

RESOLUTION NO. ZAV-14-02

RESOLUTION OF THE CITY OF CHULA VISTA CITY COUNCIL APPROVING A VARIANCE, ZAV-14-02 TO DEVIATE FROM THE MAXIMUM 3 1/2-FT. WALL HEIGHT IN THE FRONT SETBACK TO ALLOW A 6-FT. FENCE TO ENCLOSE THE SWIMMING POOL/RECREATION AREA ON A 4.68 ACRE SITE LOCATED AT 3875 MAIN STREET

WHEREAS, on September 19, 2014, a duly verified application for a Variance was filed with the City of Chula Vista Development Services Department by Stone Creek Casitas, LLC (Applicant); and

WHEREAS, the application requests approval of a Variance to deviate from the maximum 3 1/2-ft. wall height in the front setback along Main Street to allow a 6-ft. tubular steel fence to enclose the swimming pool/recreation area associated with the construction of a 97-unit multi-family apartment complex with carports, recreation building, and associated open space on approximately 4.68 acres (Project); and

WHEREAS, the area of land which is the subject of this Resolution is an existing parcel located at 3875 Main Street (Project Site); and

WHEREAS, the Development Services Director has reviewed the proposed Project for compliance with the California Environmental Quality Act and has conducted an Initial Study, IS-13-006, in accordance with the California Environmental Quality Act. Based upon the results of the Initial Study, the Development Services Director has determined that the Project could result in significant effects on the environment. However, revisions to the Project made or agreed to by the applicant would avoid the effects, or mitigate the effects to a point where clearly no significant effects would occur; therefore, the Development Services Director has prepared a Mitigated Negative Declaration, IS-13-006 and associated Mitigation Monitoring and Reporting Program; and

WHEREAS, the Director of Development Services set the time and place for a hearing on the Variance application, and notice of the hearing, together with its purpose, was given by its publication in a newspaper of general circulation in the City, and its mailing to property owners and residents within 500 feet of the exterior boundaries of the property at least 10 days prior to the hearing; and

WHEREAS, the hearing was held at the time and place as advertised, namely October 28, 2014 at 2:00 p.m. in the Council Chambers, 276 Fourth Avenue, before the City Council and the hearing was thereafter closed.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chula Vista that it hereby makes the following findings:

1. That a hardship peculiar to the property and not created by any act of the owner exists.

Pursuant to Chula Vista Municipal Code Section 19.14.190, the unique topography of the site creates a special circumstance resulting in a hardship for the property owner, denying development rights enjoyed by surrounding properties. The site is bifurcated by a drainage channel (creek) that creates substantial site planning constraints. Surrounding properties do not have this constraint. Site amenities that would typically be centrally located must be placed on either side of the drainage channel, necessitating the utilization of a portion of the front yard setback for a required six foot high swimming pool fence. State and federal requirements preclude the filling of the drainage channel, or any other use of the channel other than as a waterway. Because the site slopes down approximately 10 feet below the surface level of Main Street, the six foot high fence would not pose any visual or aesthetic issues. The intent of the front setback fence height requirement would still be met since the fence would not be immediately visible from Main Street.

2. That such a variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same zoning districts and in the same vicinity, and that a variance, if granted would not constitute a special privilege of the recipient not enjoyed by his neighbors.

The Project will allow the Property Owner to build the condominium project, and associated amenities, such as the recreation facilities similar to other property owners in the vicinity of the Project. Other parcels surrounding the area are not burdened by constraints such as a slope in the front of the property along Main Street.

3. That the authorizing of such variance will not be of substantial detriment to the adjacent property and will not materially impair the purposes of this chapter or public interest.

The granting of this Variance will not be of substantial detriment to the adjacent property. The other surrounding parcels are developed with single-family, commercial, or developments and will not be adversely affected by the project.

4. That the granting of this variance will not adversely affect the General Plan of the City or the adopted plan of any government agency.

The granting of this Variance will not affect the General Plan of the City. The project is consistent with the General Plan, and all aspects of the Chula Vista Municipal Code other than the required wall height in the front of the lot.

