

**Planning Commission Field Meeting, 99 Hillbrook Drive, Preliminary Review for a Variance Application**

Chair Gilbert called the field meeting to order at 4:00 p.m.

**ROLL CALL:**

PC: Commissioners Hasko, Goulden, Vice Chair Targ, and Chair Gilbert

Town Staff: Planning Director Debbie Pedro and Associate Planner Arly Cassidy

Others present relative to the proposal for 99 Hillbrook Drive

Neil Day, property owner

Russ Dotter, project architect

Neighbors: Dan and Karen Galinetti (25 Antonio Court)

John Murray (15 Antonio Court)

Ellen Lussier (91 Hillbrook Drive).

Associate Planner Arly Cassidy presented the report regarding the project which consists of a 805.5 square foot addition, a 744 square foot two story ADU, a 906 square foot new basement, a new pool and extensive site improvements to an existing 3,521 square foot home on a 1.0 acre property located at 99 Hillbrook Drive. The lot is located at the intersection of Hillbrook and Sausal Drives. The property sits at the top of a ridgeline with views past The Priory out to Windy Hill. It is backed by the Hillbrook/Veronica Trail off of Sausal Drive, and is otherwise surrounded by single family homes.

Planner Cassidy explained that, while an extensive remodel/addition project was proposed, the current Planning Commission meeting was meant to provide the applicant with an early read of whether the Commission would be able, in the future, to make the findings for a Variance, as required by the applicant's proposal of an increase in height (and therefore non-conformity) of the existing house where it sits within the front setback. She presented the entire project, but asked that the Commission's review be primarily limited to the porch roof height and the variance application for it.

Following her presentation, Owner Day explained the history of the house, and his family with it. He stated that his house was especially impacted by the 50 foot setback, applied after the house was built, as other houses on Hillbrook Drive sit farther back from the street. Architect Dotter described a few of the alternative designs they had considered and rejected due to flow and appearance of the house. Chair Gilbert asked if any of the other houses had been rebuilt since the setback went into place; neither the owner nor the planners knew offhand. Chair Gilbert then asked if there was enough room within the existing building envelope to construct a new house that sat completely out of all of the setbacks; Owner Day confirmed that there was.

The group walked around the existing house to view the story poles for various elements of the project. At the planned two-story ADU, overlooking the corral and planned pool area, Owner Day explained that they would install the pool and landscaping after the horses had passed on. In discussing the ADU, Neighbor Murray commented that his view of it was like "the Queen Mary in our backyard." Neighbor Lussier agreed with this description, saying that the ADU loomed over their front door, and they felt hemmed in by it. The group then visited the yard of John Murray at 15 Antonio Court, where the second story elements of the ADU and main house were visible.

Vice Chair Targ stated that he was looking to understand what the hardship was that would allow a variance. Chair Gilbert stated that she was not able to attend the evening meeting and would therefore provide her preliminary feedback there at the field meeting. She stated that a variance approval comes down to hardship, not design. If alternate designs exist (even if they are not preferable), not enough of

a hardship exists to approve a variance. She said that if a new house could fit within the building envelope, that must be considered when reviewing the variance.

Owner Day stated that they could either work with the existing house or rebuild and take advantage of the site appropriately. Vice Chair Targ said he was sensitive to the sustainability issue, but that the focus was on hardship. Chair Gilbert asked if a financial hardship qualified as a hardship in terms of a variance. Planning Director Pedro stated that no, they were different forms of hardship, and financial hardship was not enough to allow a variance. No further comments were made.

Chair Gilbert stated that Commissioners would offer further comments on the proposal at the regular evening meeting that evening, and re-stated that she would not be able to attend. Members thanked the applicant and design team for participation in the site meeting. The field meeting adjourned at 4:39 p.m.

PLANNING COMMISSION REGULAR MEETING, TOWN OF PORTOLA VALLEY, NOVEMBER 15, 2017, SCHOOLHOUSE, TOWN CENTER, 765 PORTOLA ROAD, PORTOLA VALLEY, CA 94028

Chair Gilbert called the Planning Commission regular meeting to order at 7:00 p.m. Planning Director Pedro called the roll.

Present: Commissioners Goulden and Hasko, Vice Chair Targ

Absent: Commissioner Von Feldt and Chair Gilbert

Staff Present: Debbie Pedro, Planning Director  
Cynthia Richardson, Planner  
Arly Cassidy, Associate Planner

ORAL COMMUNICATIONS

None.

