

RESOLUTION NUMBER R-294672

ADOPTED ON MARCH 20, 2001

WHEREAS, John Bertsch, Owner/Permittee, and Safdie Rabines, Applicant, filed an application with the City of San Diego for a Site Development Permit [SDP] and Variance [VAR] No. 40-0601 to allow the proposed demolition of an existing single dwelling unit and construct two single dwelling units, 2,608 square feet and 2,665 square feet known as the Hip Pocket project, on a 0.22-acre lot located at 906 West Lewis Street, and legally described as Lots 13-16, Block 35, within the Arnold & Choates Subdivision, Map No. 334, in the Uptown Community Plan area, in the MR-1000 and RS-1-1 zones; and

WHEREAS, on December 14, 2000, the Planning Commission of the City of San Diego approved Site Development Permit No. 40-0601; and

WHEREAS, Ms. Sera Larkins appealed the Planning Commission decision to the Council of the City of San Diego; and

WHEREAS, given the need for this project to be located at the property line on West Lewis Street to remain clear from the Multiple Habitat Planning Area [MHPA] and given the need to preserve the two mature palm trees in front of the project, no standard sidewalk in front of the project was required; and

WHEREAS, in lieu of the sidewalk, the Planning Commission asked and the applicant has voluntarily agreed to arrange landscaping and provide stepping stones connecting the existing sidewalk on the west edge of the project to the existing natural pathway on the east edge of the project; and

WHEREAS, the matter was set for public hearing on March 20, 2001, testimony having been heard, 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, that it adopts the following findings with respect to SDP and VAR No. 40-0601:

A. VARIANCE FINDINGS:

1. There are special circumstances or conditions applying to the land or buildings for which the adjustment is sought, which circumstances or conditions are peculiar to the land or buildings and do not apply generally to the land or buildings in the neighborhood. Such conditions have not resulted from any act of the Applicant subsequent to the adoption of the applicable Land Development Code. The project proposes to provide a three-foot interior sideyard where ten feet is required for each unit; and exceeds the maximum building height envelope above twenty-four feet as established by a 45-degree angled plane up to the maximum permitted thirty feet height (San Diego Municipal Code [SDMC] section 131.0444(b)) Within the RS-1-1 zone, portions of both houses project above the building envelope. This property is located on a steep hillside at the edge of a canyon. The entire site is impacted by the steep hillsides which limits the use of the property. In addition, the need to avoid the Environmentally Sensitive Lands [ESL] on the northern side of the property and the requisite retaining walls needed to provide brush management locate the project such that the required setback is not reasonably feasible and the need to exceed the height envelope is unavoidable. The small developable area and the lot's extreme steepness in the comparison to other canyon lots are both conditions that are peculiar to this property and do not apply generally to properties in the neighborhood.

2. The aforesaid circumstances or conditions are such that the strict application of the provisions of the applicable Land Development Code would deprive the applicant of reasonable use of the land or buildings and that the variance granted by the City is the minimum variance that will accomplish this purpose. The aforementioned circumstances cited for the property (as identified in the preceding Variance Finding "A.1") limits the availability of feasible design alternatives to develop the site in accordance with the strict application of the regulations. The site conditions would prohibit the construction of two reasonably size homes at this location. Due to the steep topography, along with the need to avoid impacts to the MHPA/ESL area, the project has been pushed up and out of the canyon as much as possible, which has resulted in the need for the two requested variances. The project proposed two standard residences comparable to size and scale to other residences surrounding the canyon. Granting the variance would permit the reasonable use of the land.

3. The granting of the variance will be in harmony with the general purpose and intent of the regulations and will not be detrimental to the public health, safety or welfare. The proposed variances (as identified in preceding Variance Finding "A.1") would allow a creative design solution that blends with the surrounding neighborhood and would not be detrimental to

the public health, safety or welfare. The design is in harmony with the purpose and intent of the regulations and complements nearby buildings. The interior sideyard variances are further substantiated by the fact that there are no adjoining structures to the north of this property, as the northern boundary is in the lower reaches of the canyon. The design reduces the impact on the canyon by pulling the buildings up and out of the canyon as much as possible. As the building design moves into the canyon, the proposed houses gradually step down the site, reducing the project scale and mass. The facade of the buildings on the street side (West Lewis Street) is single story. On the east side of the east house, there is a paper street and future development is also very unlikely. Stepping the houses down the canyon breaks the massing of the homes from the canyon side and height of the top floors. As a result, this variance would not have a negative impact on the canyon or neighboring homes. Granting the variance would be in harmony with the general purpose and intent of the regulations.

