

RESOLUTION NO. 199461

WHEREAS, J.D.W. CORPORATION, Owner, and L. ROBERT PAYNE, ET AL., Lessees, "Applicant," filed an application for a rear yard and landscaping variance under Zoning Administrator Case No. 9653 to construct a restaurant on Lot 2, Ohmer Subdivision, Map No. 5344, at 2445 Hotel Circle Place, in the R-5 Zone; and

WHEREAS, the Zoning Administrator of The City of San Diego held a public hearing on Zoning Administrator Case No. 9653 pursuant to Section 101.0503 of the San Diego Municipal Code on January 21, 1970, and denied the variance as requested, but granted a variance subject to certain special conditions set forth therein, which decision was filed in the office of the City Clerk on January 22, 1970; and

WHEREAS, Walter L. Palmer appealed the decision of the Zoning Administrator to the Board of Zoning Appeals pursuant to Section 101.0507 of the San Diego Municipal Code; and

WHEREAS, the Board of Zoning Appeals on February 5, 1970, upheld the decision of the Zoning Administrator under case No. 9653, and granted the variance and filed the same in the office of the City Clerk on March 3, 1970; and

WHEREAS, pursuant to the provisions of Section 101.0507.1 of the San Diego Municipal Code, Walter L. Palmer filed an appeal from the decision of the Board of Zoning Appeals to the City Council on March 10, 1970; and

WHEREAS, said appeal was set for public hearing and was heard on April 7, 1970, testimony having been heard and evidence having been submitted and the City Council having fully considered the matter and being fully advised concerning the same;

NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, as follows:

All of the following facts exist with respect to the granting of a rear yard and landscaping variance that allows Applicant to construct a restaurant on Lot 2, Ohmer Subdivision, Map No. 5344, at 2445 Hotel Circle Place, in the R-5 Zone:

1. There are special circumstances and conditions applying to the land and buildings for which the adjustment is sought, which circumstances are peculiar to such land and buildings and do not apply generally to the land and buildings in the neighborhood.

2. The circumstances and conditions are such that the strict application of the provisions of the ordinance would deprive the owners of the reasonable use of the land and buildings and the granting of this adjustment is necessary for the reasonable use of the land and buildings and the adjustment as granted by the City Council is the minimum adjustment that will accomplish this purpose.

3. The granting of the variance will be in harmony with the general purpose and intent of the ordinance and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

4. The granting of the variance will not adversely affect the Master Plan of the City.

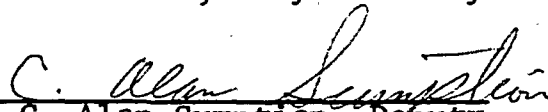
The above findings are further supported by the minutes, tape of the proceedings, maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that the City Council does hereby deny the appeal of Walter L. Palmer from the decision of the Board of Zoning Appeals and does hereby grant to J.D.W. CORPORATION

and L. ROBERT PAYNE, ET AL. a variance in the form and with the terms and conditions as set forth in the variance attached hereto and made a part hereof.

APPROVED: JOHN W. WITT, City Attorney

By


C. Alan Sumption, Deputy

VARIANCE - CITY COUNCIL

This variance is granted by the Council of The City of San Diego to J.D.W. CORPORATION, Owner, and L. ROBERT PAYNE, ET AL., Lessees, "Applicant," for the purposes and on the terms and conditions as set out herein pursuant to the authority contained in Section 101.0503 of the San Diego Municipal Code and related parts thereof and Resolution No. 199461, adopted April 7, 1970 by the City Council of The City of San Diego.

1. Permission is hereby granted to Applicant under Zoning Administrator Case No. 9653 to construct a restaurant observing a three-foot rear yard, with five feet of landscaping on public right-of-way together with additional landscaping on private property, installation of a five-foot sidewalk and a three-foot high fence separating this property and adjacent property to the west, located on Lot 2, Ohmer Subdivision, Map No. 5344, at 2445 Hotel Circle Place, in the R-5 Zone.

2. Applicant shall fully comply with all the provisions of the San Diego Building Code.

3. Restaurant shall observe a three-foot rear yard.

4. Applicant shall provide a five-foot landscaped strip for the public right-of-way, together with additional landscaping on private property as shown on revised plan, subject to the following conditions:

a. Approval by the City Street Tree Division of the Public Works Department.

b. A five-foot sidewalk shall be installed in accordance with the requirements of the City Engineer.

5. An identification sign, eight feet by three feet with an eight feet by one foot rider under and an overall height of nine feet with a minimum height of five feet from the ground to the bottom of the sign shall be erected. The sign shall observe a zero foot setback, encroaching ten feet into the required ten-foot planting strip.

6. The request for 41 parking spaces is denied; a minimum of 49 parking spaces shall be provided.

7. A fence shall be installed, three feet high, separating this property and the property adjacent to the west. The fence shall be approximately of the same materials and color of the proposed building and shall start at the back next to the freeway and extend to the front property line.

8. The effectiveness of this variance is expressly conditioned upon and the same shall not become effective for any purpose unless and until the following events shall have occurred:

a. Applicant shall have agreed to each and every condition hereof by having this variance signed within 90 days of the Council's decision.

b. This variance, executed as indicated shall have been recorded in the office of the County Recorder.

