



CITY OF MARTINEZ

CITY COUNCIL AGENDA

May 2, 2007

TO: Mayor and City Council

FROM: Albert Lopez, Deputy Community Development Director

SUBJECT: Appeal of Planning Commission decision to deny an application for a Partially Completed Addition at 639 Ulfinian Way

DATE: April 20, 2007

RECOMMENDATION:

Uphold the Planning Commission decision to deny the application for Administrative Design Review to legalize construction of partially completed addition built contrary to City approvals, located at 639 Ulfinian Way.

BACKGROUND:

This appeal is before the City Council to legalize construction that was built contrary to an approved building permit. The approved building permit was the result of a long public review process, whereby Staff, the Design Review Committee and the Planning Commission sought to resolve a view dispute between neighbors, in an attempt to strike a balance of property rights as required by the findings for Design Review.

The project is a modest extension of an existing 2nd floor living area, including a new roof area over the extension to match the existing roof, new deck and interior improvements. An uphill neighbor claimed that the new roofline blocks his view of the Carquinez Strait.

An attached project history prepared by staff (Attachment #6) provides the City Council with detailed background material, and it is summarized as follows:

1. The proposed extension by the applicant, Mr. David Elliott, of his second floor living area required Administrative Design Review (**See Attachment #2 for code interpretation**). This review typically occurs at the DRC level with notices sent to adjacent neighbors. Two neighbors became interested in the project if it was going to block views of the Carquinez Strait. (**See Attachment #3 -Blue Line for original proposal**)
2. The project that was approved (**See Attachment #3 -Red Line**) as a result of the DRC meeting (#DR06-30) was a reasonable compromise to find a property right “balance”, preserve as much view as possible for the adjacent neighbor, while allowing the building extension to occur.

3. The uphill neighbor at 633 Ulfinian (Mr. Parisi) appealed the “Red Line” approval to the next higher body, the Planning Commission. His claim was that the “Red Line” roof still blocked 90% of his view from his dining room table.
4. The Planning Commission heard the item, and approved a project requiring further alteration of the roofline (**See Attachment #3 -Green Line**), giving slightly more view to Mr. Parisi in an effort to strike a “balance” and compromise. The applicant and his architect concurred the roofline alteration was possible, but wanted to explore its financial feasibility. Nevertheless, the applicant went along with the approval and the Planning Commission ultimately rendered its decision.
5. Two days after the appeal period ended, the project architect visited the City offices and took out a building permit to build the project as approved by the Planning Commission.
6. Approximately two months later it came to the City’s attention that the project was not being constructed pursuant to the approved plans. The project was red-tagged to “Stop Work”. The City Attorney advised staff to consider the project “abandoned”, and require a new application for Administrative Design Review to legalize the constructed project.
7. A new application was submitted by the applicant and a date for March 27th was set for Planning Commission to re-consider the project.
8. The Planning Commission denied the request to legalize the project, finding that their original approval was “balanced” in preserving property rights. The denial would require the applicant to remove the constructed project and build pursuant to the approved plans as depicted by the “Green Line”.
9. Applicant appealed the Planning Commission decision to the City Council for a “de novo” hearing to consider approving the project as constructed.

Issue #1 – Appeal of original approval

The question can be asked, “Why didn’t the applicant appeal the original approval?”

The applicant claims to have appealed the project originally approved by sending a letter to the Planning Department by regular mail. The applicant was advised the night of the Planning Commission approval of the appeal process, which is to submit a request for appeal to the City Clerk and pay the filing fee. Within the required ten days, the City Clerk did not receive an appeal, nor was the required fee paid. Only after the project was ordered to “stop-work” did the applicant furnish Staff with a copy of the letter with the appeal language, and at which point he asked for a response. This was two months after the appeal period ended and the date of his letter. Staff had no record of receiving his appeal letter prior to this time.

