



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: November 7, 2018

Agenda Item 7A
Approvals:
City Manager [Signature]
Dept. Head [Signature]
Attorney [Signature]
Finance [Signature]

Department: Public Works
Prepared By: Zak Ponsen, Senior Civil Engineer ZP
Tom Bonigut, Public Works Director/City Engineer

Subject: *APPEAL OF DENIED SIDEWALK WAIVER REQUEST BY PROPERTY OWNER, 239 AVENIDA LA CUESTA.*

Fiscal Impact: None. The cost for constructing new sidewalk is borne by the project applicant.

Summary: Staff recommends City Council denial of the request to waive the new sidewalk construction requirement for the new single family residence to be constructed at 239 Avenida La Cuesta. If the City Council concurs with staff's recommendation, the property owner will be required to install new sidewalk along the property frontage as required by Municipal Code Chapter 12.08.

Discussion: City Municipal Code Chapter 12.08 requires property owners who are issued building permits for improvements that have cost valuations of \$50,000 or more to install new sidewalk along the property frontage if no sidewalk exists. This requirement does not apply to properties where there is less than four feet of right-of-way from the back of the existing curb, unless the building construction is subject to discretionary approval. In such cases, the Municipal Code requires that the discretionary approval include a condition to require dedication of right-of-way or an easement for public sidewalk purposes and the installation of new sidewalk, unless this requirement is waived by the appropriate City approval body. Also, the Municipal Code includes specific criteria under which the new sidewalk requirement may be waived by the City Manager. The decision of the City Manager may be appealed to the City Council, whose decision is final. This report summarizes the sidewalk waiver denial, and staff's recommendation to deny the sidewalk waiver appeal.

The property owner of 239 Avenida La Cuesta is seeking to build a new residence on this property, which is currently a vacant lot. The proposed project required discretionary approval, which was approved by the Planning Commission at its June 20, 2018 meeting. Since there is less than four feet of right-of-way behind the existing curb, the discretionary approval included a condition to require a sidewalk easement and installation of new sidewalk in accordance with the Municipal Code. At the Planning Commission meeting, the applicant's representative requested a waiver of this requirement, but the Planning Commission supported the requirement to provide a sidewalk easement and install new sidewalk along the property frontage, and the final discretionary approval was conditioned accordingly.

The property owner will be applying for building permits for a new single family residence on a vacant parcel. The cost valuation is unknown at this time, but it will be well in excess of the \$50,000 threshold which triggers the requirement of sidewalk along the property frontage. The property owner's representative applied for a sidewalk waiver (Attachment 1) and listed the following reasons:

- The neighboring property to the east (243 Avenida La Cuesta, the Goldschmidt House) is on the National Register of Historic Places. The applicant argues that the installation of sidewalk would have a negative impact on some of the seven defining historical features that make it a historical property.
- The property to the west (233 Avenida La Cuesta) has been identified in past Historical Resources Surveys by the City to be eligible for classification as a local landmark. The applicant argues that installation of sidewalk would have a negative impact on the features which make it a historically significant property.
- The property to the west has improvements close to the street right-of-way (ROW) which will make sidewalk unlikely.
- The grade of Avenida La Cuesta is steep. The applicant argues that the steep grade of Avenida La Cuesta would not meet ADA criteria.
- The applicant also argues that the existing topography of the subject property (239 Avenida La Cuesta) will require significant grading and retaining structures in order to accommodate sidewalk and that the result would take away from the neighboring historic properties.

Staff reviewed the applicant's request to waive the sidewalk and analyzed the field conditions on the subject property and those along the entire block. The following represent staff's findings as they relate to the applicant's appeal, which are also summarized in the staff report denying the waiver request (Attachment 2):

- In discussion with Planning Department staff, the installation of sidewalk and construction of a necessary retaining wall up to three feet high would not negatively effect the historical qualities of the neighboring properties. Additionally, the front landscaping of the neighboring properties are not listed as historically defining features to either property.
- The existing improvements along the neighboring property at 233 Avenida La Cuesta are a mail box and a small utility pedestal. In the event this property were required to construct sidewalk in the future, the mail box would not be a feature which would meet the criteria for a waiver. The existing utility pedestal would be lowered to the grade of the future sidewalk or otherwise relocated so it also does not meet the criteria for waiving sidewalk.
- Although the grade/slope of Avenida La Cuesta is approximately 9-10%, this does violate ADA standards. Federal and State standards for ADA do not require existing street grades to be changed in the direction of the path of travel, and specifically recognize and allow sidewalk adjacent to the street to match the street grade. If this were not the case then there would not be sidewalks in much of the City, or any other hilly communities. Therefore, this is also not a valid reason for a waiver.