BE IT FURTHER RESOLVED THAT THE CITY COUNCIL, BASED ON THE FINDINGS ABOVE, hereby approves the Variance subject to the following conditions:

- I. The following shall be accomplished to the satisfaction of the City, prior to issuance of building permits, unless otherwise specified:

Planning Division

1. Prior to, or in conjunction with the issuance of the first building permit, the Applicant shall pay all applicable fees, including any unpaid balances of permit processing fees for deposit account DQ-1767.
- II. The following on-going conditions shall apply to the Project Site as long as it relies on this approval:
1. Approval of the Variance shall not waive compliance with any Sections of Title 19 of the CVMC, nor any other applicable laws and regulations in effect at the time of building permit issuance.
 2. The Property Owner and Applicant shall and do agree to indemnify, protect, defend and hold harmless the City, its City Council members, officers, employees and representatives, from and against any and all liabilities, losses, damages, demands, claims and costs, including court costs and attorney's fees (collectively, liabilities) incurred by the City arising, directly or indirectly, from (a) City's approval of this Variance and (b) City's approval or issuance of any other permit or action, whether discretionary or non-discretionary, in connection with the use contemplated on the Project Site. The Property Owner and Applicant shall acknowledge their agreement to this provision by executing a copy of this Resolution where indicated below. The Property Owner's and Applicant's compliance with this provision shall be binding on any and all of the Property Owner's and Applicant's successors and assigns.
 3. This Variance shall become void and ineffective if not utilized within three years from the effective date thereof, in accordance with Section 19.14.260 of the CVMC. Failure to comply with any conditions of approval shall cause this permit to be reviewed by the City for additional conditions or revocation.

III. EXECUTION OF RESOLUTION OF APPROVAL

The Property Owner and Applicant shall execute this document signing on the lines provided below, indicating that the Property Owner and Applicant have each read, understood and agreed to the conditions contained herein, and will implement same. Upon execution, this document shall be signed and returned to the City's Development Services Department.

Signature of Property Owner

Date

Signature of Applicant

Date

IV. GOVERNMENT CODE SECTION 66020(d)(1), NOTICE

Pursuant to Government Code Section 66020(d)(1), NOTICE IS HEREBY GIVEN that the 90 day period to protest the imposition of any impact fee, dedication, reservation, or other exaction described in this resolution begins on the effective date of this resolution and any such protest must be in a manner that complies with Section 66020(a) and failure to follow timely this procedure will bar any subsequent legal action to attack, review, set aside, void or annul imposition. The right to protest the fees, dedications, reservations, or other exactions does not apply to planning, zoning, grading, or other similar application processing fees or service fees in connection with this Project; and it does not apply to any fees, dedication, reservations, or other exactions which have been given notice similar to this, nor does it revive challenges to any fees for which the statute of limitations has previously expired.

V. CONSEQUENCE OF FAILURE OF CONDITIONS

If any of the foregoing conditions fail to occur, or if they are, by their terms, to be implemented and maintained over time, if any of such conditions fail to be so implemented and maintained according to their terms, the City shall have the right to revoke or modify all approvals herein granted, deny, or further condition issuance of all future building permits, deny, revoke, or further condition all certificates of occupancy issued under the authority of approvals herein granted, institute and prosecute litigation to compel their compliance with said conditions or seek damages for their violation. Failure to satisfy the conditions of this permit may also result in the imposition of civil or criminal penalties.

VI. INVALIDITY; AUTOMATIC REVOCATION

It is the intention of the City Council that its adoption of this Resolution is dependent upon the enforceability of each and every term, provision and condition herein stated; and that in the event that any one or more terms, provisions or conditions are determined by a Court of competent jurisdiction to be invalid, illegal or unenforceable, this resolution and the permit shall be deemed to be automatically revoked and of no further force and effect.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF CHULA VISTA, CALIFORNIA, this 28th day of October, 2014, by the following vote, to-wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Cheryl Cox, Mayor

ATTEST:

Donna Norris, City Clerk

Presented by:

Approved as to form by:

Kelly Broughton
Director of Development Services

Glen R. Googins
City Attorney

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