

PLANNING COMMISSION MEETING  
DECEMBER 5, 1988

The regular meeting of the Planning Commission was called to order at 8:00 p.m. on December 5, 1988, in the Council Chamber by Chairman Hayes. Staff present: Lisa Wight, Planner, Fred Braun, Assistant Director of Public Works and John Roberto, Planning Consultant.

A. ROLL CALL

Commissioners present: Julin, Kroot, Yarish, Harle, Sias, Hayes  
Commissioners absent: Manning

B. CONTINUED PUBLIC HEARINGS

V-2260 - Howard Phillips, 70 Forest Avenue, A/P Nos. 7-013-04 and 7-013-05, a 20 foot frontyard variance on Forest Avenue to construct a parking deck within 0 feet of the front property line; and a variance for a retaining wall on Creek road.

Terry Keast, builder, was present.

Lisa Wight presented the staff report.

Mr. Keast said the applicant was opposed to the access off of Creek for the following reasons: 1. access off of Creek would cost \$60,000 more than off of Forest; 2. trees would have to be removed; 3. increase in traffic to the residents; 4. the large retaining walls necessary would create a negative impact in the neighborhood; 5. Soils Engineer specifies there should be no excessive grading; 6. the sharing of a 20 foot road easement; 7. access has always been off Forest. It is his understanding that the agreement with the Town allowed Mr. Phillips to rebuild his home. The carport has been shifted to access the catch basin and the house has been shifter.

Bill Nichols, 53 Creek Road, asked if there was still a 20 foot setback with the changes that have been made and asked if the Town had a plan of the proposed retaining wall. Fred Braun gave an explanation of placement of the retaining wall.

Commissioner Yarish did not feel it was necessary to relocate the driveway and was in agreement with the arguments made by Mr. Keast and added that structurally, access from Forest would have less impact on soil and drainage problems. He would like to see a nice finish used on the retaining wall because it will be viewed by the neighbors.

Commissioner Kroot was in agreement with Yarish and asked staff if the crib wall could structurally affect the car deck or hamper maintenance of the Town retaining wall? Mr. Braun said it is standard procedure for the engineer to be out to oversee the project and that maintenance of the retaining wall would be minimal.

Commissioner Sias asked what recourse the Town had if the car deck had to be removed to repair the retaining wall. Mr. Braun said the Town will secure a revocable encroachment permit from the applicant which will allow the Town to take back the property if necessary. Commissioner Sias was in support of the application.

Commissioner Harle echoed the comments of Commissioner Yarish.

Commissioner Julin did not support the variances based on the geotechnical considerations, stating this is a monumental slide area and it would be foolish to approve

**PLANNING COMMISSION MEETING  
DECEMBER 5, 1988**

reconstructing a home on a known slide area. Also, the floor area being proposed is 2 1/2 times greater than the original house which constitutes a significant change.

Chairman Hayes was concerned that the area being considered for the car deck is the unstable area and the soils reports indicate that bedrock is 10-11 feet down. Mr. Keast said they will drill down as far as necessary to reach bedrock. Mr. Braun noted the additional retaining wall will also add to the stability of the site and that a civil engineer will be on site to oversee that work is completed properly. Chairman Hayes felt he could support the application and the size of the house proposed.

Commissioner Julin felt the applicant should be responsible for the expense of removing the car deck if there is a need to repair the Town wall. Mr. Braun said that is included in the revocable encroachment agreement.

Mr. Nichols asked if the retaining wall could be constructed first. Mr. Keast said it would happen in the course of the foundation and therefore it would be first along with the drainage.

M/S Yarish, Kroot, to approve V-2260 - Howard Phillips, 70 Forest Avenue, A/P Nos. 7-013-04 and 7-013-05, a 20 foot frontyard variance on Forest Avenue to construct a parking deck within 0 feet of the front property line; and a 20 foot rear yard variance for a retaining wall on Creek Road within 0 feet of the rear property line on the basis: 1. Due to special circumstances applicable to the property, specifically that the access from Forest will be the least objectionable to the property owner, the strict application of the controlling zoning ordinance or regulation does not deprive such property of privileges enjoyed by other property in the vicinity as it is possible to provide access; and 2. The granting of the variance is necessary for the preservation and enjoyment of substantial property rights of the petitioner; and 3. The granting of such variance, under the circumstances of the particular case will not materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in such neighborhood. This should be conditioned that the retaining wall should be completed before the framing begins and that an architectural finish be used for the visible surface of the retaining wall. This is based on revised plans dated 11-28-88.

M/Kroot to amend motion to include the following: Other special circumstances are that the retaining wall along Creek Road will help strengthen the site, and the location of the car deck on Forest will minimize the cut and fill for turnaround and minimize wear and tear on Glen and Creek Road and this will not affect the health or safety of persons living or working in the neighborhood.

M/Yarish, to add that drainage surface and sub surface be completed prior to building the dwelling.

Ayes: Harle, Sias, Kroot, Hayes, Yarish  
Noes: Julin

Audience advised of the ten day appeal period.

