

PUBLIC HEARINGS

CITY COUNCIL
DECEMBER 16, 2003

To: Mayor and City Council

From: George J. Rodericks, City Manager **GR**

SUBJECT: Consideration of Conditional Use Permit and Variance No. 0562; Structure exceeding 7 feet in height encroaching into required rear and side yard setbacks – Location: 17871 Morrow Circle (Wayne & Renee Walz)

BACKGROUND

The applicant is requesting permission to construct a waterfall and cave structure exceeding 7 feet in height and encroaching into the required rear and side yard setbacks.

AUTHORITY

Conditional Use Permits

In order to give the City's current zoning regulations the flexibility necessary to achieve the objectives of the Zoning Code, the City Council has the authority to permit conditional uses subject to the approval of a Conditional Use Permit. Because of their unusual characteristics, Conditional Use Permits require special review and consideration so that they may be located properly with respect to the objectives of the City's zoning regulations and with respect to their effects on surrounding properties. To achieve these objectives, the City Council is empowered to grant and to deny applications for conditional use permits and to impose reasonable conditions upon the granting of such permits. The City Council shall make the following findings before granting a Conditional Use Permit:

- 1) The project is in accord with the objectives of the Villa Park Zoning Code and the purpose of the Zone in which it is located.
- 2) The project is not detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity.
- 3) The project complies with all applicable provisions of the Zoning Code.

Article 23-6.6 of the Villa Park Municipal Code requires a Conditional Use Permit for all accessory structures exceeding seven (7) feet in height.

Variance Permits

The Zoning Code authorizes the City Council to approve Variances from the terms of the zoning chapter when, because of special circumstances applicable to the property,

including size, shape, topography, location, or surroundings, the strict application of the zoning chapter deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification. Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone. The City Council shall make the following findings before granting a Variance Permit:

1. That strict or literal interpretation and enforcement of the regulation would result in an practical difficulty or unnecessary physical hardship inconsistent with the objectives of the Zoning Code; or
2. That there are exceptional or extraordinary circumstances or conditions applicable to the property or the intended use of the property that do not apply generally to other properties in the same zone; or
3. That strict or literal interpretation and enforcement of the regulation would deprive the applicant of privileges enjoyed by the owners of other properties in the same zone; and
4. That the granting of the variance will not constitute the granting of a special privilege; and
5. That the granting of the variance will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity.

Article 23-6.10 of the Villa Park Municipal Code specifies that the side and rear yard setbacks for properties within the E4 Small Estate Zone be maintained at 10 feet for detached structures over 7 feet in height.

FINDINGS

The subject property is located at 17871 Morrow Circle and is in the E4 Small Estate zoning district. The lot area is approximately 6,700 square feet and surrounding uses are residential. Although the property is in the E-4 Zone, of the 14 parcels on Morrow Circle, 5 are properly in the R-1 Zone based on square footage. Based on the size of the subject parcel, this property should also be in the R-1 Zone. A copy of the Zoning Map is attached. There is a 5 foot required rear and side yard setback for detached structures over 7 feet in height in the R-1 Zone.

The applicant is requesting permission to maintain a structure (waterfall/cave) within the required rear and side yard setback areas. The waterfall/cave is proposed at a height of 12 feet and proposed at its current location, approximately 1.5 feet from the rear property line. The majority of the waterfall/cave has already been constructed. As it is presently constructed, the waterfall/cave is 7 feet in height and 1.5 feet from the property line.

Structures less than 7 feet in height are required to maintain a setback of 3 feet from the property line. The pump equipment is less than 7 feet in height and encroaches 1.5 feet in the required setback. This will require Variance approval.

The waterfall/cave, as presently constructed at 7 feet in height, encroaches 1.5 feet into the required setback 3 foot setback. If raised to 12 feet in height, the waterfall/cave would be required to maintain a 10 foot setback within the E-4 Zone and a 5 foot setback in the R-1 Zone. As it is presently constructed the waterfall/cave will require a Variance due to a required setback of 3 feet. If a height increase is also authorized, Variance approval will be required for the requisite amount of encroachment into the required setback as determined within the R-1 or E-4 Zone. If allowed to exceed 7 feet in height, the waterfall/cave structure will also require a Conditional Use Permit.

Based on a review of the project application, the proposed project does not meet the objectives of the Villa Park Zoning Code and approval will require Variance approval due to its location on the property. Walls and fences of properties adjacent to Villa Park Road are authorized at 8 feet in height without the need for Variance approval. The wall between this property and Villa Park Road is presently 6 feet in height.

CEQA COMPLIANCE

This project is exempt from requirements of the California Environmental Quality Act by Section 15303 – New Construction or Conversion of Small Structures – Class 3. Class 3 includes the construction of new structures; the installation of new equipment and facilities in small structures; and the construction of a single-family residence or a second dwelling unit in a residential zone.

FISCAL IMPACT

None.

STAFF RECOMMENDATION

Staff cannot recommend approval of this application.

APPROVAL MOTION

Adopt Resolution No. 2003-2723, a Resolution of the City Council of the City of Villa Park approving Conditional Use Permit No. 0562, for a structure exceeding 7 feet in height encroaching into the required rear and side yard setbacks; Location: 17871 Morrow Circle.

RECOMMENDED ACTION

It is recommended that the City Council conduct a Public Hearing, review the application, and make appropriate findings thereto.

CONDITIONS OF APPROVAL

1. The structure(s) shall be in accordance with approved plans on file with the City Clerk. Any significant deviation from the approved plans will require subsequent approval by the City Council through a separate Public Hearing. All work will be suspended on the project until such approvals are obtained.
2. Building permits and approvals must be obtained prior to commencement of construction. If the approval is after-the-fact, building permits and approvals are still required.
3. The structure shall be limited in height to ___ feet.
4. Separate review and approval by the City Engineer is required for all grading, driveway approaches, street improvements, sewer connections, and work within the right-of-way or City easement prior to issuance of any building permit for the project. Additional conditions may apply.
5. If deemed necessary by the City Engineer, a street dedication and improvement bond shall be required for all work exceeding three hundred (300) square feet of floor area prior to issuance of any building permit.
6. If deemed necessary by the Building Inspector or City Engineer, a cash bond in the amount of \$575 shall be posted to protect the City from any damages to any public improvements impacted directly or indirectly by the proposed improvements.
7. Temporary toilet facilities are not permitted in the front setback areas.
8. This Variance and Conditional Use Permit shall lapse and become void one year following the date of approval unless prior to the expiration of one year, a building permit is issued and construction is commenced and diligently pursued toward completion on the site.
9. This Variance and Conditional Use Permit may be renewed for an additional period of one year, provided that prior to the expiration of one year from the date when it or the renewal of same became effective, an application for renewal is filed.