

RESOLUTION NO. 22-2008

RESOLUTION OF THE PLANNING COMMISSION OF THE COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, ON THE APPEAL OF THE ZONING ADMINISTRATOR DECISION TO DENY A VARIANCE APPLICATION REQUESTING A 1-FOOT SIDE YARD SETBACK (5-FOOT MINIMUM REQUIRED), AND AN 11-FOOT TOTAL SIDE YARD AGGREGATE (15-FEET MINIMUM REQUIRED), FOR AN EXISTING 19 FOOT TALL, APPROXIMATELY 658 SQUARE FOOT DECK BUILT WITHOUT PERMITS. JOHN & JERILYN HORNYAK (APPLICANT & OWNER), (County File #VR08-1008) AT 4202 FOSTER LANE IN THE EL SOBRANTE AREA.

WHEREAS, on January 30, 2008, John & Jerilyn Hornyak submitted a variance request for a 1-foot side yard setback (5-foot minimum required), and an 11-foot total side yard aggregate (15-feet minimum required), for an existing 19 foot tall, approximately 658 square foot deck at 4202 Foster Lane in the El Sobrante area; and

WHEREAS, on April 23, 2008, the Zoning Administrator administratively denied the variance request after determining the project did not meet the three necessary findings for the granting of a variance (County Code Section 26-2.2006).

WHEREAS, for purposes of compliance with the provisions of the California Environmental Quality Act (CEQA) and the State and County CEQA Guidelines, the proposed project is exempt from CEQA by qualifying as a Class 3 Categorical Exemption – New Construction (*CEQA Guidelines §15303[e]*).

WHEREAS, on May 4, 2008, John & Jerilyn Hornyak filed a letter of appeal with the Department of Conservation and Development, Community Development Division. The letter provided several points by which the appellant contends their proposed deck meets the required findings; and

WHEREAS, after a notice having been lawfully given, a public hearing on the appeal of the Zoning Administrators decision was scheduled before the County Planning Commission on Tuesday, August 26, 2008, public testimony was taken from the property owners as well as all interested parties; and

WHEREAS, on Tuesday, August 26, 2008, the County Planning Commission having fully reviewed, considered and evaluated all the testimony and evidence submitted in this matter;

NOW, THEREFORE BE IT RESOLVED that the County Planning Commission:

1. Denies the appeal and variance application filed by John & Jerilyn Hornyak (Applicant & Owner).

BE IT FURTHER RESOLVED, the County Planning Commission of Contra Costa County determines that sufficient evidence has not been produced to show that any of the ordinance findings required for granting a variance to the required setback minimums specified under the zoning district that applies to this site could be made for this project; such required ordinance findings are as follows:

- 1) That any variance authorized shall not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and the respective land use district in which the subject property is located.
- 2) That because of special circumstances applicable to the subject property because of its size, shape, topography, location or surroundings, the strict application of the respective zoning regulations is found to deprive the subject property of rights enjoyed by other properties in the vicinity and within the identical land use district.
- 3) That any variance authorized shall substantially meet the intent and purpose of the respective land use district in which the subject property is located. (CCC Ord. Code § 26-2.2006)

BE IT FURTHER RESOLVED that the Secretary of the County Planning Commission will sign and attest the certified copy of this resolution and deliver the same to the Board of Supervisors, all in accordance with the Government Code of the State of California.

The instructions by the County Planning Commission to prepare this resolution were given by motion of the County Planning Commission on Tuesday, August 26, 2008 by the following vote:

AYES: Commissioners - Terrell, Clark, Wong, Snyder and Murray
NOES: Commissioners - Battaglia
ABSENT: Commissioners - Gaddis
ABSTAIN: Commissioners - None

Whereas, following the August 26, 2008 decision of the County Planning Commission to deny the requested variance permit application, on August 28, 2008, John & Jerilyn Hornyak filed an appeal of the County Planning Commission's decision to the Board of Supervisors.

MICHAEL MURRAY,
Chairman of the County Planning Commission,
County of Contra Costa, State of California

I, Catherine O. Kutsuris, Secretary of the County Planning Commission, certify that the foregoing was duly called and denied on August 26, 2008.

ATTEST:

Catherine Kutsuris, Secretary
County Planning Commission
County of Contra Costa
State of California