The applicant also indicated in this letter that he would proceed with the original design (**Attachment #3 -Blue Line**), ostensibly ignoring the Planning Commission approval, the impact on his uphill neighbor, and a future decision of the City Council. Even giving the applicant the benefit of the doubt in regards to the appeal of the Planning Commission approval, the applicant

pulled a building permit two days after the lapse of the appeal period to construct the project as approved by the Planning Commission (Green Line), only to abandon it in favor of his preferred project (Blue Line), which is contrary to the concept of due process and entitlements needed for project approval. Staff does not believe the applicant has “in good faith” followed City procedure.

Issue #2 – Definition of “balance”

City ordinances require that a Design Review approval shall not occur unless the proposed design and use conforms to the following criteria and standards by:

Substantially preserving views from nearby properties where this can be done without severe or undue restrictions on the use of the site, balancing the property rights of the applicant and the affected property owner(s).

The above is the most relevant finding and directly speaks to the issue of view preservation and finding a “balance”. The City Council must attempt to render a balanced decision to protect the property rights of both parties. It is clear there will be some impact to the neighbor’s (Parisi) view if this project is constructed, regardless of the roof configuration.

Staff believes there are three options available to the City Council for consideration.

1. Legalize the construction as it stands today by approving the project to the “Blue Line”. This is the applicant request.
2. Require a partial teardown and approve the project to the “Red Line”. This configuration is the one recommended by the Design Review Committee.
3. Require a partial teardown and approve the project to the “Green Line”. This configuration is the one approved by the Planning Commission, and the applicant claims it is cost prohibitive.

Staff recommends #2, (Red Line) as it most closely adheres to the findings for Design Review for a “balanced” project, and protects property rights of the applicant and the adjacent neighbor. The graphics in both Attachment #3 and #4 depict the “Red Line” showing how it eliminates the most offensive part of the roof extension, while allowing the project to be constructed with a reasonable roofline modification.

FISCAL IMPACT:

None

ACTION:

Direct staff to prepare a resolution upholding the Planning Commission decision. Include language finding that a balance can be achieved as required by the Design Review process, if the project is constructed with a modified roofline.

ATTACHMENTS:

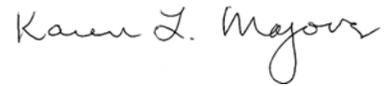
1. Location Map
2. Code Interpretation
3. Drawing of roofline alternatives
4. Photograph of roofline alternatives showing viewshed
5. Appeal Letter
6. Project History prepared by Staff
7. Planning Commission Staff Report & Minutes, DRC comments, file correspondence
8. Applicant's Executive Summary
9. Large format plan showing roof line to legalize

APPROVED BY:



City Manager

APPROVED BY:



