

## La Jolla Shores Permit Review Committee Minutes

4:00 p.m. Tuesday, May 27, 2014

La Jolla Recreation Center, 615 Prospect Street, La Jolla, CA

**Committee members present:** Janie Emerson, Tim Lucas (secretary), Phil Merten (chair), Myrna Naegle, Bob Steck.

**Members absent:** Laura DuCharme Conboy, John Schenck.

**1. Welcome and Call to Order:** Phil Merten, Interim Chair : A brief description of the public input part of the project review process as given for the benefit of members in the audience.

**2. Adopt the Agenda :** Lucas drove by 7965 Paseo del Ocaso house on way to the meeting and the required notice is not posted on the property. Lucas feels that this should not be on the agenda. Note that no neighbors are present at this project review. The posted notice is important in that the notices sent out to residents within 300' sometimes get lost in the mail, and residents that are beyond the 300' distance also become aware of a project. The posted notice serves as a backstop in case the mailed notice gets lost. **Paul Benton:** There was a notice posted and he was at the house last Thursday and the notice was there. Notices sometimes get blown away, or even taken down by people trying to delay the process. Not having a notice posted today is not a reason to delay the hearing of this item. Lucas: You are responsible for keeping a notice posted. **Benton:** We are not responsible. Anyone with a bit of mischief in mind could extend these proceedings indefinitely by removing notices. Does not believe that the code specifies that the people have to have a perfect notice. We will restore the notice after this meeting. **Bob Whitney:** Has seen a notice posted in the past. Has not been by recently. **Merten:** Does not think that there is anything in our bylaws that says that we can't review the project.

**Motion Emerson, Second: Naegle: Approve the agenda as published**

**Motion carries 3-1-1**

Approve: Emerson, Naegle, Steck Oppose: Lucas, Abstain: Merten (chair)

**3. Non-Agenda Public Comment** – 2 minutes each for items not on the agenda : None

**4. Committee Member Comments :** None

**5. Chair Comments:** None

**6. Project Review**

**6A. Ragen Residence**

- Project No. 357715
- Type of Structure: Single Family Residence
- Location: 7956 Paseo Del Ocaso, APN: 346-503-10-00
- Applicant: Lindsay King
- 858-459-9035 Lindsay@AlcornBenton.com
- Project Manager: Glenn Gargas, 619-446-5142 GGargas@sandiego.gov

**Project Description:** PROCESS 3 - CDP and SDP to demolish an existing one story single family residence and the construction of a 3,268 sq. ft. single family residence at 7956 Paseo Del Ocaso. The 5,353 sq. ft. lot is located in the Single Family Residence Zone of the La Jolla Shores Planned District, Coastal (non-appealable) Overlay Zone, Coastal Height Limit, Parking Impact Overlay, within the La Jolla Community Plan area.

**Merten:** This project originally came to the committee 3 or 4 years ago and was a remodel of the existing house. The committee requested the applicant at the time to come back with more information, but the project did not come back.

**Benton:** This is the same project number. The plans have been revised.

**Presented by: Paul Benton and Lindsay King**

This is a traditional house with two stories. The neighborhood is mostly single story houses, but there are several two story houses in the neighborhood. The owners wanted to fit in with the existing neighborhood, so they wanted a design where the second story was pulled back from the street, as well as all sides. A balcony was removed from the design to further provide separation from the neighbors.

- By going 2-stories, the footprint on the ground floor is reduced from the existing house.
- Upper floor pulled back from street and also from the rear and sides.
- Second story setback from street: 29'
- The present house is set below street level. When it was originally built, approximately 2' of dirt was removed to set the house down lower, presumably for privacy. This project will fill this in and be graded to the original street level. This will add 2' to existing grade. All height measurements will be based on the lower existing grade, however.
- Chimney is tallest point on the structure - 29' 11" top of chimney, based on the current lower grade.
- House roof height 27'

