

MINUTES

**CITY OF PACIFICA
PLANNING COMMISSION
COUNCIL CHAMBERS
2212 BEACH BOULEVARD**

October 1, 2012

7:00 p.m.

Chair Gordon called the meeting to order at 7:00 p.m.

ROLL CALL: Present: Commissioners Brown, Clifford, Langille,
Campbell, Leon and Chair Gordon
Absent: Commissioner Evans

SALUTE TO FLAG: Led by Commissioner Leon

STAFF PRESENT: Planning Director White
Assoc. Planner Diaz
Asst. Planner Farbstein
Assoc. Civil Engineer Dave Rogers

**APPROVAL OF ORDER
OF AGENDA** Commissioner Clifford moved approval of the Order
of Agenda; Commissioner Leon seconded the motion.

The motion carried **6-0**.

Ayes: Commissioners Brown, Clifford, Langille, Campbell,
Leon and Chair Gordon
Noes: None

**APPROVAL OF
MINUTES:
AUGUST 20, 2012** Commissioner Clifford moved approval of the
minutes of August 20, 2012; Commissioner Campbell
seconded the motion.

The motion carried **4-0-2**.

Ayes: Commissioners Brown, Clifford, Langille and Campbell
Noes: None
Abstain: Commissioners Leon and Chair Gordon

DESIGNATION OF LIAISON TO CITY COUNCIL MEETING OF OCTOBER 8, 2012:

None.

CONSENT ITEMS:

None.

PUBLIC HEARINGS:

- 1. Amendments to CDP-334-12 AMENDMENT to COASTAL DEVELOPMENT PERMIT, filed by the owner and applicant, Mike O'Connell, to change the siding materials and driveway entrance for a three-story single-family dwelling currently under construction at 240 Stanley Avenue (APN 023-010-200). Recommended CEQA status: Exempt.**

Asst. Planner Farbstein presented the staff report.

Planning Director White stated that the applicant or a representative did not appear to be present. It was a surprise because they understood that Randy Berend would be in attendance to respond to the issue of the retaining wall, as well as the item before them. He wasn't sure how to recommend proceeding.

Chair Gordon asked about the standard procedure when the applicant does not show up for the hearing when they were seeking some kind of approval.

Planning Director White thought it depended on the nature of the item. He had expected that there would be some questions in this particular case, regarding the circumstances, given the new information the Commission received last week. They were hopeful that Mr. Berend would be present to respond to those questions. He thought they also might have questions about the original request to change the sidings and reconfigure the retaining wall and driveway. He thought one option open to them was to continue the item until the next available hearing and staff could assure that the applicant or representative would be present. He reiterated that they were surprised that it was not the case now.

Chair Gordon thought it made sense to go ahead with the Q&A with staff which included a representative from the engineering department.

Commissioner Campbell asked staff if they could bifurcate the two issues and deal with the one that was publicly noticed and address the unauthorized construction at the next meeting.

Planning Director White responded that he thought they could. He added that they had some discussions internally and they thought one of the missing pieces of information was that, while they understand the desire for the retaining wall, staff did not have any plans that show the retaining wall and he thought the Commission would probably like to have plans that depict the wall where it was on the property related to the property line. He thought they would have had that conversation at this meeting, and the applicant may have been directed to provide the plans, if they wanted to continue with the design. He concluded that, without the applicant present, it was hard to know what the response would be. He concluded that they probably can bifurcate it if they choose to do so.

Commissioner Campbell asked clarification that, if they did bifurcate it and talked about the siding material and driveway entrance, they would be of independent concern from the unauthorized construction.

Planning Director White agreed, but did feel that there was a physical connection between one of the walls on the driveway and a portion of the wall that was in the public right-of-way.

Chair Gordon questioned whether bifurcation would work because the plan before them was not what has been built and they didn't have plans for what has been built. He concluded that bifurcation had some problems.

Planning Director White thought it might be possible to bifurcate the issue with the siding versus the issue with the walls.

Commissioner Campbell thought that was what he was getting at since the siding was the main issue.