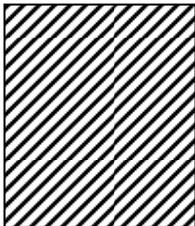
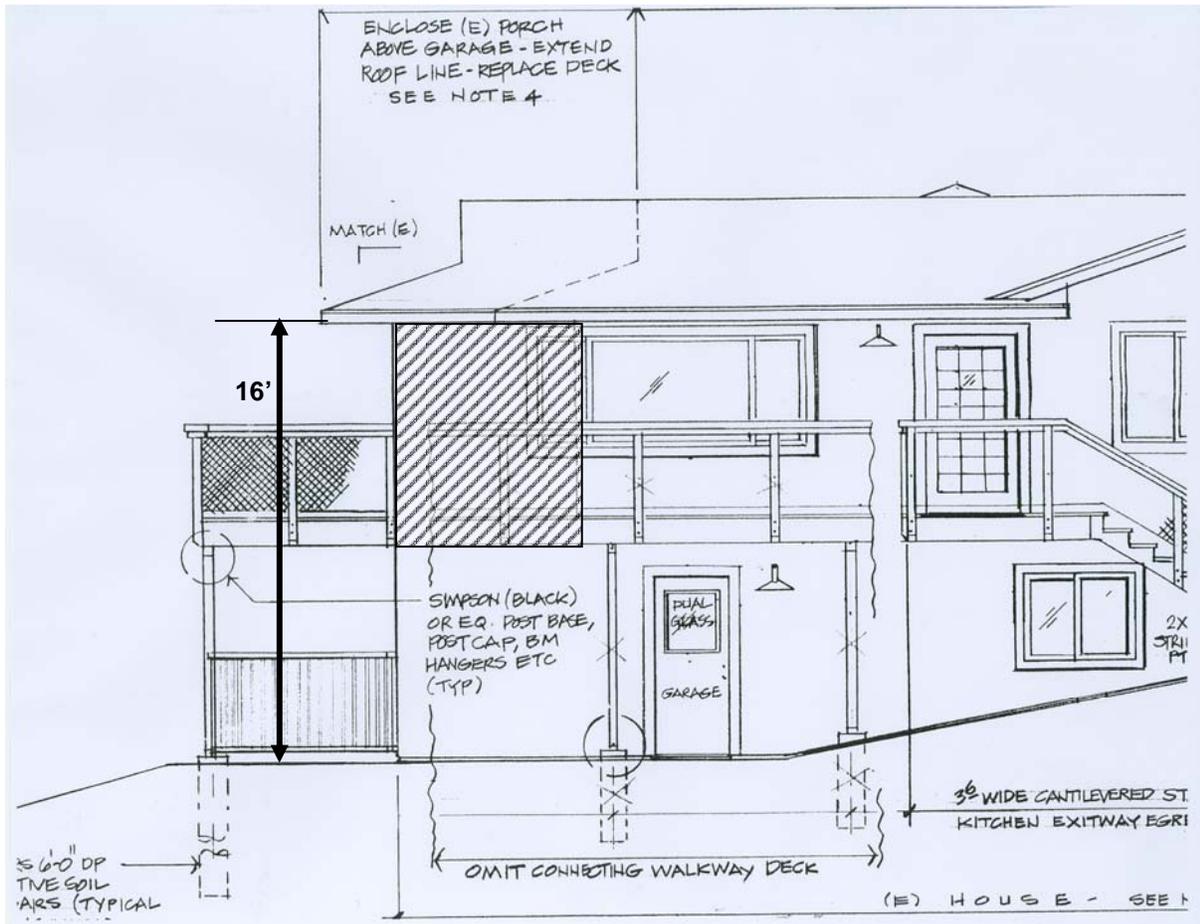
Department Head

LOCATION MAP

DR 07-08
639 Ulfinian Way
Elliot Residence

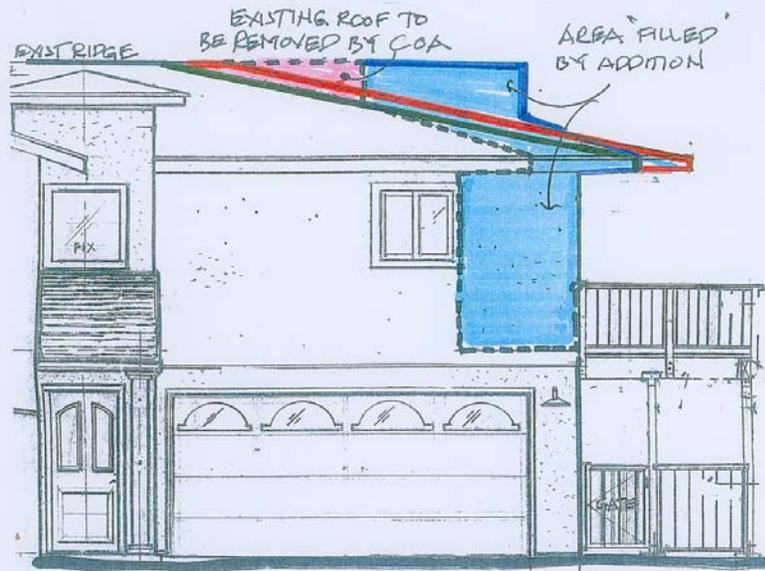


Attachment #2 – Code Interpretation



The area shaded above and the roof supporting it is new living area to be constructed with less than required yard setback. Since the height of the wall is proposed at 16' in height, a yard setback of 8' is required, where 6' is proposed. Such a reduction can be allowed with Design Review pursuant to section 22.12.230B 3(b) of the zoning code.