OLD BUSINESS

1. Final Review for a Conditional Use Permit, Architectural Review and Site Development Permit, 838 Portola Road, Owner: Georgia Bennicas, File #: PLN\_USE 7-2017

Planner Richardson described the history of the project. She said that on October 9, 2017, the ASCC made their final recommendation to the Planning Commission for approval of the project with one modification to specify that the address numbers are not illuminated. Planner Richardson asked the Commission to review the complete record of the application as detailed in the staff report.

Vice Chair Targ invited questions from the Commission. Hearing none, Vice Chair Targ invited the applicant to comment. Hearing none, Vice Chair Targ brought the item back to the Commission for discussion.

Commissioner Hasko asked for clarification regarding self-illuminating reflective signs. Planner Richardson said that referred to interior exit signs, the panic hardware on the interior.

Commissioner Hasko asked for clarification regarding a Knox Box. Planner Richardson said if there were automatic gates, the Fire Department would have a special key to gain access via a Knox Box, but one was not required in this case.

Commissioner Goulden moved to find the project categorically exempt pursuant to Sections 15031 and 15302 of the California Environmental Quality Act (CEQA) Guidelines. Seconded by Commissioner Hasko; the motion carried 3-0.

Commissioner Hasko moved to approve Resolution 2017-13, PLN\_USE 7-2017 with the conditions of approval. Seconded by Commissioner Goulden; the motion carried 3-0.

Commissioner Goulden moved to approve the site development permit subject to the conditions of approval. Seconded by Commissioner Hasko; the motion carried 3-0.

2. Review of a Proposal to Renew a Conditional Use Permit and Update an Existing Wireless Communication Facility, T-Mobile, 3530 Alpine Road, File # PLAN\_USE 00005-2017

Planning Director Pedro said that Associate Planner Cassidy would present one Power Point for both applications – PLAN\_USE 00005-2017 and PLAN\_USE 00004-2017. She said the two permits came under the same CUP in 1999 and at that time included a third facility. She said the CUP for 3530 Alpine Road was extended from 2006 to 2016 and the CUP for 700 Portola Road expired in 2004 and was never fully reupped. She said at this point there are two separate CUPs to cover their continued use and update to the facilities at the two locations.

Associate Planner Cassidy explained the history of the preliminary review and the Wireless Subcommittee, and the updated plans for final review, as detailed in the staff report. A T-Mobile representative was present.

Vice Chair Targ invited questions from the Commission.

Commissioner Hasko asked for clarification regarding the Subcommittee review and comments. Associate Planner Cassidy said the Subcommittee's comments #4 and #5 are contained within Condition of Approval #5 and the Subcommittee's comment #6 is in Condition of Approval #6.

Commissioner Hasko asked how the Subcommittee's comment #5 is covered in the Conditions of Approval. Associate Planner Cassidy said it is covered in the second sentence of Condition of Approval #5 – “Any disturbance to the site during work shall be restored to previous conditions to the satisfaction of the Public Works Director.”

Vice Chair Targ asked if there were any issues with this being located within the Scenic Corridor. Associate Planner Cassidy said they haven't considered it as a different design review process because of that. She said review is fairly limited by State Law and there are a number of conditions that can be placed on the applicants, and a number of those conditions have been applied, but she does not think the Scenic Corridor is a viable option for refusing placement.

Vice Chair Targ asked if there were any additional conditions considered because of it being the Scenic Corridor, such as shielding. Planning Director Pedro said there were. She said one that came under consideration was to not have any ground equipment associated with the facilities, so all the equipment is installed on the pole. Associate Planner Cassidy said originally the Portola Road application did include ground equipment, and upon staff's first review it was requested that it be moved onto the pole. She said the applicant complied.

Vice Chair Targ invited comments from the applicant. Ann Welch, T-Mobile representative, thanked the Commission for the opportunity to speak on behalf of the projects. She said they made every attempt to respond to issues brought forward by the Planning Commission and the Wireless Subcommittee.

Vice Chair Targ invited public comment. Hearing none, Vice Chair Targ closed the public hearing and brought the items back to the Commission for discussion.

Commissioner Hasko moved to find Project 5-2017 categorically exempt of the California Environmental Quality Act (CEQA) Guidelines. Seconded by Commissioner Goulden; the motion carried 3-0.

Commissioner Hasko moved to approve the Resolution of the Planning Commission regarding a T-Mobile Wireless facility located at 3530 Alpine Road, File # PLAN\_USE 5-2017. Seconded by Commissioner Goulden; the motion carried 3-0.