Planning Director White stated that the siding was really what prompted this item in the first case. When the applicant indicated that they might want to reconfigure the walls, staff suggested that they throw everything in and deal with it at one time.

Commissioner Campbell added that, since they were present now, it would make for a shorter meeting the next time.

Commissioner Clifford was in agreement with bifurcating because it worked in terms of dealing with the siding and leaving the wall for a second issue. He also felt that, since they had engineering present, he would like to be clear that there was no approval for an encroachment permit for the wall.

Assoc. Civil Engr. Rogers responded that there has been no approval for the encroachment into the right-of-way for the retaining wall.

Commissioner Clifford asked if there was also no inspection for the work done.

Assoc. Civil Engr. Rogers stated that there was also no inspection.

Commissioner Brown was also in favor of dealing with the siding material request today, separating it out from the wall issue. He was relieved to hear that there was not much provided on the retaining wall because he could not figure out what the request was for. He requested that, when they address the unauthorized construction issue, they get the same level of attention for the retaining wall as was given to the siding.

Commissioner Leon assumed that, until the issue of the retaining wall was resolved, there was no project approval and they can't go forward with the project, and asked if all work had ceased.

Planning Director White stated that the work has not ceased. They ceased the work on the walls, but the house continues. He felt they can make a distinction on what was authorized and what was done in an unauthorized way which was part of the retaining wall. They made that distinction and posted it as such.

Commissioner Leon assumed that, by separating the two issues, the construction on the home can go forward independently.

Planning Director White stated that it would be in the best interest of the City and the builder to resolve this once and for all, not continuing on indefinitely with no resolution to the issue with the wall.

Commissioner Leon thought there might be a possibility that all work ceased.

Planning Director White stated not at this time.

Commissioner Leon followed the thinking of his fellow commissioners by separating the two items. With an attempt to go forward, he would want to see plans and more detail from engineering on comments on the drawings and evaluation of impacts. He was glad to hear a mention of a physical connection between the driveway and the walls, adding that they can only speculate on what that is at this point. He was in favor of moving forward by separating the two and continuing the wall issue.

Commissioner Langille stated that, if they went forward with a motion, it would deal with the CDP amendment on the siding.

Planning Director White stated that their preference would be to decide the matter of the siding and the remainder of the proposal which includes the wall adjacent to the driveway and the unauthorized wall would be continued to the next available hearing.

Commissioner Langille assumed it would be part of a separate CDP amendment.

Planning Director White thought it would be decided in part and not decided in part. He acknowledged that this was not a typical situation, but that would suffice.

Commissioner Langille stated that, when driving by the site, the encroachment was into Stanley Way, and she asked if it was that it was too close to the street.

Planning Director White stated that it was in the street right-of-way in Stanley, over the property line.

Chair Gordon stated that he was a bit confused. He stated that they have an application that was requesting revisions in terms of siding and an application for revisions in terms of the retaining wall. He gathered that, while the application was pending, the builder proceeded in building the retaining wall which is the subject of the application to be considered at this meeting but what he built was not in conformance with what he said he was going to build.

Planning Director White stated that he went beyond the scope of the plans submitted for Commission approval, with the area beyond the scope was the area beyond the property line and in the right-of-way. He agreed that his assumption was correct.

Chair Gordon mentioned that Commissioner Clifford had asked if engineering had granted an encroachment permit and the answer was no. He asked if they had a discussion between the builder and engineering regarding building into the right-of-way.

Assoc. Civil Engr. Rogers stated that there was no discussion about the revised retaining wall with engineering prior to the retaining wall being put in place.

Chair Gordon stated that he was not in favor of bifurcation because he was concerned about the conduct of the builder, stating that you are supposed to get approval before building something but the builder has built it before approval, in addition to building it into the public right-of-way. You are not supposed to do that, and, if you do, you have to get a permit to do it which he also did not do. He thought that the builder might have a good defense, but he wasn't present to explain himself. Under these conditions, he was not happy with the situation and he wasn't in the mood to consider the sidings under these circumstances. He wasn't happy with his conduct and didn't want to bend over backwards. He felt it wasn't how it was supposed to be done, and added that there are safety issues involved, and he was also concerned about the precedent they would be setting.

