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6 B(3)

These minutes were approved by the Zoning Administrator on 11-25-13.

**CITY OF SAN CLEMENTE
MINUTES OF THE REGULAR
ZONING ADMINISTRATOR MEETING
November 20, 2013**

Staff Present: James Holloway, Cliff Jones, Amber Gregg, John Ciampa, and Kimberly Maune

2. MINUTES

Minutes of the Zoning Administrator meeting of November 6, 2013 received and filed.

3. ORAL AND WRITTEN COMMUNICATION

None

4. PUBLIC HEARINGS

A. 510 Avenida La Costa – Minor Architectural Permit 13-268/Minor Exception Permit 13-267 – Donello Residence (Gregg)

A request to consider an addition of less than 50% to a legal nonconforming single-family home and the continuation of a legal nonconforming side yard setback. The addition totals 839 square feet; 221 square feet on the first floor and a new second story totaling 618 square feet. The project is located at 510 Avenida La Costa which is in the Residential Low and Coastal Zone zoning districts (RL-6-CZ) and is located on a coastal canyon. The legal description is Lot 27 of Tract 2964 and Assessor's Parcel Number 060-191-17.

Associate Planner Amber Gregg summarized the staff report. Staff received one response from the public, a letter from John Boyer, Esquire. He lives in Las Vegas but he owns a home up the street from this home; he could not attend this meeting. Ms. Gregg gave the letter to Mr. Holloway. She summarized the letter stating that Mr. Boyer is opposed to this project because the CC&Rs state one story and 16 feet in height. She spoke to the head of the Homeowners Association (HOA), they have basically held to the 16 feet in height throughout the entire development of the Riviera District.

Applicant Derek Wolf of Wolf Design Studio was present. Mr. Wolf stated he is the designer/architect representing the owners. He clarified that the CCR&Rs state 16 feet or one story with regards to the height limit. He has reviewed this project with the HOA. The 16 feet is taken from the highest point of grade touching the structure. Based on where they are

6 B(3) - 1

touching grade, going up 16 feet from there, allows them to stay within the 16 foot height limit and also stay well below the City height limit of 25 feet.

Mr. Wolf stated the plans were reviewed by the HOA, there are three members, Mark McGuire is the head of the HOA, and he reviewed the plans for the height. Mr. McGuire also reviewed the plans with regards to the Minor Exception Permit (MEP) and the Minor Architectural Permit (MAP) and he is supportive of the project. Mr. McGuire also supports the fact that there will be a second story. There is precedent in the neighborhood on other lots that are restricted in this way that do have second stories so this request does not break the mold.

Mr. Holloway asked if this project is on a sloping lot. Mr. Wolf responded there is a slope, it is a flat lot and it slopes up from each pad, to each pad, it slopes up the street. It is a flat pad but there is slope which comes very close to the house on the east side of the home.

For clarity, Mr. Holloway asked how the height is measured in the Riviera District. Mr. Wolf responded as it states in the CC&Rs they obtained a survey, which gave them the corners around the structure. Anywhere where the building is touching grade, whatever that grade is, then it is allowable to go up 16 feet from that grade. That is how they measured this project.

Ms. Gregg stated this is different from how the City measures. This project is 19 feet per City measurements; however, the CC&R requirements differ from City requirements. Since they are digging into a slope they can take advantage of the height of the slope that they are digging into, which is three feet higher, which is what brings the project to the allowable 16 feet.

Mr. Holloway stated there is a difference in definition. The City goes by the Zoning Code definition. Mr. Wolf stated this project meets both the City and the HOA CC&R height limits.

Robert Whittier was present and stated he is a member of the Architectural Committee of the HOA. Mr. McGuire informed him that new, revised drawings would be submitted and he would like to know if Mr. McGuire has those; Mr. Wolf responded yes. Mr. Whittier stated the Architectural Committee has not reviewed the revised drawings. Mr. Wolf stated the only difference is in the size of the master shower; it is now set back two feet. Mr. Wolf and Mr. Whittier examined the plans. Mr. Wolf stated originally it was a seven foot deep shower, not it is four and a half feet. Mr. Whittier responded this is good.

Mr. Whittier stated he has other observations as an individual and not as a member of the Architectural Committee. He is concerned with drainage from the roof, it isn't clear that it goes to the street throughout the entire property. Mr. Wolf responded they will comply with all Building Codes.