**C. PUBLIC HEARINGS**

1. PP-10 - Terry and Eugene Schenk and Kintetsu Enterprises Company of America, off Cherne Lane; A/P Nos. 5-300-15, 5-300-24, and 5-300-281, preliminary plan review of the creation of a new building site by combining a portion

PLANNING COMMISSION MEETING  
DECEMBER 5, 1988

of the Kintetsu property (A/P 5-300-15) with the Schenk property (A/P Nos. 5-300-24 and 5-300-28) in an R-1 H District. Future public hearing will be required for a rezoning, parcel map, design review, and environmental review.

The applicants were present.

John Roberto presented the staff report.

Gene Schenk said Kintetsu has agreed to give them the land needed to meet the R-1H requirements, also allowing site "A" to have substantial off street parking and a meadowland for the proposed pool site. This parcel can be accessed from Cherne and Lillian Court and the parcel will be tree studded on all four corners. Kintetsu will decrease their density from 8 dwellings to 7 to allow us to build. The most logical access for the Kintetsu properties would be off Carlson or Idlewood because it is too steep from Cherne..

Mr. Roberto said that Kintetsu still has an easement on Cherne and legally they have a right to access their property via Cherne.

Commissioner Harle thought one of the conditions of approval for the Kintetsu properties was to take access off of Rancho. Chairman Hayes agreed that there was a strong statement made about the access.

Dominic Cericola, 3 Lillian Court, said there have been several slides in the area, and that should be taken into consideration.

Andrew Gambardella, 4 Ranch Road, said that silt from the Kintetsu property comes down and onto the roadway. Additional homes will create an additional hazard and he felt the Town should put in a drainage system prior to any development.

Ron Caceres, 10 Lillian Court, said his property drains onto the Kintetsu properties and wondered where it will drain when the property is developed.

Gene Berman, 19 Cherne Lane, said there should be a bond secured for road damages.

Enid Berman, 19 Cherne Lane was concerned about additional traffic on a very small road.

Richard Bushman, 25/27 Rancho, would like to know the general concept for Kintetsu now that they are giving some of the land to the Schenks.

Commissioner Kroot asked if there was an additional Kintetsu application. Mr. Roberto said they have not submitted an application for the additional seven homes and the Sub Division Parcel Map does not require it.

Chairman Hayes felt it important to get a general sense of what the Kintetsu Group is proposing.

Gene Schenk said the Kintetsu Group is willing to do all that is necessary for approval of the application.

Commissioner Kroot liked the idea of adding to the Schenk parcel to make the two parcels more equal, however he was not sure parcel "A" needed to take the shape as proposed. He thought the house could be designed well. There could be benefits to the community if this is approved such as a better drainage system.

**PLANNING COMMISSION MEETING  
DECEMBER 5, 1988**

Commissioner Sias considered this overdeveloping and felt the house would loom over the area. There are few trees to hide the house and he is not quite sure the area is even buildable. He did not think this was in keeping with the General Plan R-1H requirements. He would like to get an idea of what the Kintetsu Group is proposing and was not sure if Cherne Lane could handle additional traffic.

Commissioner Harle felt that the transfer of development rights of Kintetsu to Schenk could be a mitigation and would rather see the additional land added to parcel "A" .

Commissioner Julin did not have enough information to make a decision. Her thoughts were that this could be taking a house from a clustered environment and building it in a visible location.

Commissioner Yarish asked if the applicants thought of changing the shape of parcel "A". Gene Schenk said the shape could be changed however he was trying to save the old oak tree.

Chairman Hayes said this land has already been subdivided and now the applicants are testing the density level by asking for more. He said the house proposed is on a hillside and would be very visible. He questioned whether of not this application was possible based on the Fire Department requires a 20 foot road width. He was opposed to the application.

Terry Schenk said that the views on Cherne Lane are beautiful and a desirable location. The Kintetsu Group likes the fact we will do the development which will save them the utility problem of not having to go down Cherne Lane.

Gene Schenk said they could change the configuration of the lot and get additional space from the Kintetsu Group.

Commissioner Yarish questioned where the drainage problems originated. Mr. Gambardella said that all the land in question is fill land.

Ron Caceres, 10 Lillian Court, thought it important to know what the Kintetsu Group was proposing before any decision is made on this application.

Gene Schenk asked if the hearing could be continued so he could provide any additional information necessary for the Commission to approve it.

M/S Sias, Julin, to deny PP10 - Terry and Eugene Schenk and Kintetsu Enterprises Company of America, off Cherne Lane, A/P Nos. 5-300-15, 5-300-24, and 5-300-28, preliminary plan review of the creation of a new building site by combining a portion of the Kintetsu property in an R-1 H district on the basis that this application goes against the General Plan, specifically there is a potential visual impact in a sensitive area and there are alternative housing locations that will be less visible and this is inconsistent with past planning decisions that limits housing on hillside lands to 2.

Ayes: Yarish, Sias, Julin, Hayes  
Noes: Harle, Kroot

Motion carried. Audience advised of the ten day appeal period.

