

RESOLUTION NO. 2008-120

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION DECISION TO DENY A VARIANCE FOR THREE STRUCTURES FOR THE DOMINGUEZ VARIANCE PROJECT EG-07-114

WHEREAS, Daniel Dominguez, represented by Evan Winn (hereinafter referred to as Applicant) filed an application with the City of Elk Grove (hereinafter referred to as City) requesting approval of a Variance from Elk Grove Zoning Ordinance Development Standards for Three Accessory Structures (Structure Nos. 1, 2, and 3) and Wall Height for a masonry wall in the Agricultural Residential Zoning District; and

WHEREAS, the Planning Commission considered the Applicant's request at a public hearing on December 20, 2007. The Planning Commission granted the variance request as to the masonry wall and denied the variance request as to Structures 1, 2, and 3; and

WHEREAS, the City Clerk received a Notice of Appeal on January 2, 2008 from Brigit Barnes, representing the Applicant, requesting an appeal of the Planning Commission's December 20, 2007 decision; and

WHEREAS, the City Council is the appropriate authority to hear and take action on this project after an appeal from the Planning Commission; and

WHEREAS, the proposed project is located on real property in the incorporated portions of the City of Elk Grove more particularly described as APN 127-0110-061; and

WHEREAS, on May 28, 2008, the City Council held a duly noticed public hearing as required by law and considered all of the information presented by staff, information presented by the project proponent, and information presented by interested parties.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Elk Grove hereby denies the appeal and affirms the decision of the Planning Commission, based on the following findings:

Planning Commission Decision

The decision of the Planning Commission granting in part and denying in part the variance request is hereby affirmed, and the Planning Commission decision, findings, and conditions of approval are incorporated herein by reference.

CEQA

Finding: Project is categorically exempt from the provisions of CEQA under section 15305(a).

Evidence: This exemption applies to minor alterations in land use limitations. This application involves setback encroachment for new construction and does not result in the creation of any new parcel, or change the existing use.

Variance (Masonry Wall)

The requested variance for the masonry wall is granted.

Findings:

1. There are special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, such that the strict application of the Zoning Code deprives such property of privileges enjoyed by other property in the vicinity and under identical land use zoning district classifications.
2. The variance does not constitute a special privilege inconsistent with the limitations upon other properties in the vicinity and land use zoning district in which such property is located.
3. The variance will not adversely affect the interests of the public or the interests of residents and property owners in the vicinity of the premises in question.
4. The variance is consistent with the objectives of the General Plan and Zoning Ordinance.

Evidence:

The conditional approval of the masonry wall variance to allow a 6-foot tall masonry wall located within the front yard setback, while conditioning the project to require the abatement of structure Nos. 1, 2, and 3 to ensure compliance with the zoning code, is justified by special circumstances and constraints related to the shape of this property. The orientation of the two residences located on irregular shaped lots at the end of his cul-de-sac create a need for additional privacy screening above and beyond what the Zoning Code regulation for fence and wall height allow. The location of the wall functions more like a side yard fence than a front yard fence. Allowing the 6-foot tall masonry wall to be located within the 25-foot setback area provides adequate privacy screening without impacting the residents of this neighborhood. The six foot wall is an existing wall which has not had an adverse impact on the public or adjacent property owners, and granting the variance for the existing wall will not significantly impact properties adjacent to the subject property. The policies of the General Plan and Zoning Ordinance are intended to promote orderly development that does not impact adjacent properties. As conditioned the Variance approval of the wall maintains orderly and quality

development that is consistent with the goals and objectives of the General Plan and Zoning Ordinance. The variance also maintains the objectives of maintaining open space and a buffer between residences that provide a sense of security, privacy, and aesthetics.

Variance Request (Structure Nos. 1, 2, and 3).

The variance request for Structure Nos. 1, 2, and 3 is denied. The evidence does not justify the granting of the variance for this structures, nor does the evidence support the findings necessary to grant the requested variance.

Structure No. 1: There are no special circumstances applicable to this property which would preclude Structure No. 1 from being constructed in compliance with the standards of the zoning district. The applicant applied for a building permit for a structure in this location which met the zoning code standards and was approved. The applicant could have built the structure at the height depicted in those approved plans. Alternatively, the size of the property would have allowed the applicant to have applied for a permit for a building of its existing height in a location which complied with the zoning code. Allowing this structure to have interior yard setbacks ranging from 10 to 16-feet where a 25.5-foot setback is required would impact adjacent properties. The mass of this structure has an appearance that is out of scale with other residences in the neighborhood, creating aesthetic impacts on the neighborhood that cannot be mitigated without requiring the mandatory 25.5-foot setback for this structure. Furthermore the structure infringes on views and buffers that are commonly enjoyed by properties in the AR-1 Zoning district. Denial of the Variance for the structures will ensure the development does not have an adverse impact on the adjacent properties and allow for orderly development.

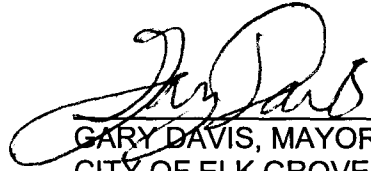
Structures Nos. 2 and 3: There are no special circumstances applicable to this property which would preclude structures Nos. 2 and 3 from being constructed in compliance with the standards of the zoning district. The structures were built without the appropriate building permits. Application for the permits would have allowed the applicant to revise the plans to be consistent with the zoning code and then approved, and built, in proper locations. Allowing these structures to be approved in locations closer to the side and rear property lines than permitted by the zoning code creates an adverse aesthetic impact on the neighbors. The structures infringe on views and buffers commonly enjoyed by properties in the AR-1 Zoning district. Denial of the Variance for the structures will ensure the development does not have an adverse impact on the adjacent properties and allow for orderly development.

Judicial Review

Judicial review of this decision is governed by California Code of Civil Procedure section 1094.6. Any action or lawsuit seeking judicial review of this decision must

be commenced no later than ninety (90) days following the date of mailing of this decision, as indicated on the enclosed certificate of mailing. (See Cal. Code Civ. Proc. § 1094.6). The failure to commence an action or lawsuit seeking judicial review of this decision within that time period shall render this decision final and conclusive and will bar any further legal challenge to this decision. Other timelines and legal limitations may apply.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 28th day of May, 2008.


GARY DAVIS, MAYOR of the
CITY OF ELK GROVE

ATTEST:


SUSAN J. BLACKSTON, CITY CLERK

APPROVED AS TO FORM:


SUSAN COCHRAN, CITY ATTORNEY

CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2008-120

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)

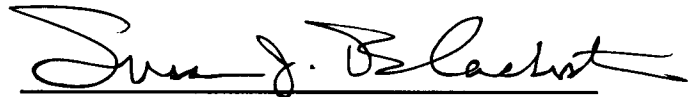
I, Susan J. Blackston, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on May 28, 2008 by the following vote:

AYES : **COUNCILMEMBERS:** *Hume, Scherman, Davis, Cooper, Leary*

NOES: **COUNCILMEMBERS:** *None*

ABSTAIN : **COUNCILMEMBERS:** *None*

ABSENT: **COUNCILMEMBERS:** *None*



Susan J. Blackston, City Clerk
City of Elk Grove, California