Mr. Whittier is concerned about the overhang on the downhill side of the house, which he was told does not meet City code. Mr. Wolf stated that was true on the original plans, this has been modified and corrected on the revised plans, it will not be allowed closer than 30 inches to the side yard. Ms. Gregg stated this is a condition of approval.

Mr. Whittier stated as a caution there is a wall, a gate, for the driveway, and a pedestrian gate, that is in the setback from the front property line. The CC&Rs have a restriction that is three feet. Mr. Wolf responded he spoke with Mr. McGuire about this; they are going to take care of that as a separate application to the City and not as an approval today. He will resubmit plans to the Architectural Committee and then he will resubmit plans to the City and go through another hearing.

Mr. Whittier stated he and his neighbors understand it is City practice for remodels which cost over \$50,000 that a sidewalk will be put in by the owner. In the last year the City spent over \$100,000 putting a sidewalk in on the other side of the street; it is a five foot wide walkway that is beautiful. The neighborhood has an issue of no sidewalk periodically on the other side. Walking from the bottom of the hill there is a sidewalk, then there is a flat lawn which people can walk across, then at this property there is no sidewalk. People are not even able to get out of a car on that side. He sees children exiting from car back seats out into the street. As a public safety and a practical issue the neighborhood very much wants to see a sidewalk. Mr. Wolf responded they are not being required to do that, they have Public Works approval to not provide the sidewalk.

Tom Winters was present. Mr. Winters stated he is concerned about this project cutting into the view of the people adjacent to this property. He said Mr. Wolf spoke about the height issue from the flat part of the pad of the property but that the slope up does come into play. He would like to know to what degree it changes the actual height. Currently the height is measured from the flattest part of the pad.

Mr. Wolf reiterated that the CC&Rs state height is to be measured from the highest point of grade that touches the structure. It does not say when that benchmark was set. All it says is wherever the highest point of grade is that touches the structure, this lot is allowed to build up 16 feet from there. They bumped out the entry to hit the slope and that gave them an extra three feet to go up from there the 16 feet. Where it ends up height

wise with the flat roof compared to the ridgeline of the house now is probably about three feet above the height of the ridgeline. They met with both neighbors, down slope and up slope. This project will take away a small portion of these neighbors' view of the cliff. To mitigate that they are taking down the rest of the peaked roof at the back of the house where there is not a second story; they are lowering that down to give the neighbors back a view of the ocean and of the beach below. He understood they were going to be taking view away, they didn't have to give anything back but they want to be good neighbors; they are all good friends, they all have children the same age. They wanted to make sure they were being respectful to the neighbors.

Mr. Winters stated he is sure that is their concern, but they are taking view away from people in that community. Those views have been respected for a long period of time. The concern for a lot of people is that taking a partial view away, especially an ocean view, is very critical to the people that live in that community. He thinks it is clear in the CC&Rs that the height is measured from that point of the property that currently exists, not from the upslope connected to that piece of property. That is what his understanding was. Evidently someone else interpreted it differently. The question remains in his mind why story poles were not required when the views of other people are being cut into whom probably would respect the height restrictions. It seems in this case, because of a technical issue, they are given more consideration to go higher. What is to prevent the next person to go even higher. What is to prevent other people in that same line to go higher right on up the line. It seems to him that if the rules are going to be modified for this particular property there's a danger they could be modified for other people that decide to make improvements.

Robin Boyer was present. Ms. Boyer stated her concern is that the CC&Rs say certain lots are not permitted to have two stories and this is one of the lots. How is it that they get to change the CC&Rs. Why have CC&Rs then. She owns the house two doors down. She is glad those who live there are all friends. She is not part of the friends. She bought the house because of the beautiful view. Once one person decides to build a two story who says another person won't build a two story.

Mr. Holloway stated a number of issues have been brought up. He is going to go through them. Drainage was mentioned, that is a City code. It has to be complied with. It is rather technical so it is dealt with at the final Building Permit issuance with both Building and Engineering. The City is diligent about enforcement of City codes.

Mr. Holloway stated the issue of sidewalks was brought up. Zak Ponsen is present at this meeting; he is a Senior Civil Engineer with the City's

6B(2)-7

Engineering Division. Mr. Holloway asked Mr. Ponsen to explain the status of the sidewalk requirement for this proposal.