2. V-2263 - Joan Hechtman, 66 Indian Rock Road, A/P 177-161-02, a 3 foot frontyard variance to construct an open

**PLANNING COMMISSION MEETING  
DECEMBER 5, 1988**

bridge connecting deck within 11 feet of the front property line.

Joan Hechtman, applicant, and Francisco Centurion, Architect, present.

Lisa Wight presented the staff report.

Mr. Centurion said it would be a better access on flat land to the house.

All the Commissioners were in support of the application.

M/S Kroot, Sias, to approve V-2263 - Joan Hechtman, 66 Indian Rock Road, A/P 177-261-02, a 3 foot frontyard variance to construct an open connecting bridge and deck within 11 feet of the front property line; and a 15 foot frontyard variance to construct a retaining wall for a walkway within 5 feet of the front property line on the basis: 1. Due to special circumstances applicable to the property, specifically the steep hillside and existing car deck necessitate that the bridge and retaining wall be constructed above grade. The strict application of the controlling zoning ordinance or regulation deprives this type of property of privileges enjoyed by other property in the vicinity and under identical zoning classification; and the granting of a variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located in that other properties have direct access from the street to their front door; and 2. The granting of the variance is necessary for the preservation and enjoyment of substantial property rights of the petitioner because the owner is rebuilding a house destroyed by fire. 3. The granting of such variance, under the circumstances of the particular case will not materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in such neighborhood. The areas will be concealed by planting and the access will be directly off the street.

All ayes. Motion unanimously passed. Audience advised of the ten day appeal period.

3. EU-28 - Surinder Oberoi, 28 El Cerrito Avenue, A/P 5-242-11, use permit for an existing second unit to remain upon change of ownership.

The applicant was present.

Lisa Wight presented the staff report.

Candy Mitchell, 2 El Cerrito, was concerned about additional traffic and parking in the area.

Mr. Oberoi said they are getting rid of the illegal third unit which will reduce traffic, and in the future will be submitting an application for rebuilding the garage.

Commissioner Julin was in favor of the application but thought a limit of 2 or 3 cars on the site should be considered.

M/S Harle, Sias, to approve NU-64 - Surinder Oberoi, 28 El Cerrito Avenue, a use permit for a second living unit in an R-1 District to remain upon change of ownership on the basis. 1. Falls within the maximum number of second residential units authorized by resolution of the Council for the single family residential use area in which the unit is located; 2. Is located on an Assessor's parcel or

PLANNING COMMISSION MEETING  
DECEMBER 5, 1988

parcels on which the owner of record maintains his principal residence; 3. Does not encroach upon required setbacks, or cover land in excess of 40 percent, or necessitate vehicular parking within required setback, as noted in amendments on the conditions; 4. Meets all applicable Codes in effect at the time of the establishment of the unit; 5. Has been made the subject of a rent guarantee contract between the applicant and the Town; 6. Does not cause excessive noise, traffic, parking, or overloading of public facilities; 7. The use will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the Town; and 8. The granting of the application is necessary for the preservation and enjoyment of substantial property rights of the petitioner. This is conditioned on installation of a permanent heater be installed in accord with the Building Inspector's specification; that the applicant obtain written permission from the owner at No. 20 to use one parking space on that property; and that the number of vehicles domiciled at the property not exceed 3 because the available parking is substandard in size and location; and the existing kitchen sink in the former illegal third unit be removed from the third unit.

All ayes. Motion unanimously passed. Audience advised of the ten day appeal period.

4. C-221 - M. S. Partnership, La Mancha Development Company, 805 Sir Francis Drake Boulevard, A/P 6-082-14, design review of a new commercial building in a C-3 District, and a review of proposed Negative Declaration). CONTINUED TO DECEMBER 19, 1988.

D. APPROVAL OF MINUTES

M/S Yarish, Julin, to approve minutes of November 7, 1988 with the following changes: page 4, paragraph 11 to read: "Chairman Hayes thought the guiding principal should be to produce an impact no greater than that in the R-1 zone. This principal would allow a maximum of 12 cars on this site." page 4, paragraph 12, change "change" to "chance"; page 5, paragraph 3, Ayes "Kroot, Yarish, Sias, Hayes" Noes "Harle, Julin, Manning"; page 6, paragraph 2, should read "Commissioner Kroot abstained from this application."; page 6, paragraph 8, change "signal" to "single"; page 7, paragraph 7, delete "limit"; page 8, paragraph 8, change "creaks" to "cracks"; page 8, paragraph 7, change "site" to "sight", page 8, paragraph 9, change "pursuance" to "pursuant"; page 9, paragraph 2, change "subturrian" to "subterranean"; page 9, paragraph 3, add "..about .many of the same issues...";

All ayes.

M/S Kroot, Harle, to approve the minutes of November 21, 1988 as written.

Ayes: Julin, Kroot, Sias, Harle  
Abstain: Hayes, Yarish

The regular Planning Commission meeting was adjourned at 11:20 p.m. to the next regular scheduled meeting on December 19, 1988.

BARBARA CHAMBERS  
ADMINISTRATIVE SECRETARY/TECHNICIAN