Commissioner Campbell stated that he was also concerned about the conduct. His reason for proposing looking at the siding was for economies. He thought the next meeting would take longer going over the conduct as well, but he didn't think the siding was controversial and they could dispense with that issue and look at everything else at the next meeting, which will probably take some time. He just thought they might as well get rid of something, that might not take much time at the next meeting, but he felt this was a clean way to go with the efficiency issue more than anything else. He reiterated that he was concerned about what the builder did.

Commissioner Leon stated that, the more he thinks about it, the more troubled he is. He mentioned Commissioner Clifford's question about whether the wall had been inspected, and since it was a retaining wall and had not been inspected, he was concerned about the viability of the wall. He thought engineering had a huge task ahead of itself at the next meeting when they address the integrity of the wall. He acknowledged that they can't speculate what it is or is not.

Planning Director White stated that he wasn't sure that they could have all the information together for the Commission from both the applicant and engineering by the next meeting.

Commissioner Leon agreed, adding that he didn't want to speculate, but he looked at the history of things that have been built without permits in the past in the City with the different outcomes.

Planning Director White agreed with them, adding that there are open questions for which they do not have answers.

Commissioner Leon is now thinking that the deciding issue was a cosmetic issue but, in a way, he was surprised that they haven't stopped work until this can be resolved.

Planning Director White stated that it may come to that. He didn't want it to linger on indefinitely. He stated that it just came up, and it was a curious situation where someone with an open application pending approval by the Commission would behave in this way. He would have liked to hear what the applicant's defense was. He also did not want this to continue on without resolution either. They have methods available to force that issue.

Commissioner Leon referred to the comment that stopping work may be an option.

Planning Director White agreed, clarifying that it was in order to resolve the situation. Right now, they have a violation that they want to correct one way or another, either a wall that can be approved, built and inspected, or to remove it.

Commissioner Leon assumed that they may have other further revisions to what they ultimately may be looking at for approval.

Planning Director White agreed that it was entirely possible.

Commissioner Leon thought the cleanest way to do it would be to postpone the whole thing, and not get into any discussion of what they were approving or sending any kind of message other than they don't have enough information to proceed. He was rethinking his first thoughts, and they might consider postponing all action until they are clear on where they were headed with the project.

Commissioner Clifford asked what else they would have for their next meeting, adding that he wanted to be sure they didn't have too big of an agenda.

Planning Director White stated that they had one fairly substantial item, the housing element. He added that he wasn't positive that they would have the material for them for the next meeting, since they would have to have everything in their hands and to the Commission within a week.

Commissioner Clifford added that they might not have an applicant at that point.

Planning Director White didn't know.

Commissioner Clifford was very disappointed in both what has happened and the lack of the applicant's presence at this meeting.

Planning Director White agreed.

Commissioner Langille thought it would be cleaner to continue the whole matter because the CDP amendments were directed to mainly the siding but also the driveway revision. She agreed that the siding was a cosmetic issue but, if it came down to making two CDP amendments, that would be more confusing.

Chair Gordon stated that part of the reason he wasn't interested in moving forward with any part of project was that it sends the wrong message to the applicant. He stated that a lot of what they do was based on trust, with the applicant submitting plans and the Commission looks at them, and approve or modify them, and they get the plans back and they build. He felt it was disturbing when someone jumps the gun. He understood that he wasn't present to defend himself, but he didn't know what else they could conclude except that the builder was disregarding the protocol. He was not in favor of approving anything now until he understands what happened based on what the builder says.

Commissioner Campbell clarified again that he was not trying to bend over backwards for the builder. He was trying to point out that the Commission was not the police. If the Planning Department wants to stop the work on this project, it was not the Commission's call. He felt that the Commission was supposed to be looking at whether the siding conforms to planning and zoning requirements and, in the future, whether the driveway conforms as well. He thought it was going to be a big issue and they would be having a discussion about that. He reiterated that he was as upset as everyone about the conduct.