Mr. Ponsen stated during the Development Management Team (DMT) process they made the applicant aware since the remodel is expected to be over \$50,000 there is a sidewalk requirement in the City's Municipal Code to install sidewalk along the frontage. The applicant, per the code, has applied for a waiver for a portion of the frontage. They were granted that waiver by the City Manager. That is the approval process per the City Code Section 12.08. The applicant is going to put in sidewalk for the eastern half of the property, there is a small segment, it will go up and around the drive approach and then another segment for a short portion just west of the drive approach. But then the slope gets so steep that the applicant met the requirement to waive the sidewalk for the portion in front of that tree due to the topographic reasons. Mr. Ponsen explained this in detail while referring to the plans so everyone could understand.

Mr. Holloway clarified sidewalk will be a requirement until topography gets so extreme that it is infeasible. Mr. Ponsen responded correct and stated that about half the frontage will have sidewalk. Mr. Holloway stated it is shown clearly on the plans. Mr. Ponsen stated the sidewalk will be four feet wide, and the portion going up and around the drive approach will either be three or four feet, the right-of-way there is ten feet so most likely the sidewalk will be four feet all of the way through, at least for the portion where there is sidewalk.

Mr. Holloway stated Ms. Gregg is an expert on story poles and asked her to explain when they are required by City code. Ms. Gregg stated story poles are required by code for new structures or additions that are three or more stories within a nonresidential, Mixed Use zone and/or an Architectural Overlay District, or any structures with the potential to affect public view corridors from public places in the Coastal Overlay zone, regardless of the number of stories. Single family homes are not required to do story poles. Mr. Holloway stated story poles for this project are not required by the City code, it doesn't mean CC&Rs could not require them.

Mr. Holloway stated the City does not regulate private views. This is a long standing policy. The City does not enforce CC&Rs. The City does not have standing with the CC&Rs, it is not City business. He doesn't believe anyone would want the City to enforce CC&Rs because they are tough to interpret and there are always multiple sides to an issue.

Mr. Holloway stated that what is before him is a MEP and a MAP. The purpose of the MEP is to make common sense adjustments for owners who want to make additions to their homes that are on the same plate line as original construction. The Riviera District was built in the 1950s and

1960s; the Zoning Code has probably changed four times since then. By virtue of some of those code changes it has made some of these homes that were constructed legally and per code at the time, legal nonconforming. Because of this, there are provisions in the code so homeowners can build up on a bearing wall or build out matching the structural wall. This is a common sense remedy for the codes that have changed over the last five to six decades. This is common in many cities. The purpose of the MEP is to allow home improvement designs to align up on structural bearing walls and plate lines.

Mr. Holloway stated the MAP is for an expansion of this nonconforming use. Within the last three or four years the City updated the MAP process dealing with these major additions to homes. In the past homeowners would leave one wall up that might have been encroaching into the setback, which would be nonconforming today, and they would build a house. This would mean there would be an entire new house with one old setback retained. The City Council did away with this being allowed. The City worked through this technical, complicated, and also political compromise solution where an owner can add on 50 percent. If they go over 50 percent then the entire project has to be brought into conformance, including the setback.

Mr. Holloway stated this proposal is for an expansion of 49.8 percent of the square footage. The City is diligent about enforcing codes. As far as the CC&R height regulations and view issues, those are not within City jurisdiction or City business.

Mr. Winters asked what is the purpose of having CC&Rs then. Mr. Holloway responded in this case the main purpose of CC&Rs is to give the neighborhood more regulatory authority than the City has. Communities don't want big government regulating small neighborhood issues. Riviera District has their CC&Rs; Mr. McGuire can explain what they can and can't do. The City follows the Zoning Code, beyond that the CC&Rs give neighborhoods additional regulatory authority.

Mr. Winters stated the governing body within the community, if it wishes to pursue the issue that relates to going up another three feet, has to go to court. Mr. Holloway responded that he cannot advise on that. He is not trying to be evasive. One of the problems with CC&Rs from the City's standpoint is these documents were constructed 60 years ago. There are hundreds of HOAs in the City, and they are all different. They all have different governance sections, remedy sections, mediation sections, and so on. He suggested Mr. Winters speaks to Mr. McGuire, it is their neighborhood, they should have that level of control, and how they amend it is different in every HOA. It depends on how the documents were set up.

Mr. Winters stated there are several structures within the community where the owner has had to dig further down in order to comply with those height restrictions. That kept neighbors happy and also meant a lot to the owner making those improvements because they could still enjoy the expansion and its benefits. Mr. Holloway stated there's no doubt it is a premiere neighborhood, there is really good governance and they have worked through these types of issues. It is a level of detail that the City does not get into. The City does not have legal standing to do that.

Mr. Holloway stated that other than the CC&R issues, and the technical issues which were covered, sidewalk, drainage, this is a straight forward request from a City code standpoint.