- Real Slate roof tiles will be used. White materials for the sides.
- The owners have met with the adjacent neighbors.
- FAR: 60%
- Lot Coverage: 46%
- Greenspace: 32.3%
- Setbacks, ground level: front=15', rear=25', south side= 4' at chimney, 6'3" at house, north side=varies from 4' at front to 6'3". Second story: Front= 29', sides: 8'4", rear=36'
- Perimeter garden wall height: 6' from finished grade. Rear of house is 7'8" height

**Public comment:** none

**Committee discussion:**

**Merten:** Is the garden wall surrounding the property measured from finished grade? What are the heights on the sides.

**Benton:** It is measured from finished grade per code. **Merten:** It looks like the rear wall is 7'8", it can only be a maximum of 6'. **Benton:** (after measuring). It is shown on the plans as 7'8". That was a mistake. I will mark on the plans that all walls will be limited to 6' above lowest grade (whichever side of the wall is lower).

**Naegle:** Likes the way the house has been pushed back from the street. It makes it appear to be a single story house. **King:** The second floor was set near the center of the lot. **Merten:** Good job setting the second floor back. Thinks the house is in scale with the neighborhood. Thinks this conforms to the Community Plan.

**Lucas:** After bringing in the dirt to fill in the lot, will this now be level with the neighbors houses on each side? **King:** It will be more level than it presently is, sitting in a depression. **Benton:** Possibly a foot higher than the neighbor on the North.

**Motion:** Steck **Second:** Emerson

**Findings can be made to for Coastal Development Permit and a Site Development Permit for the Regan residence, 7956 Paseo del Ocaso, Project No. 357715, as depicted on marked up drawings on May 27, 2014, to reflect 6' high perimeter fences. The notations were made on plan sheet numbers: 0.0 and 1.3. Motion carries: 4-0-1**

Approve: Emerson, Naegle, Merten, Steck; Oppose: ; Abstain: Lucas (still has concerns on the missing notice to be posted on the house)

**6B. Wu Residence**

- Project No. 361774
- Type of Structure: Single Family Residence
- Location: 7615 Hillside Drive
- Applicant: Francisco Mendiola 619-804-4463 Francisco@CDGIUS.com
- Project Manager: John S. Fisher, 619-446-5231 JSFisher@sandiego.gov

**Project Description:** PROCESS 3 - CDP and SDP to demolish an existing structure and the construct a 7,345 sq. ft. two story single family dwelling unit with a basement. The site is located at 7615 Hillside Drive. The site is located in the Single Family Residence Zone of the La Jolla Shores Planned District, Coastal (non-appealable) Overlay Zone, Coastal Height Limit, within the La Jolla Community Plan area.

**Presented: Francisco Mendiola, Jess Gonzales, James Wu**

This project had a previous CDP, but project was never built. This is a new, more compact project to fit in better. It is close to the footprint of the current house, which was built in 1964. This was a rental property for many years. New owner purchased the property recently and had three main principles for the design of the project. The new building had to be in context with the neighbors. The house had to fit the slope of the hillside. The design should follow the inside functions of the house. The resulting project being presented here is smaller and more compact than the previously approved design. A comparison.

- Proposed house entry and garage is in a similar location to the existing house.
- Setback in front is similar to the existing= 1' to property line, 15' to street.
- Side setbacks: 7' & 10'
- FAR= 32%, Lot coverage=17.8%, Landscape=71.8%, Footprint=13.57%
- Meets 30' height limit.
- House is two stories, plus basement on hillside below.
- A pool will be added away from the basement (not connected to the building). Pool equipment will be below the pool structure, covered for sound insulation.