- The topography of the subject property at 239 Avenida La Cuesta does have a slope along its frontage. According to staff measurements, in order to construct a four foot wide sidewalk, a retaining wall approximately two to three feet high would be required. This does not meet the criteria of Municipal Code Section 12.08.020(A)(4) which states that such a necessary wall would have to be in excess of three feet. Additionally, staff has informed the applicant that since extensive grading will be required on the property in order to construct the residence and exterior improvements, it is clear that any necessary retaining wall could be avoided (or minimized) with modest trimming of the existing slope. This is typically done on all grading projects for new construction since most property owners wish to have a clean appearance from the street. Also, the approved project has a significant setback distance from the street, which provides sufficient space to grade this vacant parcel in a way that allows for sidewalk.

As noted above the Planning Commission did not waive the sidewalk requirement. In that discussion, it was also noted that many of the properties along this side of this entire block would also likely be discretionary in the future if they proposed improvements since they are historical structures or directly adjacent to a historical residence. Given the likely discretionary nature of the entire block, future proposed projects would similarly be conditioned to provide easements or rights-of-way and install new sidewalk. Also, the topography is generally such that the criteria for waiving new sidewalk would likely not be met on most if not all properties.

Recommended**Action:**

STAFF RECOMMENDS THAT the City Council concur with staff's denial of the sidewalk waiver request and find that based upon the evidence presented, it is appropriate to require an easement for public sidewalk and installation of new sidewalk at 239 Avenida La Cuesta.

Attachments:

1. Appeal Letter from Property Owners
2. Staff Report on Request for Sidewalk Waiver at 239 Avenida La Cuesta

Notification:

Properties within 300 feet of 239 Avenida La Cuesta; project applicant and owner.

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ADVANCED
CIVIL GROUP

ENG 17-066

October 27, 2017

City San Clemente
Development Section of Public Works
Attn: Zachary Ponsen, PE
910 Calle Negocio, Suite 100
San Clemente, CA 92673

Re: Request for Sidewalk Waiver – 239 Avenida la Cuesta, San Clemente, CA

Dear Mr. Ponsen:

At the request of Mr. Rich Romney ("Owner"), Advanced Civil Group ("ACG") is submitting this sidewalk waiver request letter for the property known as 239 Avenida la Cuesta ("Property") in the City of San Clemente ("City"), California along with a check in the amount of \$257 made out to the City.

It is ACG's understanding that the City has requested sidewalk be constructed on the Property adjacent to the Avenida la Cuesta street curb as a condition of the proposed development of the Property with a single-family home. The Owner and ACG have studied the Property and surrounding properties and feel that the existing conditions justify the issuance of a sidewalk waiver for this Property. Below is a list of reasons why the Owner and ACG feel a sidewalk waiver should be issued.

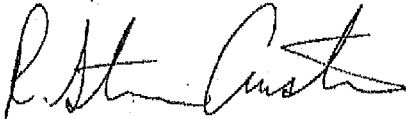
- The Property is adjacent to 243 Avenida la Cuesta known as the Goldschmidt House to the east, which is one of only a few properties in San Clemente listed on the National Register of Historic Places ("NR"). The NR recognizes properties with seven defining historical features. The Goldschmidt House does not currently have sidewalk adjacent to Avenida la Cuesta and because of the existing topography, landscaping and layout of the property, constructing sidewalk with grading and retaining structures would have a negative impact on some of the seven defining historical features that make it a HR property. For this reason, it is very unlikely that sidewalk will ever be built on the Goldschmidt House property.
- The Property is adjacent to 233 Avenida la Cuesta to the west, which is identified in the last City Historical Resources Survey as a property with historical significance and is eligible as a separate or individual property local landmark. This property, like the Goldschmidt House does not currently have sidewalk adjacent to Avenida la Cuesta and has existing topographic, landscaping and layout features that if changed to accommodate sidewalk would have a negative impact on the features that make it a historically significant property.
- The property at 233 Avenida la Cuesta mentioned above has existing improvements very close to the Avenida la Cuesta right-of-way. Constructing sidewalk in this location without impacting the existing improvements appears very unlikely.
- The grade of Avenida la Cuesta from the intersection at Patero del Oro up past the Property to the intersection of Calle Balla is between 9% and 10%. This is a very steep grade for a path of travel and even exceeds the California Americans with Disabilities Act ("ADA") design limits for access ramps of 8.33%. Steep sidewalk in this area would likely not be used and could open up the potential for ADA based litigation.

