

CITY OF CERES  
PLANNING COMMISSION  
MINUTES

September 21, 2009

**MEETING CALLED TO ORDER:** 6:00 p.m.

**ROLL CALL:**

**PRESENT:** Del Nero, Kachel, Kline, Williams

**ABSENT:** Smith (excused)

**ALSO PRESENT:** Interim Development Services Director/City Engineer Glenn Gebhardt, Interim City Planner Tom Westbrook, City Attorney Mike Lyons, Associate Planner James Michaels, Administrative Secretary Linda Ryno

**PLEDGE OF ALLEGIANCE:**

The Pledge of Allegiance was led by Chairperson Williams.

**APPROVAL OF MINUTES:**

1. September 8, 2009.

Commissioner Kline asked for clarification regarding narrative on page two regarding water tanks on site. There was some discussion between the Commission and Interim City Planner Westbrook.

It was moved by Commissioner Kline, seconded by Commissioner Kachel, to approve the minutes as presented. Carried 4/0.

**CONFLICT OF INTEREST DECLARATION:**

None

**CITIZEN COMMUNICATION:**

None

**APPROVAL OF AGENDA AS POSTED (OR AMENDED) AND  
CERTIFICATION OF POSTING:**

It was moved by Commissioner Del Nero, seconded by Commissioner Kline, to approve the agenda as posted. Carried 4/0.

**NEW BUSINESS:**

None

**PUBLIC HEARING(S):**

2. Variance 09-10; proposal to allow an existing 6 ½ -7 foot tall privacy wall to maintain an exterior side yard setback of seven feet from property line where 15 feet is required at 3209 Blaker Road.

Associate Planner Michaels gave a report and Interim City Planner Westbrook further explained the history of why Mr. Oxford submitted the variance.

Commissioner Del Nero asked the following questions:

- how much of the wall is not in the correct location? Associate Planner Michaels responded approximately 45 lineal feet.
- didn't staff review plans of the wall? Associate Planner Michaels responded that the building permit application for remodel was reviewed by staff.

Interim City Planner Westbrook interjected that the original site plan showed the 15' dimension but not in the correct location.

Commissioner Kachel asked if a six foot tall fence required a building permit. Associate Planner Michaels responded that it did not.

Chairperson Williams asked if a certificate of completion is required when buildings are finished. Interim City Planner Westbrook responded that certificates are required of commercial properties, not single family residential.

Commissioner Kline asked staff the following questions:

- where is the sidewalk shown on the plan? Associate Planner Michaels pointed to it on the site plan, as well as the property line.
- page 19 (Mr. Oxford's letter), fourth paragraph, in regard to inspections. Does staff agree with the applicant's comments? Interim City Planner Westbrook responded that he had no reason to discount Mr. Oxford's comments, nor can he ask the inspectors, as they no longer are employed by Stanislaus County. Mr.

Westbrook continued that as earlier pointed out, the building permit was not for a wall, it was for a home remodel.

- is it City staff's responsibility on drawings or is it the architect's responsibility to be sure information is correct? Interim City Planner Westbrook responded that generally it is the professional architect or engineer's responsibility. Mr. Westbrook further stated that he believed what happened was the draftsman looked at the assessor's parcel map which shows the boundary of the property, does not show sidewalk or any dimensions and failed to account for the cross section of the right-of-way and because of that, the wall was five feet off.
- when the site plans are drawn up and subdivisions are made, are the sidewalks and types of things already a part of the plans? Interim City Planner Westbrook responded that generally plot plans show all the improvements on the ground.

The public hearing was opened at 6:26 p.m.

Kevin Oxford, 3207 Blaker, presented a poster board with pictures to the Commission. Mr. Oxford explained that he paid \$520 for plan check and his plans were not sent back by the City or he would have corrected them. He further stated that a former planner told him the setback was 15'. Mr. Oxford also said the assessor's parcel map shows the property line to the sidewalk.

Mr. Oxford continued: the property is zoned General Plan LDR and GP, there are no GP policies that support the variance request, yet on page 9, it reads "The granting of such a variance will not be contrary to the objectives of the General Plan. FINDING CAN BE MADE. So there are no objectives, but then it says they couldn't support it because there are no GP policies.

Regarding the easement, Mr. Oxford stated he got letters from TID, P G & E, AT & T, Pac Bell and they said there was no problem with encroaching in the easement; that they didn't think he was in the easement because they said the easement starts 10 feet from the curb, not from the back of the sidewalk.

Regarding the Assessor's Map-it shows the sidewalk (dashed lines) 10 foot public utility easement and arrow to curb, not to back of sidewalk.

Chairperson Williams responded that the line Mr. Oxford was referring to on the Assessor's Map, doesn't represent a sidewalk

Interim City Planner Westbrook said the line doesn't represent the sidewalk, but the property line. From the property line, there's a 10' public utility easement.

Mr. Oxford then commented that the utility companies said there's no conflict and that he could encroach into the easement and that in the future, if they had to do repairs, he would incur the costs. He continued on that each utility states, there is no pending

construction in the future

Mr. Oxford then read from a letter from Interim City Planner Westbrook that “additionally Mr. Oxford decided to construct an enhanced wall although the construction of a wood fence would be appropriate”. Mr. Oxford commented that he felt the City just wanted him to install a wooden fence, not the wall.

Mr. Oxford then read from the Planning Commission minutes of August 2, 2004. regarding 15’ yard setbacks on corner lot and that Westbrook approved 5’ setbacks for three houses on corners.