- Second floor is shifted to the east, so neighbor above still has their view over the garage and side setback. This proposal is less bulky than the immediate neighbors.
- Present house has empty space under the first floor. The proposed design, is very similar, but the space is being filled in by the basement in this design.
- This house is a flowing, somewhat modern style. Neighbor house on east is Contemporary style. House on west is Tudor style. The neighborhood is very eclectic mix of styles.
- Neighbor property to east is higher. The proposed second floor is about the height of the neighbor garage.
- Property is on a steep hillside, but has been filled, so is not considered sensitive habitat.
- The proposed basement space is pulled back from the previously approved design, so it is disturbing the hillside less.
- 10' drainage easement on east side of property. Site drainage will be through this easement.
- A detailed model was presented to the committee showing the proposed house on the slope.
- A materials board was shown. Tan and brown colors. Wood trim.

**Naegle:** The city cycles notes that the house front yard setback is not in conformance with the other setbacks in the neighborhood. **Gonzales:** They have spoken with the city planner Peter Cho, and have provided him the setback survey. He agrees that they are in conformance, but he can not clear the issue until the plans have been submitted.

**Steck:** Are the neighbors concerned about their views? **Mendiola and Gonzales:** They have spoken with the neighbors and showed them the plans. They were quite pleased with how the house is set low and farther back from the hillside.

**Lucas:** Talk about the footer used to secure the house? **Mendiola and Gonzales:** They are using caissons. The system is a newer one, and require less depth than the previously approved project. Also, the house is pulled back, so requires less structure underneath. **Lucas:** Cycles noted that project exceeded the FAR on a steep slope. **Gonzales:** The slope has been disturbed so this is not considered sensitive habitat. The planner agrees and will clear this when the plans are submitted.

**Lucas:** Cycles also say that the design had a circular driveway which is not permitted due to not having enough frontage to the property. **Mendiola:** The city planner would not accept a second driveway. This has been changed and is shown as a single curb cut in these plans today. **Lucas:** I know of a house in my neighborhood that had a second driveway approved afterwards by the city, even though it did not meet the required frontage. This is a narrow street with poor visibility, having a second entrance would enhance the safety of this project. **Merten:** They would need to follow the variance process.

They could apply for this afterwards.

**Merten:** The pool is not connected to the house structure, and the area between is going to be grass? **Mendiola and Gonzales:** Yes. Separated by 6'. **Merten:** You could install pavers or grasscrete in this space, but if a slab was ever poured, that would be considered a connection to the house. In that case, the height limit would be calculated differently, and would be in violation of the 30' height limit.

#### **Public Comment:**

**James Wu (owner):** Has lived in Muirlands for 20 years and his children went to La Jolla High School. Is very grateful for the public school system here. He wants to be a part of the LJ Shores community.

**Kim Whitney:** What are the ceiling heights for the levels? **Mendiola:** From 8' to 10'.

#### **Board Discussion:**

**Merten:** How is site drainage being handled? **Mendiola and Gonzales:** Through natural drainage and site percolation. There is also a drainage easement, with a channel, on the east of the property that the house runoff will drain to. The house footprint is similar to the existing house, so the runoff should be very similar. **Merten:** Based on their presentation, they are trying to stabilize the hillside and will not spill drainage over the sides. It will be relatively easy for them to tap into the drainage easement and route runoff to it.

**Myrna:** She doesn't think the design is compatible with the neighborhood. There are some very small scale Spanish homes in the area. Thinks that this style is out of character. **Gonzales:** There is an eclecticism to the street, with lots of styles. There is no overriding architecture to this area.

#### **Discussion on the motion:**

**Emerson:** Does not understand the rules that determine if the lower portion is a basement or a floor. This lower section has lots of windows. **Merten:** Whether called a basement or a floor, doesn't really affect the design. **Emerson:** Would still like more information on these regulations.

**Lucas:** Thinks that this is a very respectful house to the neighborhood. The size of the house visible from the street fits in with other houses nearby. This has a smaller footprint than what was approved before. This is a very difficult building site. My biggest objection is with the city's reluctance to allow you to have a second curb cut to allow safe driveway access on La Jolla Shores Permit Review Committee, May 27, 2014, Minutes, Page 3 of 3

this narrow, winding, road with limited visibility. I urge you to pursue a variance to get a second driveway curb cut.

