

(R-94-2008)

RESOLUTION NUMBER R-

284394

ADOPTED ON

AUG 02 1994

WHEREAS, Luis E. Garcia and Donald and Connie Goertz, applicants, appealed the decision of the Planning Commission denying the combined application for Hillside Review/Resource Protection Ordinance Permit No. 90-0834 and parcel map submitted by the applicants for subdivision of an existing lot with an existing single-family dwelling, located at 3230 Welmer Place, and described as Lot 27, Unit No. 1, Map No. 6208, in the University Community Plan Area, in the R1-5 zone and the construction of a new 2,270 square foot single-family dwelling on the proposed new lot; and

WHEREAS, after full consideration of the evidence presented at the November 10, 1992 public hearing in front of the Council of The City of San Diego (the "Council"), including the staff report, the record of the proceedings before the Planning Commission of The City of San Diego, testimony and arguments of the applicants and their representatives, testimony of interested persons, and maps, diagrams and exhibits, the City Council on a vote of 5-4 approved a motion to deny the appeal and the permit applications; and

WHEREAS, in that certain action titled Garcia v. City of San Diego, et al., San Diego Superior Court Case No. 661411

Consolidated with Case No. 661460, the court issued a Peremptory Writ of Mandate (the "Writ") dated April 22, 1994, commanding the City to set aside the prior decision and actions taken by the Council on November 10 and 23, 1992, denying petitioners' application No. 90-0834 for tentative parcel map, resource protection ordinance permit and hillside review permit, and all subsequent actions in connection thereto; and

WHEREAS, the court further commanded in its Writ as follows:

IN TAKING ACTION AND MAKING FINDINGS ON THE ADMINISTRATIVE RECORD WITH RESPECT TO PETITIONERS' PERMIT APPLICATIONS, RESPONDENT CITY COUNCIL SHALL COMPLY WITH THE STATE LAW AND ITS SAN DIEGO MUNICIPAL CODE, INCLUDING SECTION 101.0454.E.8 [SIC] WHICH PROVIDES:

The decision of approving, conditionally approving or denying the application shall include the findings of fact relied upon by the decision maker. The decision shall be filed with the City Clerk, the Planning Department, Engineering and Development Department and the Building Inspection Department and a copy shall be mailed to the applicant.

Nothing in this Writ shall limit or control in any way the discretion legally vested in you.

; and

WHEREAS, the Writ further commands filing a return to the Writ within 60 days following service on the City; and

WHEREAS, the City desires to comply with the Writ; and

WHEREAS, the City Council desires to exercise the discretion lawfully vested in it with regard to consideration of the appeal and project application; and

WHEREAS, San Diego Municipal Code section 102.0301.1 (also known as the Subdivision Ordinance) requires that when a subdivision permit is sought within a Hillside Review Overlay, the findings of fact and approval requirements of the Hillside Review Overlay shall be incorporated into the subdivision review; and

WHEREAS, the provisions of the Hillside Review Overlay Zone regulations (San Diego Municipal Code section 101.0454; herein "Hillside Review Ordinance") provide that an application for development of land subject to the ordinance, including, without limitation, construction of new single family homes and subdivision of lots, shall be denied unless all of the following findings are made (San Diego Municipal Code section 101.0454(E)(5)):

a. The site is physically suitable for the design and siting of the proposed development. The proposed development will result in minimum disturbance of sensitive areas.

b. The grading and excavation proposed in connection with the development will not result in soil erosion, silting of lower slopes, slide damage, flooding, severe scarring or any other geological instability which would affect health, safety and general welfare as approved by the City Engineer. Disturbed slopes are planted with native and self sufficient vegetation.

c. The proposed development retains the visual quality of the site, the aesthetic qualities of the area and the neighborhood characteristics by utilizing proper structural scale and character, varied architectural treatments, and appropriate plant material.

d. The proposed development is in conformance with the Open Space Element of the General Plan, the Open Space and Sensitive Land Element of the community plan, any other adopted applicable plan, and the zone. The applicant has discussed the feasibility of open space dedications or easements with appropriate City staff.

e. The proposed development is in conformance with the qualitative development guidelines and criteria as set forth in Document No. RR-262129 "Hillside Design and Development Guidelines"

; and

WHEREAS, the Resource Protection Ordinance (San Diego Municipal Code section 101.0462) requires in subsection (G)(5)(a) compliance with the regulations of the Hillside Review Ordinance before a permit may be issued; and

WHEREAS, the provisions of the Resource Protection Ordinance provide that an application for development of land subject to the ordinance, including, without limitation, construction of new single-family homes and subdivision of lots, shall be denied unless all of the following findings are made (San Diego Municipal Code section 101.0462(K)):

1. The proposed development will not adversely affect the City of San Diego's Progress Guide and General Plan.

2. The proposed development will conform to the community plan for the area and any other applicable plans, policies and ordinances.