He further commented that he’s 12 feet out and that it ‘s not on the sidewalk like the city makes it sound. He said the city makes it sound like he planned to put his wall in the wrong place, but it was an mistake; he measured from the gutter, he thought it was 5 feet gutter, 4 feet sidewalk, and then 15 feet. So he went 15 feet to the pillar, 16 feet to the wall, so from the sidewalk it makes him 11 feet if you have a 5 foot property line.

Commissioner Kline said the minutes referred to exterior sideyard setbacks being 15’ except for three parcels where the exterior side-yard setback may be 5’ and asked Mr. Oxford if he knew why.

Interim City Planner Westbrook responded to the question by saying that not unlike some of the examples shown by Mr. Oxford, there is a sound wall next to these homes and that’s why the setback is only five feet in those locations.

Commissioner Kline asked if the sound wall was put up by the developer? Interim City Planner Westbrook responded affirmatively.

Chairperson Williams asked if the pictures presented by Mr. Oxford at the meeting were the same as the locations noted in the staff report? Interim City Planner Westbrook responded that he had not seen the pictures that Mr. Oxford showed the Commission, but that the ones mentioned in the staff report are all sound walls, which are different than Mr. Oxford’s.

Interim Development Services Director Gebhardt said that one of the issues with fences is that it’s not uncommon for people to make a decision to install a fence in a location that appeals to them and that generally, it’s a risk, those individuals take. He further stated that he has heard from Mr. Oxford that he’s done his measuring from the back of walk, from face of curb and also measuring from the gutter and that ultimately it’s the property owner’s responsibility of knowing where the property line is and what the setbacks are.

Keith Eusibio, 27189 Jones Road, Escalon, said he felt he may have the reason that Mr. Oxford has had so much trouble because Mr. Eusibio argued with the building inspector. He also said the fence was only 5'10" and that the fence may be higher in some places but they will be throwing 3" of dirt against it to create a landscaped flowerbed. He showed pictures of a house at 2013 Walnut in which he claimed the property owner submitted a residential care facility on zero lot line.

David Oxford, 3820 Gatesville, Modesto, said that over 300 letters were sent out, the property was posted, and no one was in the audience to voice their objections. He further commented that as far as setting a precedence that it doesn't have to do with setting a precedence-there is no precedence and that it's like telling Barrack Obama he can't be president-that's precedence. He also said that the wrought iron gate was \$5000, in addition to the \$6,000 or \$7,000 that his brother has invested in the wall.

Interim City Planner Westbrook corrected Mr. Oxford by saying that 30 notices were mailed to property owners within 300 feet.

The public hearing was closed at 7:15 p.m.

Commissioners Del Nero and Kline both commented that they felt the architect had let Mr. Oxford down.

Commissioner Kachel stated that all findings must be met, and that Mr. Oxford submitted photos addressing primarily the second finding about the neighborhood. Giving him the benefit of the doubt, there are other s out there like him and he could make the evidence about the neighborhood. Commissioner Kachel said that staff agreed with you that findings 3 & 4 can be made. Finding 1 size, shape or topography not to one's individual situation-it's flat, there are three other similar lots in same situation, street improvements in at the time he purchased it in the entire subdivision; with that, Commissioner Kachel said he can't make the finding to support the first finding.

Chairperson Williams stated that felt Mr. Oxford is just as much a victim as anyone else in the situation and that she doesn't question his integrity or honesty or desire to build a quality project.

The public hearing was reopened at 7:27 p.m.

Mr. Oxford commented that his lot size and shape make it special circumstance and that he will only have an 11 foot strip along the side and will not have much of a back yard and that he was responsible for measuring where the wall should go-he thought it was from the curb and measured 15 feet back.

The public hearing was closed at 7:29 p.m.

It was moved by Commissioner Kachel, seconded by Commissioner Kline, to deny the variance, specifically that the first finding cannot be made. Carried 4/0.

Interim City Planner Westbrook asked that Mr. Oxford look at the last page of the agenda which states that any item can be appealed within 10 days of Planning Commission action, which is October 1 at 5:00 p.m.; if the appeal is not filed by that time, the matter will not be heard by the City Council.

Mr. Oxford shook his head in agreement.

**PUBLIC MEETINGS(S):**

None

**UNFINISHED BUSINESS:**

None

**MATTER INITIATED BY PLANNING COMMISSION AND STAFF**

None

**REPORTS:**

Commissioner Kline suggested that it was time for the Planning Commission to move forward with making a recommendation to the City Council for a Student Commissioner and reminded the other Commissioners that he and Commissioner Kachel had met last school year with Ceres High School classes.

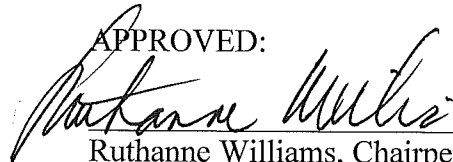
Chairperson Williams said that she thought students at Central Valley High should be given the opportunity to apply as well.

There was some discussion among the Commission. Interim City Planner Westbrook volunteered to contact the school district about arrangements to meet with students at Central Valley High and that he would report at their next meeting.

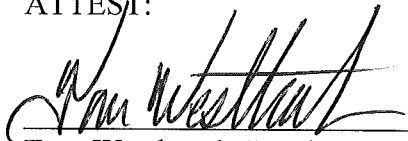
**ADJOURNMENT:**

The Commission adjourned at 7:44 p.m. to the next regularly scheduled meeting of October 5, 2009.

APPROVED:

  
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Ruthanne Williams, Chairperson

ATTEST:

  
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Tom Westbrook, Interim Secretary