**Merten:** Will support the project. The mass of the house has been broken up, so it fits with other houses in the neighborhood. Although it has a different curvilinear expression from the rest of the houses, there are a lot of different styles on the street. The colors and scale of the house work, it is not increasing the profile on the street as compared to other houses. The setbacks are larger than the adjacent neighbors.

**Motion:** Steck Second: Lucas

**Findings can be made for a Coastal Development Permit and a Site Development Permit to demolish the existing structure and construct a 7,345 sq ft house at 7615 Hillside Drive, Project No. 361774, based on plans presented today, dated March 15, 2014. Motion carries 3-1-1**

Approve: Lucas, Merten, Steck; Oppose: Naegle; Abstain: Emerson (Needs more information, does not understand the regulations determining a basement versus a lower floor)

7. Discussion – SDMC Chapter 13, (Zones): Do the zoning requirements of SDMC Chapter 13, (Zones) Regulations apply to projects within the La Jolla Shores Planned District. (See La Jolla Shores Planned District Ordinance, SDMC Sec.1510.0107 Applicable Regulations)

**Merten:** This question was raised at the previous meeting. The reason to raise this has to do with the Development Services Department's lack of enforcement of the La Jolla Shores Planned District Ordinance, particularly, the application of the La Jolla Shores Design Manual over the last couple of years. Several years ago, Joe LaCava, Tony Chrisafi, and Merten met with DSD department chairman Kelly Broughton. He stated the reason that they are not applying the Design Manual when reviewing projects is that they would have to act like a design review board and make discretionary decisions. He stated that they are not going to do that. For the last few years they have been approving projects that one could easily argue, didn't comply with the Design Manual. We have a new Mayor and a new director of DSD. The Mayor's office directs the DSD, so there may be different directives being applied. Chapter 13 of the Municipal Code brings in several other sections of the Municipal Code to apply, including the section on Zones, if there is no conflict with a PDO.

At this point several handouts were reviewed: "The Application of Citywide Base Zone Regulation of Floor Area Ratios and Setbacks in the La Jolla Shores Planned District" by Rob Whittemore, dated June 28, 2011, and a response "Comments Regarding the City Attorney's Memorandum Pertaining to Application of City Wide Base Zone Regulations in the La Jolla Shores Planned District" by Phil Merten, prepared in 2011. The Whittemore document gives some of the history of the LJS PDO and the efforts to have the City recognize that citywide residential base zone regulations do apply. The City Attorney's Office did agree with this conclusion in a memo on April 18, 2007 by Wolfsheimer. Merten at that time produced his response (Comments Regarding the City Attorney's Memorandum...). There was a rebuttal to this by DSD director Escobar-Eck in a document on April 26, 2007. Whittemore rebutted the points in the Escobar-Eck document in a document on July 11, 2007. On November 10, a memorandum appeared from Maureen Green of the City Attorneys Office, simply stating that the earlier memorandum by Wolfsheimer had been retracted. This memorandum was never signed or authorized, and came 6 days after the general election in which the City Attorney (Aguirre) was not re-elected. Since then there have been changes in the City Attorney's Office and the Mayor's Office. Merten is not sure that we have a current opinion from the City Attorney as to whether the citywide residential base zones apply. Merten thinks it would be helpful from this committee's standpoint, and from a community planning standpoint to have a clear understanding on if the zone regulations do or do not apply. He originally made an argument at the time that the zone regulations do not apply. Since that time, the City has done a horrible job at applying the LJS PDO and Design Manual. It may be time to reassess whether these base zone regulations should apply.

**Bob Whitney:** Why are you bringing this up again? This has been reviewed and decided before. In the minutes from the CPA meeting Feb 2, 2012, Councilwoman Sherri Lightner's representative, stated that the City Attorney's office wasn't going to pursue this issue anymore. She also stated that the City Attorney said that if you want these zones to apply, then the La Jolla Shores PDO would have to be amended. Amending the PDO is really the correct way to do this. The second point is that if there is a conflict between the Municipal Code and the LJS PDO, the PDO clearly takes precedence. The PDO doesn't address FAR's and other zone issues.