3. The proposed development will be sited, designed, constructed and maintained to minimize, if not preclude, adverse impacts on environmentally sensitive lands.

4. The proposed development will be sited and designed to prevent adverse impacts on any environmentally sensitive lands and resources located in adjacent parks and public open-space areas and will provide adequate buffer areas to protect such resources.

5. The proposed development will minimize the alterations of natural landforms and will not result in undue risks from geological and erosional forces and/or flood and fire hazards.

6. Feasible measures, as defined in this section, to protect and preserve the special character or the special historical, architectural, archeological or cultural value of the affected significant prehistoric or historic site or resource have been provided by the applicant.

; and

WHEREAS, at the time it took action to deny the appeal of the project, the City Council did not formally adopt findings consistent with the ordinance requirements; NOW, THEREFORE,

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

1. That the foregoing recitations are true and correct.
2. That the prior actions taken by the City Council to deny the appeal in this matter are hereby rescinded, including, without limitation City Council Resolution No. R-281143.
3. That the City Council has reviewed the administrative record in this matter which is the same administrative record as was presented to the court in the above referenced consolidated law suits.

4. That after reviewing the administrative record, this City Council hereby denies the appeal, affirms the decision of the Planning Commission denying the project applications and adopts the following findings:

a. With respect to Hillside Review/Resource Protection Ordinance Permit No. 90-0834:

i. The Council cannot make the finding under Section 101.0454(E)(5)(a) of the Hillside Review Ordinance. The design and siting of the proposed development is unsuitable because the new residence will be built into the steep slopes of Rose Canyon. There are no existing residences built into the rim of Rose Canyon. Although the proposed residential use is consistent with the community plan, the proposed lot-split would result in a new lot consisting primarily of very steep slopes and would require the home to be placed on or in the steep slopes. Such a lot, if created would be out of character with the surrounding development and lots which have level or even building pads that do not result in homes constructed on canyon slopes. The neighborhood has a well established pattern of development which does not include development of principle structures over the canyon rim as proposed by this project. The minor intrusion of decks and limited accessory structures on other properties do not create a precedent for development of the canyon slopes. In addition, the proposed

development would require excavation of sensitive canyon slopes.

ii. The City Council cannot make the finding under Section 101.0454(E)(5)(c) of the Hillside Review Ordinance. The proposed development does not retain the visual qualities of the site, the aesthetic qualities of the neighborhood and the neighborhood characteristics. The harmony in scale, height, bulk, density, and coverage of development creates an incompatible physical relationship to surrounding properties for which this area has been planned. No other development of this type has been allowed on the rim of Rose Canyon. The proposed development is visible from the canyon floor which is part of Rose Canyon Park.

iii. The City Council cannot make the finding under Section 101.0462(K)(2) of the Resource Protection Ordinance because the proposed project is not in keeping with the spirit or intent of the University Community Plan goal to preserve Rose Canyon and its viewshed environs. No existing houses in the vicinity are built into the steep slopes of Rose Canyon.

iv. The City Council cannot make the finding under Section 101.0462(K)(3) of the Resource Protection Ordinance because the proposed development would be designed, constructed and maintained in a manner that adversely impacts environmentally sensitive lands through excavation and development of the slopes of

Rose Canyon. In addition, the view of the rim of Rose Canyon would be permanently adversely impacted by the proposed development sited on the canyon rim.

v. The City Council cannot make the finding under Section 101.0462(K)(4) of the Resource Protection Ordinance because the proposed development is adjacent to Rose Canyon Open Space Park and would be designed, constructed and maintained in a manner that would permanently adversely impact the view from the canyon floor, which is Rose Canyon Open Space Park, because the development would be the only dwelling unit built into the canyon rim.

The above findings are supported by the administrative record, the testimony of neighbors during the prior public hearings on this matter as transcribed in the administrative record, maps and exhibits submitted with the administrative record, all of which are herein incorporated by reference.

b. With respect to Tentative Map No. 90-0834:

i. Pursuant to San Diego Municipal Code section 102.0301.1, for property subject to the Hillside Review Ordinance, all approval requirements of the Hillside Review Ordinance are incorporated into the subdivision review. Because the City Council cannot make all of the findings required for approval of the proposed project under the Hillside Review Ordinance, the tentative map for subdivision of the property must be denied.

ii. Pursuant to the Resource Protection Ordinance, permits to develop property, including subdivision permits, cannot be approved unless approval under the Resource Protection Ordinance is first obtained. Because the City Council cannot make all of the findings required for approval of the proposed project under the Resource Protection Ordinance, the tentative map for subdivision of the property must be denied.

APPROVED AS TO FORM:


Daniel S. Hentschke, Special Counsel

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Or.Dept:Plan.
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