Commissioner Leon thought he would make a motion to see where they were regarding continuing the CDP.

Commissioner Leon moved that the Planning Commission continue Amendment CDP-334-12 until such time as the applicant and Planning Director/Planning Department are able to come forward for consideration; Commissioner Clifford seconded the motion.

Planning Director White stated that it would be helpful to staff to include in the motion the specific things they expect would be necessary to brought back to the Commission in order to render a decision. He stated that one thing would be a set of plans that depict the wall in its entirety with additional input from the engineering staff on construction criteria for recommending approval or not. He reiterated that, for clarity, it was not just getting the applicant present in two weeks saying he was there and asked what they think. They needed more specifics to allow the Commission to make an informed decision.

Commissioner Leon stated that there was no inspection so the issue of accepting an uninspected structure or retaining wall was an issue. He stated that the Engineering Department has the burden to make certain assessments of what was acceptable from this point to where it needs to be in a legal conforming way. He would be looking for comments and strong analysis from Engineering on those key points. He thought they would have strong dialogue with the applicant on his options and they will wait and see what they are.

Chair Gordon asked if they were clear about what else was in the motion.

Planning Director White thought they were pretty clear and he was just getting it on the record.

The motion carried **5-1**.

Ayes: Commissioners Brown, Clifford, Langille, Leons and
Chair Gordon
Noes: Commissioner Campbell

CONSIDERATION:

2. **UP-965-06 EXTENSION OF PERMITS for the construction of a nine (9)**
 PSD-757-06 unit three-story condominium building with a subterranean
 garage at 1567 Beach Boulevard, Pacifica (APN-016-011-190).

Assoc. Planner Diaz presented the staff report.

Commissioner Leon remembered approving the project, adding that it was appealed and went through the process. He asked if the final approval from the Coastal Commission basically mirrored what the Planning Commission, with substantially the same plans.

Assoc. Planner Diaz agreed, stating that the only changes had to do with the driveway on the north side but the condominium as approved by the Commission was the same.

Commissioner Leon knew there had been some back and forth on it, and he was confirming where they were on it.

Commissioner Clifford asked if they also approved the seawall or some retaining wall at the Ocean to keep the water out of the garage, and he thought the Coastal Commission took that out.

Assoc. Planner Diaz agreed, adding that part of the approval was raising the existing seawall but they took that away.

Chair Gordon understood that the applicant's representative stated that she didn't need to speak but would answer questions. He suggested that she come on and see if there are any questions for her.

Nadia Holaber, applicant's attorney, stated that the change was when the engineer felt that there should be a point where the project was at 27 feet above sea level. That happened at their approval on Beach Boulevard. By the time that the Council approved, the idea of changing the wall itself had been deleted. She explained that the 27 feet was reached after the Coastal Commission's action, not in the street but onto the property so Beach Boulevard was not changed at all. Other than that, this was the project they looked at.

Commissioner Leon was in favor of granting the extension.

Commissioner Leon moved that the Planning Commission **EXTEND** UP-965-06 and PSD-757-06 to October 7, 2013;" Commissioner Langille seconded the motion.

The motion carried **6-0**.

Ayes: Commissioners Brown, Clifford, Langille, Campbell,
 Leon and Chair Gordon
Noes: None

COMMISSION COMMUNICATIONS:

Commissioner Campbell complimented the FogFest on a great event and a great parade, as well as city staff who had a big hand in this.

STAFF COMMUNICATIONS:

None.

ORAL COMMUNICATIONS:

Roger Medler, Pacifica, stated that he had a nuisance complaint regarding Seaview Tire and Brake and would like to solve the problem.

ADJOURNMENT:

There being no further business for discussion, Commissioner Clifford moved to adjourn the meeting at 7:40 p.m.; Commissioner Langille seconded the motion.

The motion carried **6-0**.

Ayes: Commissioners Brown, Clifford, Langille, Campbell,
Leon and Chair Gordon
Noes: None

Respectfully submitted,

Barbara Medina
Public Meeting Stenographer

APPROVED:

Planning Director White