**Merten:** If you look at setbacks, and the MC says that setbacks shall be some specified distance, but the PDO says that they should be in general conformity to those in the vicinity, you now have two different statements on the same subject. This is a conflict, and the LJS PDO would apply. For there to be a conflict, you have to have a statement from each side. Where one ordinance is silent on the issue, and the other ordinance is specific on the issue, then there is no conflict. Since the LJS PDO is silent on the issue of Floor Area Ratios, one could say the Municipal Code regulations apply. In my 2007

memorandum, I argued that FAR's were a means of controlling the amount of development on a site. In the citywide regulations FAR's are used. In the LJS PDO, controlling the amount of development on a site is done in a different way. It doesn't establish an FAR, but instead establishes building setbacks in general conformity, it establishes a maximum residential building footprint of 60%, and it has a Design Advisory Board that is supposed to step in and make a decision on whether a project is appropriate or not in relationship to the community.

**Bob Whitney:** Here is a document from then City Architect Michael Stepner, that says that they chose not to have an FAR in La Jolla Shores, because they composed design regulations on projects instead. What you are asking for now is restrictions in FAR's and setbacks in the Design Manual. **Naegle:** That document is faulty, because in another letter, he claimed to be the author of the La Jolla Shores PDO, and that is untrue. He is not the author of the PDO. If he would misrepresent himself in this way, he would misrepresent anything else also, in my opinion.

**Bob Whitney:** Stepner is saying that they didn't impose an FAR because they imposed design regulations that substitute for them. **Lucas:** The LJS PDO specifically does not say that they did not implement FAR's for that reason. Whatever he says, is his interpretation, and I don't agree with it. **Whitney:** Stepner was the City's Architect and he was intimately involved with the decisions made with the LJS PDO. **Naegle:** If you look at the LJS PDO, Michael Stepner's name is never mentioned. Many other names of community members and City officials are listed as contributing to the development of the PDO, but Stepner's name is not.

**Emerson:** The problem of the the years is that the way we interpret the PDO is not the same as they interpret it downtown at the City. **Merten:** Stepner makes the case that we have a LJS PDO that says you are supposed to apply the Design Manual, but for the past several years we have had a Development Services Department that says they are not going to apply the Design Manual. This was right from a director of DSD. We now have a different Mayor and staff, so maybe they will review the issue again, and will start applying the Design Manual again.

**Merten:** Does this committee think that this is an issue worth further discussion and asking the LJ CPA to make a formal request to the City Attorney's office or the DSD to make an official determination on what regulations apply?

**Bob Whitney:** Based on the CPA minutes, the current City Attorney, says that you have to amend the LJS PDO. **Lucas:** But that's a political decision, on his part. He doesn't want to spend political capital in making a tough legal decision. He wants the community to spend 5 years of our time trying to write and amend the PDO instead. I think the argument Merten presented is right, that the LJS PDO is silent in this area and that the FAR regulations do apply. In the 1990's the DSD circulated a card for development in the Shores that showed FARs versus lot sizes. In the 1990's they were using FAR's in their decisions, and all of that went out the window when the Municipal Code was revised in 1998 and became effective in 2000, even though the section containing LJS PDO had not had any significant changes made to it since 1976. I think that this should be pursued, and maybe our City Attorney would make a tough legal determination this time. **Bob Whitney:** I think that you are barking up the wrong tree and following the wrong process by trying to change it I this way. The PDO needs to be amended.

**Merten:** Does the committee feel that is appropriate to put this on our agenda to ask the CPA to raise this issue with the City Attorney's office and get some clarification? **Emerson:** I think we should check with Councilwoman Lightner's office first and try to get confirmation of the City Attorney's statement. If it is correct, then this pursuit may be a dead end.

**Merten:** I will send an email to Councilwoman Lightner's office regarding the City Attorney's comments and copy everyone on it.

Adjourn

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