3. Review of a Proposal to Renew a Conditional Use Permit and Update an Existing Wireless Communication Facility, T-Mobile, 700 Portola Road, File # PLAN USE 00004-2017

Commissioner Hasko moved to find project PLAN\_USE 4-2017 categorically exempt from Section 15303 of the California Environmental Quality Act (CEQA) Guidelines. Seconded by Commissioner Goulden; the motion carried 3-0.

Commissioner Hasko moved to approve the Resolution of the Planning Commission regarding a T-Mobile Wireless facility located at 700 Portola Road, File # PLAN\_USE 4-2017. Seconded by Commissioner Goulden; the motion carried 3-0.

#### NEW BUSINESS

4. Review of Modification to the Town's Ground Movement Potential Map, File # PLN GMM 1-2017, 30 Holden Court, Lee Residence

Planner Richardson described the background of the modification, located at the end of Holden Court. Staff recommended adoption of the attached resolution approving the requested modifications to a portion of the Town's Ground Movement Potential Map, as detailed in the staff report. A representative from Murray Engineers was present. Planner Richardson said the Town Geologist has reviewed the report and agrees with their assessment that the modification can be made.

Vice Chair Targ invited questions from the Commission.

Commissioner Hasko said there is a statement by Cotton Shires that reads, "The proposed map modification will result in map boundary inconsistencies at adjacent properties to the north and south; therefore, these adjacent property owners should be notified of the map modification." She asked if there is currently any known negative impact on the neighboring properties. Planner Richardson said there has been no subsurface exploration on those sites which could have different geology. She said it is unknown until an application is submitted and they have an opportunity to review it. Planner Richardson confirmed to Commissioner Hasko that approving the map change did not change the rights of neighboring properties, who would need to come in with separate assessments.

Vice Chair Targ asked if it was common for geologic designation modification applications to come in separate from the application for a development. Planner Richardson said it is a separate process. She said the house is reviewed by the ASCC, whereas the modification, according to the resolution that was approved years ago, is required to be reviewed by the Planning Commission. Planning Director Pedro said the new house under review by the ASCC cannot be finalized until the map modification is approved.

In response to Commissioner Hasko's questions, Planner Richardson said the adjacent property owners have been notified according to the Town's noticing procedures. Commissioner Hasko asked for clarification regarding the "map boundary inconsistency." Planning Director Pedro said previously there was a swath of land under the Pd Zoning designation that will now change to yellow and then brown. She said the impact to the neighbors may actually be beneficial, because if it has been deemed to have a more stable soils designation, they expect this to continue, although the neighbors still have to do their own investigation.

Vice Chair Targ invited comment from the applicant. Hearing none, Vice Chair Targ invited public comment. Hearing none, Vice Chair Targ brought the item back to the Commission for discussion.

Commissioner Goulden moved to approve Resolution 2017-14 regarding the adjustment of the Town's Ground Movement Potential Map at 30 Holden Court. Seconded by Commissioner Hasko; the motion carried 3-0.

5. Study Session for a Proposed Variance Request for Increased Roof Height in the Setback, File #PLN VAR 04-2017, 99 Hillbrook Drive, Day Residence

A field meeting was held at the site earlier this afternoon. Associate Planner Cassidy said the applicant had the entire project story-poled to give the Commission a complete visual of the proposal; however, an ASCC application for the changes has not yet been submitted because the applicant is waiting to see if the variance findings can be made. She said that while the findings will not be made tonight, this session is intended to offer initial reactions and guidance to the applicant regarding the variance request before they move forward with further project development.

Associate Planner Cassidy presented the proposed variance request, as detailed in the staff report.

Vice Chair Targ invited questions from the Commission.

Commissioner Goulden said he would not want to set a precedent whereby applicants could reference rules changes as the basis for an extraordinary hardship.

Vice Chair Targ invited comment by the applicant.

The applicant said the setback change of 1967 impacts very few people on Hillbrook, and looking more broadly at the entire town, well under 25% of the properties. He said by and large, the change codified what had already been done, but they are unfortunate enough to be in the situation where the house was built according to the rules at the time. He said that they have a disproportionate impact.

Vice Chair Targ invited public comment.

Ellen Lussier, 91 Hillbrook. Ms. Lussier said she was at the site today. She said she cannot speak in favor of or against the appropriateness of variance, and she understands the Commission needs to take into account precedent and other considerations, but from a neighborhood and design perspective, she does not see any issue with this proposed porch.