9. This variance shall inure to the benefit of and shall constitute a covenant running with the land, and the terms, conditions and provisions hereof shall be binding upon Applicant and any successor or successors thereto and the interest of any such successor shall be subject to each and every condition herein set out.

10. This variance is not a permit or license, and any permit or license required by law must be obtained from the proper department.

11. In addition to any other remedy provided by law, any breach in any of the terms or conditions of this variance or any default on the part of Applicant or its successors in interest shall be deemed a material breach hereof and this variance may be cancelled or revoked. Cancellation or revocation may be instituted by City or Applicant. The Zoning Administrator shall set the matter for public hearing before the Board of Zoning Appeals giving it the same notice as provided in Section 101.0503

of the San Diego Municipal Code. An appeal from the decision of the Board of Zoning Appeals may be taken to the City Council by any interested person within ten days after the decision is filed with the City Clerk. The Clerk shall set the matter for public hearing before the City Council giving the same notice as provided in Section 101.0503.

12. Any zone variance granted by the City shall be null and void and shall be revoked automatically one year after its effective date unless the use or construction permitted, or both, is commenced before said time expires, in accordance with Municipal Code Section 101.0506.

Passed and adopted by the Council of The City of San Diego on April 7, 1970.

AUTHENTICATED BY:

Mayor of The City of San Diego, California

City Clerk of The City of San Diego, California

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) ss

On this _____ day of _____, 19____, before me the undersigned, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared FRANK CURRAN, known to me to be the Mayor, and JOHN LOCKWOOD, known to me to be the City Clerk of The City of San Diego, the municipal corporation that executed the within instrument and known to me to be the persons who executed the within instrument on behalf of the municipal corporation therein named, and acknowledged to me that such municipal corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, in the County of San Diego, State of California, the day and year in this certificate first above written.

(Notary Stamp)

Notary Public in and for the County
of San Diego, State of California

The undersigned Applicant by execution hereof agrees to each and every condition of this variance and promises to perform each and every obligation of Applicant hereunder.

J.D.W. CORPORATION,
a corporation

(Seal)

By _____

By _____

L. Robert Payne

Patricia R. Payne

Michael D. Rodgers

Dee Anne Rodgers

Jackson W. Goodall

Mary E. Goodall

Acknowledgment

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) ss

On this _____ day of _____, 19____, before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____, known to me to be the _____ and _____ known to me to be the _____ of

J.D.W. CORPORATION, a corporation
the corporation that executed the within instrument and known to me to be the persons who executed the same on behalf of said corporation and acknowledged to me that said corporation executed the same, pursuant to its bylaws or a resolution of its Board of Directors.

WITNESS my hand and official seal.
(Notary Stamp)

Notary Public in and for the County
of San Diego, State of California

Acknowledgment

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) ss

On this _____ day of _____, 19____, before me the undersigned, a Notary Public in and for said County and State, personally appeared L. Robert Payne, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that _____ executed the within instrument.

WITNESS my hand and official seal.
(Notary Stamp)

Notary Public in and for the County
of San Diego, State of California

Acknowledgment

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) ss

On this _____ day of _____, 19____, before me the undersigned, a Notary Public in and for said County and State, personally appeared Patricia R. Payne, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that _____ executed the within instrument.

WITNESS my hand and official seal.
(Notary Stamp)

Notary Public in and for the County
of San Diego, State of California

Acknowledgment

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) ss

On this _____ day of _____, 19____, before me the undersigned, a Notary Public in and for said County and State, personally appeared Michael D. Rodgers, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that _____ executed the within instrument.

WITNESS my hand and official seal.
(Notary Stamp)

Notary Public in and for the County
of San Diego, State of California

Acknowledgment

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) ss

On this _____ day of _____, 19____, before me the undersigned, a Notary Public in and for said County and State, personally appeared Dee Anne Rodgers, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that _____ executed the within instrument.

WITNESS my hand and official seal.
(Notary Stamp)

Notary Public in and for the County
of San Diego, State of California

Acknowledgment

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) ss

On this _____ day of _____, 19____, before me the undersigned, a Notary Public in and for said County and State, personally appeared Jackson W. Goodall, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that _____ executed the within instrument.

WITNESS my hand and official seal.
(Notary Stamp)

Notary Public in and for the County
of San Diego, State of California

Acknowledgment

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) ss

On this _____ day of _____, 19____, before me the undersigned, a Notary Public in and for said County and State, personally appeared Mary E. Goodall, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that _____ executed the within instrument.

WITNESS my hand and official seal.
(Notary Stamp)

Notary Public in and for the County
of San Diego, State of California

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CITY CLERK'S OFFICE

1970 APR 13 11:49

SAN DIEGO, CALIF.

Passed and adopted by the Council of The City of San Diego on APR 7 1970,
by the following vote:

Councilmen	Yeas	Nays	Excused	Absent
Helen Cobb	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sam T. Loftin	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Henry L. Landt	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Leon L. Williams	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Floyd L. Morrow	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Bob Martinet	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Allen Hitch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mike Schaefer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Frank Curran	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

FRANK CURRAN
Mayor of The City of San Diego, California.

JOHN LOCKWOOD
City Clerk of The City of San Diego, California.

(Seal)

By *Colfa N. Hamel*, Deputy.

Office of the City Clerk, San Diego, California

Resolution Number 199461 Adopted APR 7 1970

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