- * The existing topography of the Property will require significant grading and potentially retaining structures to accommodate sidewalk and ADA compliant access over the driveway. This will take away from the aesthetics of the two adjacent historical properties and will create additional impervious area to the Property that is not needed.

The Owner and ACG understand that sidewalk along most City streets make sense and can help to create a more accessible community. However, in this unique case it probably does not make sense to have sidewalk. The existing historical properties on each side of the Property make it very unlikely that sidewalk will ever be constructed providing access to sidewalk on the Property. The historical property on the west has existing improvements very close to the street right-of-way that create a barrier to being able to construct accessible sidewalk to the Property. The existing grade of Avenida la Cuesta is very steep and will likely deter use of the sidewalk and could open up the possibility of ADA litigation. Lastly, the existing conditions of the Property would require significant grading and potentially retaining structures to accommodate sidewalk, which would not conform to the existing historical properties or the City and State desire to reduce impervious area.

We appreciate your consideration and hope that the City will grant the requested sidewalk waiver. Please feel free to call me with any questions or to discuss at 949-391-7772.

Sincerely,



R. Steve Austin, P.E.

Co: Rich Romney (Owner)
Jay Crawford (Architect)





Memorandum Engineering Division

August 7, 2018

To: Tom Bonigut, City Engineer/Director of Public Works
From: Zak Ponsen, Sr. Civil Engineer
Subject: Request for Sidewalk Waiver at 239 Avenida La Cuesta
Valuation: Exceeds \$50,000
Discretionary: Yes

The owner/applicant at 239 Avenida La Cuesta (hereinafter "the Site") is proposing a new single family residence immediately adjacent to two historical properties. Building permit valuation will be in excess of \$50,000. Per section 12.08 of the San Clemente Municipal Code, the owner is required to construct sidewalk along the property frontage when the cost of improvements are greater than \$50,000. The owner has contacted the City of San Clemente requesting to waive the sidewalk along the property frontage since they believe that sidewalk along the entire block would be highly unlikely and that the neighboring properties are historical.

Avenida La Cuesta has a 40-foot right-of-way with approximately 2 foot wide right-of-way measured from the face of curb on the north side of the street. There is no existing sidewalk along this frontage, nor along the adjacent property frontages. Since the project is discretionary, a sidewalk easement granted to the City of San Clemente may be required to provide a 4 foot wide sidewalk along the frontage. During the Planning Commission hearing the easement dedication condition of approval was discussed and it was decided by the Planning Commission that the condition should remain for the project and an easement should be granted, unless a waiver of the sidewalk is obtained through the City Manager.

The remaining three residences on the block also do not have sidewalk along their frontages. These properties would also be discretionary projects due to their historical nature, or being directly adjacent to a historical property, thus a sidewalk easement may also be required along their frontages. Per staff site visit, it appears that in order to install sidewalk along the Site frontage and the adjacent frontages, a 3 foot high maximum retaining wall would be required. Additionally, a residence being historical does not meet the requirement for allowing a waiver to be granted.

Staff recommends denying the request to install sidewalk along the frontage based on the following sections of the Municipal Code.

1. *Section 12.08.020.A.1 "In slope areas, the construction of the sidewalk would require a retaining wall greater than three (3) feet high relative to the surface of the sidewalk"*

It does not appear that a wall greater than 3 feet would be required. Additionally, as this is a new construction project, the frontage slope could be regraded to reduce the slope angle and eliminate any necessary retaining wall.

Engineering Division Memorandum

City of San Clemente

2. *When construction of continuous sidewalk on a street block is highly improbable due to major structures, massive retaining walls or major topographic issues.*

Per site review of the other three properties on the block, it does not appear that a wall greater than 3 feet would be required along those frontages as well.


8/16/18

Tom Bonigut, City-Engineer/Director of Public Works


9/16/18

James Makshanoff, City Manager Date

Attachments: Picture of the Site