Attachment #3– Shows the various roof configurations proposed



(black dashed line) Outline of building and roof before addition

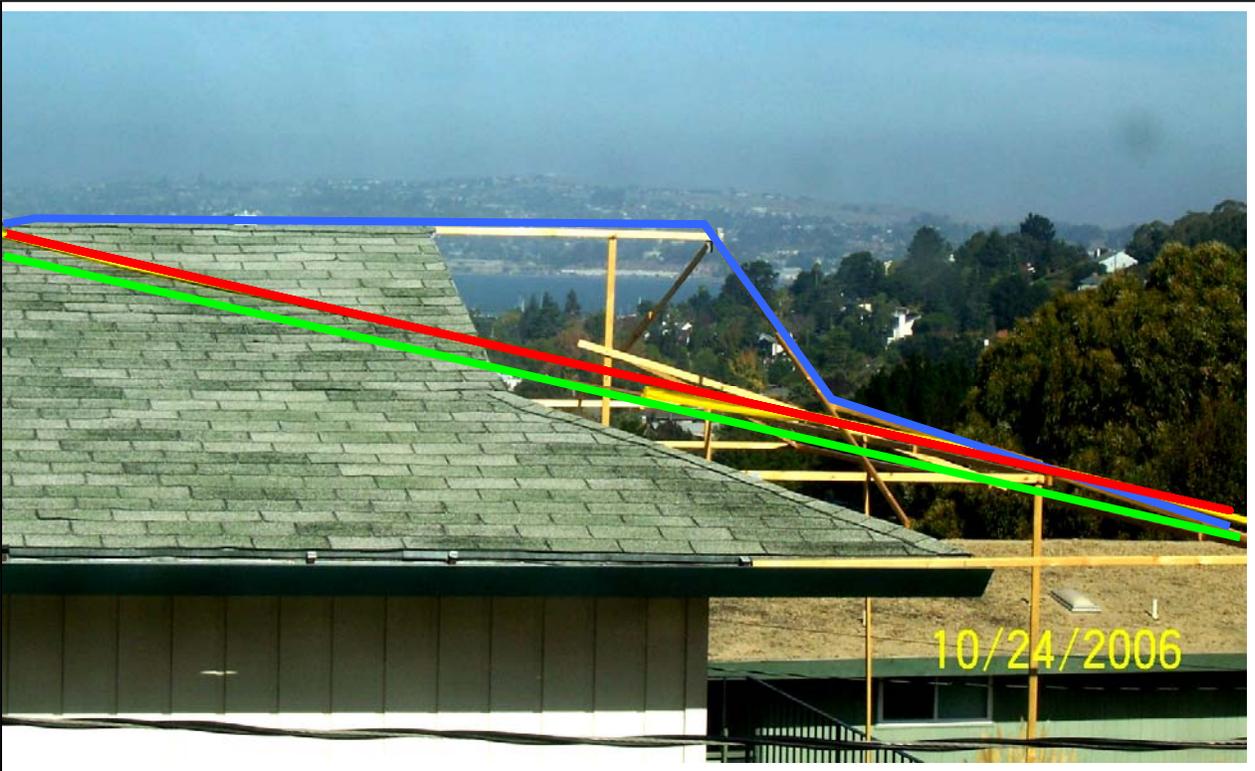
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(BLUE LINE) Roof outline as:

- Shown on original building permit request of August 31, 2006. Within the allowed comment period (September 1 - 12, 2006) neighbors protested the (otherwise pending) Administrative Design Review Approval. Due to neighbor's concern over potential view loss, the item was referred to the Design Review Committee. This configuration was rejected by staff, on the recommendation of the Design Review Committee, on October 11, 2006, and
- as illegally constructed by applicant, February 2007.

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(RED LINE) Roof outline as approved, by staff, on the recommendation of the Design Review Committee, on October 11, 2006. This configuration was appealed by adjacent neighbor.

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(GREEN LINE) Roof outline as approved by Planning Commission on November 28, 2006, in response to applicant's request for a design that preserves more of his existing view.

Attachment #4 – Shows various alternatives with viewshed in background



Attachment #4