Vice Chair Targ said Ms. Lussier's comments were helpful. He said the issue being looked at tonight is limited to the variance of the increasing height. He said her comments with respect to the general massing that they talked about earlier in the field were also noted and will be dealt with in a subsequent process.

Hearing no additional comments, Vice Chair Targ closed the public hearing and brought the item back to the Commission for discussion. He said the issue is the uniqueness or special circumstances of the property in the context of the design change.

Commissioner Goulden said he could make Findings 4, 5, and 6. He said he is unsure of Findings 1, 2, and 3. He said he was concerned with setting precedent.

Commissioner Hasko was also concerned about setting a precedent. She said the Commission is in the awkward position of looking at something that appears eminently sensible, understanding why the applicant wants it, and noting that the design aesthetic appears sensible, yet it requires that they make the findings to grant a variance. She said she has a hard time finding the special circumstances to justify granting a variance. She said the property across the way has similar constraints. She said every property in town has restrictions and parameters they must work within. She said special circumstances are not driven by design preference, and she does not want to set a precedent by granting a special privilege. She said the Bennicas property that was reviewed tonight was denied a variance to have a 2-foot overhang that was partially functionally driven. She said she understands the

vision and why it seems to be a sensible proposal, but she does not have the basis for finding the variance.

Vice Chair Targ said he was focusing on the term “privileges” in the Findings requirements. He said it does not address issues of use, but addresses issues of privileges, which would include design. He said the subject property is more of a rectangle, with greater frontage, whereas the property across the street has less relative frontage and is not impacted to the same extent. He said, however, he is also moved by the fact that this is a 50-year-old ordinance and is not new or surprising. He said these kinds of considerations would have been built into issues such as value, for example. He said the shape of the property does distinguish it from the other properties. He said there are only three Commissioners present, and they appreciate the useful public comment, the field visit, and the figures provided by the applicant showing the different property sizes and configurations. He noted that a fourth Commissioner was present at the field visit, who voiced a skeptical position.

Vice Chair Targ said they appreciated the opportunity to provide early consideration and encouraged the applicant to work with staff as they move forward and hope they have found this input helpful. The applicant said he wasn't sure that he did find it helpful. He asked to be told in plain English how he should take this discussion.

Vice Chair Targ said this is a preliminary discussion, a study session, and represents a straw poll. He said the straw poll is currently 2 to 1, with the 1 being in favor of the position the applicant brought forward and 2 less so. He said two Planning Commissioners are missing, but the applicant had the opportunity to hear from one of them in the field, who sounded less favorable. Vice Chair Targ said he would not take this as an endorsement of the variance. However, he said, this is not a decisional meeting, and in a certain sense, the applicant needs to take what's voiced here on its own terms, which may be challenging because there is not a unanimous voice and two Commissioners are not at the dais.

Planning Director Pedro said this is helpful feedback for the applicant, and of course the applicant can continue to pursue a variance if desired; however, based on the feedback this evening there is not a majority to support a variance.

The applicant said they have a perfectly functional existing house, and they are requesting a minor change that doesn't change any peak elevation or substantially modify the silhouette or the front elevation. He asked if that bore any consideration in the decision-making process. Vice Chair Targ said it does have a bearing. He said Items 4, 5, and 6 go to the issue of community impact, and the Commissioners could make those findings. The applicant said he generally understands, but denying a variance of the space will trigger a significant negative impact on his property.

Vice Chair Targ said the Planning Commission has two primary tasks. It adjudicates, looks at a rule, and decides if the facts fit the particular rule, and there is not much room for independent judgment. The other task is exercising discretion – deciding if an application is consistent with the vision for the Town, if it is generally consistent with the community values, where there's more of an opportunity for the Planning Commission to consider values such as community impact, and their decisions can be based upon that. He said the decision to grant a variance is an adjudicative decision where they sit more like a court – **do the facts and map them onto the limited findings that they have to make, and there is not a lot of discretion in how those work.**

Vice Chair Targ said that one might be sitting as an applicant and say, “I can't believe what you guys are doing. I am about to incur a very large expense for an impact that is exceptionally slight. That doesn't make a lot of sense. It doesn't make sense from an ecological standpoint, and it doesn't make a lot of sense from an aesthetic or community impact standpoint.” Vice Chair Targ said that while all of

that may be true, a variance, by applying a preset law to a particular set of facts, limits the Planning Commission's ability to consider those kinds of policy, common-sense sorts of issues that are before the body. He said they have to determine there is a special circumstance applicable to the property that distinguishes it from the other properties in town. Vice Chair Targ said the reason that is very important is they want to have very specific rules that everybody has to follow so that when an applicant comes before the Commission, the applicant knows that he or she is being treated like all others, that there is no favoritism or special privilege that's being presented, and that the rules that are written down have meaning and are going to be applied.