4. The granting of the variance will not adversely affect the applicable land use plan.

The proposed variances (as identified in preceding Variance Finding "A.1") would allow the development of residential structures consistent with the community plan use designation. In addition, the structures maintain the residential characteristics of the neighborhood and does not negatively affect adjoining buildings. Therefore, granting this variance would allow reasonable use of the lot and would result in buildings that are a positive addition to the neighborhood.

B. SITE DEVELOPMENT PERMIT FINDINGS:

1. The proposed development will not adversely affect the applicable land use plan.

The project is in conformance with the land use, density, parking, floor area and landscaping requirements for this site per the applicable land use plans and policies in effect for the project site per the Uptown Community Plan, and is consistent with the residential land use designation. However, the project incorporates variances from the applicable RS-1-1 zone to allow a three-foot interior sideyard setback where ten feet is required; and to allow the project to exceed the maximum building height envelope limits above twenty-four feet as established by a 45-degree angled plane up to the maximum permitted thirty feet height. Based on the aforementioned circumstances identified for this project in the preceding: "Variance Findings" the proposed interior sideyard setback deviations are not considered significant and will allow development that is consistent with the general purpose and intent of the Uptown Community Plan.

2. The proposed development will not be detrimental to the public health, safety, and welfare. The permit prepared for the proposed Hip Pocket, LLC residential units includes various conditions and referenced exhibits of approval relevant to achieving project compliance with the applicable regulations of the City's Land Development Code in effect for this project; and that such conditions have been determined by the decision maker as necessary to avoid adverse impacts upon the health, safety and general welfare of persons residing or working in the surrounding area. The project will comply with the development regulations in effect for the subject property as described in SDP No. 40-0601, and the regulations/guidelines pertaining to the subject property per the San Diego Municipal Code. In addition, the proposed development is required to obtain Building Permits to show that all construction will comply with all applicable Building and Fire Code requirements. The proposed project is exempt from the California Environmental Quality Act [CEQA] pursuant to State CEQA Guidelines sections 15303-3, New

Construction or Conversion of Small Structures. As the project is an allowable use for this zone and location, the development will not be detrimental to the public health, safety and welfare of the community it serves.

3. The proposed development will comply with the regulations of the Land Development Code. The project complies with a majority of the Land Development Code; including land use, density, parking, floor area and landscaping requirements. However, the project incorporates variances from the applicable RS-1-1 zone. Based on the aforementioned circumstances identified in the preceding "Variance Findings" the project would be consistent with the general purpose and intent of the applicable regulations of the City's Land Development Code. Through the granting of this permit, the project must comply with all conditions of SDP No. 40-0601.

C. SUPPLEMENTAL FINDINGS - ENVIRONMENTALLY SENSITIVE LANDS - A SITE DEVELOPMENT PERMIT REQUIRED IN ACCORDANCE WITH LAND DEVELOPMENT CODE SECTION 143.0110 BECAUSE OF POTENTIAL IMPACTS TO ENVIRONMENTALLY SENSITIVE LANDS MAY BE APPROVED OR CONDITIONALLY APPROVED ONLY IF THE DECISION MAKER MAKES THE FOLLOWING SUPPLEMENTAL FINDINGS IN ADDITION TO THE FINDING IN SDMC SECTION 126.0504(A):

1. The site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to environmentally sensitive lands. The project is not proposing to encroach into the MHPA and is, therefore, consistent with the Multiple Species Conservation Program [MSCP]. Therefore, the development will result in minimum disturbance to ESL.

2. The proposed development will minimize the alteration of natural land forms and will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards. As the project is proposed to step down the canyon side rather than cut deeply into the canyon wall, alteration of the natural land forms would be minimized. The project has been reviewed for brush management requirement and is consistent with all City regulations. Regarding geologic and erosional forces and flood hazards, the Geology Review staff reviewed the project and has indicated that no geotechnical report is required at this time, but that a geotechnical report will be required as final improvement and grading plans are development.

3. The proposed development will be sited and designed to prevent adverse impacts on any adjacent Environmentally Sensitive Lands. The project is not proposing to encroach into the MHPA and is, therefore, consistent with the MSCP. In addition, the site design to step the architecture down the slope and to pull the project out of the canyon avoids impacts to sensitive resources. The development has, therefore, been sited and designed to prevent adverse impacts on the adjacent ESL.