Mr. Holloway informed everyone of the ten day appeal period, this is not absolutely final until the City Council approves these minutes.

Mr. Wolf asked what could be appealed; Mr. Holloway responded he is not going to advise on that. Mr. Holloway stated he explained what is within the City's jurisdiction, what is not within the City's jurisdiction, and why the City has these exceptions. If everyone understands how cities develop over decades of time, this exception provision is very common. There are 480 cities in California, they have all changed their codes over time, there has to be this provision for common sense construction. It doesn't answer everyone's concern but it is not bending a rule because of some bad intent, or the owner is getting away with something, it is a mechanism that is meant to deal practically with a common problem.

Mr. Holloway thanked Mr. Wolf, Ms. Gregg, and all of the neighbors.

Action: The Zoning Administrator approved Minor Architectural Permit 13-268/Minor Exception Permit 13-267, Donello Residence, subject to Resolution ZA 13-040 with attached Conditions of Approval.

ACTION SUBJECT TO APPEAL TO OR CALL-UP BY CITY COUNCIL

B. 160 Avenida Cabrillo – Minor Cultural Heritage Permit 13-254 – Schwartz Garage Doors (Jones)

A request to consider exterior changes to a building located at 160 Avenida Cabrillo. The property is located in the Mixed Use zoning district, and in the Architectural Overlay (MU3-A). The legal description is Lot 39 of Block 4, Tract 779, and Assessor's Parcel Number 058-073-39.

Associate Planner Cliff Jones summarized the staff report.

6 B(2)-7

Applicant Martin Schwartz was present. He stated that Mr. Jones explained the project very well.

There were no members of the public present to address this item.

Mr. Holloway stated the staff report was very good. He has always been interested in this building, it really is a classic. He asked about the Texaco logo on the building. Mr. Schwartz explained that he has had that since they bought the building. It is a symbol of where he and his wife came from and their history. They put it up when they bought the building in 1999.

Mr. Holloway stated this building is over 60 years old. He is glad to see the General Plan policies acknowledge this part of the City's history, this Mid-Century history. He thinks it is interesting that the history of San Clemente in the mid 1950s was all about automobiles, tire stores, and gas stations, and this Texaco logo is on the building, it fits perfectly. Mr. Schwartz stated that he loves the building.

Mr. Holloway stated this is a great building and the proposed garage doors really fit with the architecture. He looks forward to the City embracing the Mid-Century architecture as the City gets older.

Mr. Holloway informed the applicant of the ten day appeal period and thanked him for working with staff. Mr. Schwartz said staff was all great and did a wonderful job and he thanked everyone.

Action: The Zoning Administrator approved Minor Cultural Heritage Permit 13-254, Schwartz Garage Doors, subject to Resolution ZA 13-041 with attached Conditions of Approval.

ACTION SUBJECT TO APPEAL TO OR CALL-UP BY CITY COUNCIL

C. 311 W. Palizada – Tentative Parcel Map 2013-142 – Sayer Condo Map
(Gregg)

A request to consider a Tentative Parcel Map for the subdivision of a duplex into two condominium units. The duplex is under construction. The subject site is in the Residential Medium Density zoning district and Coastal Overlay (RM-CZ) at 311 W. Avenida Palizada. The legal description is Lot 6, Block 26 of Tract 779 and Assessor's Parcel Number 692-053-05.

Associate Planner Amber Gregg summarized the staff report. Ms. Gregg stated this is the second condominium subdivision since the City modified

4 B(2)-8

the Zoning Ordinance to allow condominium subdivisions at the Zoning Administrator level; it has been very successful.

Applicant Dan Sayer was present; he stated that the staff report covered everything.

There were no members of the public present to address this item.

Mr. Holloway asked Ms. Gregg how much parcel maps used to cost and how long did they used to take to process. Ms. Gregg responded they used to cost over \$3,000 and they took approximately 18 weeks to process. Mr. Holloway asked about the cost and the processing time since the Zoning Ordinance was changed. Ms. Gregg responded it now takes six weeks from the time of complete submittal and the cost is over \$1,000 less.

Mr. Sayer stated this is his second time to go through this process and this time it has been much smoother than previously. He likes the new process, the shorter time frame, and the lower fees. He stated that Ms. Gregg has been great to work with. Mr. Holloway thanked Mr. Sayer for working with Ms. Gregg.

Action: The Zoning Administrator approved Tentative Parcel Map 2013-142, Sayer Condo Map, subject to Resolution ZA 13-043 with attached Conditions of Approval.

