the structure vary depending

on the individual zones.

Based on the width of the lot, the RS-1-7 zone requires either equal side setbacks of 6'-6" on each side of that portion of the lot, or a minimum side yard setback of 4'-0" on one side and 9'-0" on the opposite side of the premise. The applicant proposes to utilize the 4'-0" setback on the northern side of the premise but does not provide the required 9'-0" setback for the entire length of the southern side. The applicant is proposing the 6'-6" setback where 9'-0" is required along the southern property line.

The applicant is also seeking a variance for relief of the minimum side setback that applies to the portion of the premise within the RS-1-1 Zone (also established by Table 131-04D) The RS-1-1 Zone requires a minimum side setback of 10'-0" on each side of the premise. The applicant proposes a 3'-6" maximum reduction to the side setback within the RS-1-1 designated portion of the premise, resulting in a minimum side setback of 6'-6" on the north property line and a 7'-0" setback along the south property line.

The findings to approve the Variance request are established in Section 126.0805 of the Land Development Code. The code section states that the decision maker may approve or conditionally approve a variance only if the decision maker can make all four of the required findings.

The first finding states that "there are special circumstances or conditions applying to the land or premises for which the variance is sought and that the circumstances or conditions are peculiar to the land or premises on which the variance is sought that do not apply generally to the land or premises in the neighborhood." The applicant contends that this property is unique in that it is split zoned, with each portion of the site not meeting the minimum lots sizes of the underlying zones. Staff contends that this is not a circumstance peculiar to the project site in that the majority of the premises on Cromwell Court (8 of 9 lots) are split zoned and do not meet the minimum lot size requirements of the underlying zone. Further, minimum lot size requirements (dimensions and acreage) only apply when subdividing land. The fact that each separately zoned portion of the premise does not meet the minimum lot size requirement has no bearing on the application of the development regulations. The applicant also contends that a fire hydrant and utility pole guy wire and anchor are also peculiar to this premise. While these utilities may not occur on other properties in the neighborhood, the utilities are located within the required side yard setback and could not be developed under normal circumstance. The contention that a variance is needed to recoup property that could never have been developed in the first place is not a peculiar trait.

The second finding required to approve or conditionally approve a variance states that "the circumstances or conditions are such that the strict application of the regulations of the Land Development Code would deprive the applicant of reasonable use of the land or premise and the variance granted by the City is the minimum variance that will permit the reasonable use of the land or premises." The applicant contends that the development within the neighborhood, particularly large newer homes reconstructed after the Normal Heights fire, are the standard by

which reasonable use of the site should be determined and that a smaller single-family home than proposed would deprive the applicant of reasonable use of the property. Staff believes that the property could be reasonably developed with a large single-family residence of (approximately) 4,140 square feet in compliance with the minimum setback requirements and that the conforming structure would not be appreciatively smaller than the currently proposed design. To that end, Neighborhood Development Permit No. 6244 includes a specific condition (Condition No. 33) stating that the project will comply with all of the minimum development regulations including the side yard setbacks.

### **Critical Project Features to Consider During Substantial Conformance Review**

The overall design and placement of the structure in relation to the hillside should be considered a critical project feature when reviewing any request for a substantial conformance review. Any revised design should be consistent with the hillside development guidelines and the recommendations within the Mid-City Communities Plan. Revised plans should maximize the previously disturbed and padded area on the property fronting the street. Revised plans should step down the hillside and provide appropriate off-setting planes, varied roof lines and building articulation to minimize the bulk and scale of the structure both from Cromwell Court and equally important views from Mission Valley below. No additional variance or deviation to the development regulations should be approved as a part of the substantial conformance. Additionally, pursuant to the Normal Heights Community Planning Committee's recommendation, the guest bedroom should not be converted into a companion unit without the appropriate development permit or amendment to Neighborhood Development Permit No. 6244 (Condition No. 37).

### **Conclusion:**

The project proposes the development of a single-family home on a 0.22-acre site containing steep hillside and biological resources. The land use and density of the proposed project is consistent with the recommendations of the Mid-City Communities Plan's Normal Heights Neighborhood Element. An Environmental Initial Study concluded that the proposed development would not have any significant impact to the site or the surrounding area. The Normal Heights Planning Committee reviewed the proposed design including the requested variance and recommended that the project be approved. City staff is supportive of abandoning the existing sewer easement and developing the property with a single-family home. However, staff does not support the requested variance and has determined that there is no peculiar circumstance applying to the site and that a marginally smaller structure observing the minimum setbacks could be developed and considered reasonable use of the property.

### **ALTERNATIVES:**

1. Recommend that the City Council APPROVE Neighborhood Development Permit No. 6244, Variance No. 6245 and Easement Abandonment No. 182887 with modifications; or

2. Recommend that the City Council DENY Neighborhood Development Permit No. 6244, Variance No. 6245 and Easement Abandonment No. 182887 if the applicable findings to approve the project cannot be affirmed.

**Respectfully submitted,**

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**Marcela Escobar-Eck**  
**Deputy Director, Project Management Division**  
**Development Services Department**

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**John P. Hooper**  
**Development Project Manager**  
**Development Services Department**

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Attachments:

1. Aerial Photograph
2. Community Plan Land Use Map
3. Project Location Map
4. Project Data Sheet
5. Project Site Plan and Elevations
6. Draft Permit with Conditions
7. Draft Neighborhood Development Permit Resolution with Findings (denying variance)
8. Applicants Findings (approving variance)
9. Draft Easement Abandonment Resolution
10. Easement Vacation Exhibit
11. Community Planning Group Recommendation
12. Ownership Disclosure Statement
13. Project Chronology