4. The proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program Subarea Plan. The project is not proposing to encroach into the MHPA and is, therefore, consistent with the MSCP. In addition, the site design to step the

architecture down the slope and to pull the project out of the canyon avoids impacts to sensitive resources. The development has, therefore, been sited and designed to prevent adverse impacts on the adjacent ESL.

5. The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply. The proposed project is located in the Uptown Planning Area and, therefore, would not contribute to erosion of public beaches or adversely impact local shoreline sand supply.

6. The nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development. No mitigation is required as a result of the project design to avoid environmental impacts.

D. SUPPLEMENTAL FINDINGS - ENVIRONMENTALLY SENSITIVE LANDS DEVIATIONS:

1. There are no feasible measures that can further minimize the potential adverse effects on the Environmentally Sensitive Lands. This project would deviate from the requirements of the ESL regulations by exceeding the allowable maximum developable area of 50% due to the need for retaining walls necessary for brush management. The Applicant proposes to build the homes with a zero sideyard setback on West Lewis Street to minimize the impact to the ESL. Due to the extreme topographic conditions on this site, no further feasible measures can be implemented to further minimize the potential adverse effects on the ESL.

2. The proposed deviation is the minimum necessary to afford relief from special circumstances or conditions of the land, not of the Applicant's making. This project would deviate from the requirements of the ESL regulations by exceeding the allowable maximum developable area of 50% due to the need for retaining walls necessary for brush management. The Applicant proposes to exceed the allowable maximum developable area only to the minimum extent necessary to meet City brush management regulations.

E. MID-CITY PLANNED DEVELOPMENT ORDINANCE:

1. A 10-Foot street sideyard setback is required. The Applicant is proposing a zero sideyard setback. According to the resubdivided corner lot regulations (SDMC section 131.0443(i), Goldfinch Street, a paper street, is the front yard and West Lewis Street is the street side yard. The required front setback on Goldfinch Street may be reduced to six feet (SDMC section 131.0443(a)(2)), and the required street side setback on West Lewis Street is ten feet. Due to the extreme topographic constraints of the site, and the need to remain out of the ESL to the maximum possible extent, a zero sideyard setback is recommended.

2. A 1,000 square foot area for front yard is required. Due to the extreme topographic constraints of the site, and the need to remain out of the ESL to the maximum possible extent, a zero sideyard setback is recommended. Due to the need for a zero Street Sideyard Setback, the front yard requirement cannot be met.

3. **A six-foot interior sideyard setback is required.** The Applicant is proposing a three-foot interior sideyard setback along the common lot line between the two units. This results from the effort made to minimize the encroachment into the ESL. The units designs are oriented away from each other, minimizing the impact of this deviation.

4. **A 10-foot driveway visibility triangle is required for the easterly driveway.** The Applicant proposes to maintain a zero setback distance as identified in E.1. above. As a result, the 10-foot driveway visibility triangle for the easterly driveway is not possible. However, the north side of the 900-block of West Lewis Street in front of the proposed project is red-curbed and prohibits parking. In addition, West Lewis Street t this location is One Way and traffic entering this section would be slowing to make the left turn onto West Lewis Street.

5. **An 18-foot driveway is required.** The Applicant proposes to locate the garages at the property line per E.1. above.

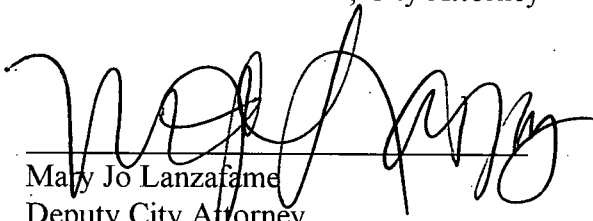
6. **Off-setting planes are required.** The Applicant proposes to locate the garages at the property line per E.1 above, and has provided visual relief by opening the fencing and gate.

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

BE IT FURTHER RESOLVED, that the appeal of Ms. Sera Larkins is denied; the decision of the Planning Commission is sustained; and Site Development Permit and Variance No. 9-40-0601 is granted to John Bertsch, Owner/Permittee, and Safdie Rabines, Applicant, under the terms and conditions set forth in the permit attached hereto and made a part hereof.

APPROVED: CASEY GWINN, City Attorney

By


Mary Jo Lanzafame
Deputy City Attorney

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Or.Dept:Clerk
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Reviewed by Morris Dye