Vice Chair Targ said this places the Planning Commission sometimes in a very uncomfortable position where it finds that while a proposal would certainly make sense, the applicant really isn't in a unique or special condition that distinguishes him or her from other applicants who may come before the body who are in a similar situation. Vice Chair Targ pointed out that earlier this evening, an applicant came before the Commission who had an already-constructed architectural element on her building that was within a setback, and they required that she remove it. Vice Chair Targ said, had it been approved, it would have been an after-the-fact variance, which is permissible. Commissioner Hasko said the Commission did not take into account that it had already been done and merely applied the usual Findings requirements. Vice Chair Targ said whether it had been done or not was not part of their decision-making process.

Vice Chair Targ said a variance is an adjudicative matter and is rarely granted because the Commission tries to establish fairness in what could otherwise be a very subjective decision-making body. He said they are trying to maintain the regularity, which is the issue they have with respect to precedent setting. He said the three Commissioners present are struggling with the issue, and the extent to which the applicant sees something as a being a special circumstance. Vice Chair Targ said from his perspective, he could possibly see a way to make that finding, but it's a really close call. He said there are two other Commissioners who may not be able to make that finding given the precedential impact that it could have and the need to demonstrate fairness across the board.

Vice Chair Targ said he was generally sympathetic to the applicant and his challenged position because of the words he's hearing tonight regarding the project he's trying to move forward.

The applicant said he appreciated the comments and asked how to proceed from here. Vice Chair Targ said it would be appropriate for him to talk with staff about the process. He said the applicant could apply for a variance at this point, and if it is denied, the decision could be appealed to the Town Council. Planning Director Pedro said they would want to look at the project in its entirety. Vice Chair Targ said the applicant would need to bring the application forward along with the variance and have it be heard.

Planning Director Pedro said based on the feedback that's been provided this evening, the applicant could take a different direction. She said they have been talking with the applicant for the past few months regarding other alternatives that would provide a path for receiving approval of a remodel, addition, or new residence that does not require a variance. Planning Director Pedro said in order to grant a variance approval, all six findings must be made, which is something the applicant should consider in deciding whether or not to move forward with a variance application.

#### COMMISSION, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

Planning Director Pedro said the Council reappoints all Commissioners and Committee members annually. She said the Town Clerk has asked that members of the Commission confirm that they desire to continue to serve in 2018 and to review their information listed in the Committee contact



book, providing any updates as necessary. The Commissioners present advised Planning Director Pedro that their contact information was up to date.

Vice Chair Targ said he saw on the PV Forum that there was an opening on the Planning Commission which makes him think this question has already been asked. Commissioner Goulden said Chair Gilbert and Commissioner Von Feldt indicated they will not serve past the end of the year, although there was discussion that perhaps one of them would delay their departure so both positions weren't vacant at the same time. Planning Director Pedro said Chair Gilbert agreed to stay on for another two to three months, so staff advertised one vacancy, which is Commissioner Von Feldt's position, and another one will be advertised in a few months. She said the deadline to submit an application to the Town Clerk is December 1. She said the Council is scheduled to interview the candidates on December 13. Vice Chair Targ asked if staff was undertaking any particular outreach. Planning Director Pedro said a notification has been posted on PV Forum, sent out on the Town's email notices, and the new Communications Analyst will also help disseminate the information. There have been advertisements in the newspaper and on the Town's website, but she thinks the best way is through word of mouth. Planning Director Pedro said they have received one application so far.

Vice Chair Targ said Fire Marshal Enea has been in high demand lately, given her expertise. He said Chair Gilbert is with her now and people in his subdivision and HOA will be with her on Monday morning. He is confident that all of the other HOAs will be doing the same thing, given the tragic situation in the North Bay.

#### APPROVAL OF MINUTES:

6. Planning Commission Meeting of September 6, 2017

Commissioner Hasko moved to approve the minutes of the September 6, 2017, meeting, as amended. Seconded by Commissioner Goulden, the motion carried 3-0.

7. Planning Commission Meeting of October 18, 2017

The approval of minutes for October 18, 2017, will be continued.

ADJOURNMENT [8:24 p.m.]