ACTION SUBJECT TO APPEAL TO OR CALL-UP BY CITY COUNCIL

D. 439 N. El Camino Real – Minor Conditional Use Permit 13-403 – Tax Office (Gregg)

A request to consider an office use, tax office, on the ground floor of a commercial building located in the Central Business District Overlay zone. The project is located at 439 N. El Camino Real in the Mixed Use zoning district and the Architectural, Central Business District, and Pedestrian Overlays (MU3-A-CB-P). The legal description is Lot 91, Tract 789 and Assessor's Parcel Number 057-133-01.

Associate Planner Amber Gregg summarized the staff report.

Applicant Vicky Wilson was present. She stated she appreciates the process and Ms. Gregg did a nice job.

There were no members of the public present to address this item.

6B(2)-9

Mr. Holloway stated in the absolute center core of the Pedestrian Overlay the City wants retail operations; however, he is totally in favor of this request because this will bring people to the greater downtown area. There is good parking. There should be some symbiotic uses here where people will drop off their taxes and then visit a downtown restaurant. He anticipates good synergy from this use. Certainly this is much better than a vacant suite.

Mr. Holloway informed the applicant of the ten day appeal period and thanked her for working with staff.

Action: The Zoning Administrator approved Minor Conditional Use Permit 13-403, Tax Office, subject to Resolution ZA 13-042 with attached Conditions of Approval.

ACTION SUBJECT TO APPEAL TO OR CALL-UP BY CITY COUNCIL

E. 301 Cazador Lane – Amendment to Cultural Heritage Permit 12-359/Minor Exception Permit 13-325 – Cazador 4-Plex (Ciampa)

A request to consider the demolition of a single-family residence and the construction of a four unit apartment building with a reduced street side yard setback and a spa that is within the required setback for a property that is within 300 feet of a historic resource in the Residential Medium zoning district and Coastal Zone (RM-CZ). The project site is located at 301 Cazador Lane, legal description being Lot 1, Block 10, of Tract 822, Assessor's Parcel Number 692-045-01.

Associate Planner John Ciampa summarized the staff report. Mr. Ciampa and Mr. Holloway examined the plans.

Designer Rick Moser and owner Chris Pierce were present. Mr. Moser stated they have met all of the requirements and they worked together with a really good staff who he worked with previously when the request originally went to the Planning Commission. They are in plan check right now with the hope of an approval at this meeting. The project was not constructed the first time because of the economy and the owner lost the property. His client purchased the property and wants to proceed with the same concept.

Betty Valenta was present and stated she owns a home on Avenida Madrid. She is curious about what is going to be put on the corner and how it will be situated on the lot. Ms. Valenta, Mr. Moser, Mr. Pierce, and Mr. Ciampa examined the plans and Mr. Ciampa explained the project in detail while referring to the plans.

6 B(3)-10

Mr. Pierce stated the proposed project will sit further back from the street than the current structure. He stated that legally, based on the lot size, he could build five units on this lot. Physically four units will fit better. He believes this project will fit nicely in the neighborhood and on the large lot. He will be living there. He hopes everyone in the neighborhood will like the project.

Ms. Valenta understands the project now and is not opposed in any way.

Mr. Holloway stated this looks like a nice project with a complex plan. This is amendments to an earlier approved Planning Commission approval that are minor in nature.

Mr. Holloway informed everyone of the ten day appeal period and thanked everyone for working with staff. Mr. Pierce thanked Mr. Ciampa and stated that it was a pleasure to work with him. Mr. Moser thanked everyone and stated that it is always a pleasure to work with the City of San Clemente. He works with 30 different cities and San Clemente is one of the best cities to work with.

Action: The Zoning Administrator approved Amendment to Cultural Heritage Permit 12-359/Minor Exception Permit 13-325, Cazador 4-Plex, subject to Resolution ZA 13-044 with attached Conditions of Approval.

ACTION SUBJECT TO APPEAL TO OR CALL-UP BY CITY COUNCIL

5. NEW BUSINESS

None

6. OLD BUSINESS

None

ADJOURNMENT

The meeting adjourned at 4:05 p.m. to the regular Zoning Administrator meeting to be held on December 4, 2013 at 3:00 p.m., at the Community Development Department, Conference Room A, located at 910 Calle Negocio, Suite 100, San Clemente, California.

Respectfully submitted,

SAN CLEMENTE ZONING ADMINISTRATOR

6 B(2)-11


James Holloway

6B(2)-12