

CITY COUNCIL

For City Clerk's Use:

☐ **APPROVED** ☐ **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 17

Date: January 27, 2010

TO: Honorable Mayor and Members of the City Council

FROM: Jonathan H. Brindle, Director of Community Development

SUBJECT: Appeal of Planning Commission Decision (PHG 09-0039).

PLANNING COMMISSION DECISION:

On December 8, 2009, the Planning Commission voted 5-1 (Caster voted no) to approve a portion of a Variance request as recommended by staff.

STAFF RECOMMENDATION:

It is requested that Council introduce Resolution No. 2010-11 denying the Appeal of the Planning Commission Decision.

PROJECT DESCRIPTION:

An appeal of a Planning Commission decision (PHG 09-0039) to partially approve a request for a Variance to reduce a front yard setback at 1445 Conway Drive. The applicant requested a Variance to reduce the required front-yard setback at a church in the R-1-8 zone from 15 feet to two feet, for the construction of a six-foot-high, wrought iron fence. The Planning Commission approved the Variance along only a portion of the front property boundary.

LOCATION:

Approximately 11.04 acres on the southwestern corner of Sheridan Avenue and Conway Drive, addressed as 1445 Conway Drive.

ENVIRONMENTAL STATUS:

A Notice of Exemption was issued in accordance CEQA Section 15061(b)(3), "General Rule." The project will not have any impact on fish and wildlife resources.

FISCAL IMPACT:

None

GENERAL PLAN ANALYSIS:

The General Plan land use designation on the site is Urban I, which allows single-family residential development with a maximum density of 5.5 dwelling units per acre and a minimum lot size of 6,000 SF. A church exists on the site, as permitted through the Conditional Use Permit process. The proposed Variance would be consistent with the General Plan.

BACKGROUND:

On January 22, 2008, the Planning Commission approved a Conditional Use Permit for a phased, multi-year, expansion plan for the Church of the Resurrection. The expansion will include an expanded parking area, a new sanctuary building, new administration and classroom buildings, and improvements/conversions of existing buildings. As part of the expansion of the church and school, fencing was approved to provide security to the entire site after business hours. No fence height was specified and the CUP process cannot be used to modify development standards such as fence height.

The church wants to secure the eastern portion of the site during the first phase of project construction, which includes expansion of the parking area. The current request proposes to construct a six-foot-high wrought iron fence. It would be located along the eastern portion of the northern and southern property boundaries, aligning with existing fences or structures, and extending along the entire eastern boundary of the site along Conway Drive. While the fence would meet required setbacks along the northern and southern property boundaries, it would be located two feet from the eastern (front-yard) property line, where a 15-foot setback is required. The San Diego County Water Authority has two 48-inch water lines within an existing 100-foot-wide easement along the entire eastern frontage of the site. The easement extends parallel through Conway Drive and into the property approximately 52 feet. The Water Authority will not allow a parallel fence to be located within 10 feet of the centerline of either water line.

The Resurrection Church requested a Variance to reduce the setback for a six-foot-high fence along Conway Drive, from 15 feet to two feet from the front property line along the entire frontage on Conway Drive, including gates at two driveways. Staff recommended approving the portion of the Variance request adjacent to the parking lot. The Planning Commission reviewed the request on December 8, 2009. The Commission approved the Variance request along the southern portion of the site, as recommended by staff, but did not feel that a Variance for the northern portion of the fence would be justified. The applicant filed an appeal of the Planning Commission decision to the City Council on December 21, 2009.

PLANNING COMMISSION ACTION:

On December 8, 2009, the Planning Commission voted 5-1 (Caster voted no) to approve a portion of the Variance request, as recommended by staff. The Planning Commission approved the Variance along only the southern portion of the front property boundary. Chairman Caster was in favor of the applicant's request for the Variance for the fence along the entire property boundary and voted

against approving a portion of the request. There was general discussion among the Commissioners related to security and access at the church. A church neighbor spoke against granting the Variance indicating that a fence too close to the curb in front of the sanctuary would impact views and be unsightly. The majority of the Commissioners felt that there were viable options for security fencing in front of the sanctuary building without the need for a Variance along the entire property frontage.

ANALYSIS:

The applicant is requesting approval of a Variance to construct a six-foot-high wrought iron fence within the required front yard setback. Zoning Code Section 33-1080 limits the height of open fences within the front yard setback to three and one-half feet. Open fences exceeding three and one-half feet in height in the front yard must be located at the setback line for principle structures. The required front yard setback in the R-1-8 zone is 15 feet and the applicant proposes a six-foot-high fence to be located two feet from the front property line (along Conway Drive) to avoid a waterline easement.

The San Diego County Water Authority has two 48-inch water lines and an approximately 100-foot-wide easement along the entire eastern frontage of the church site. The easement extends more than 50 feet into the church's property along the Conway frontage. The Water Authority will not allow a parallel fence to be located within 10 feet of the centerline of either water line. The church has several options for fencing along the eastern property boundary:

1. Construct a six-foot-high fence at or beyond the front setback line – This could be constructed outside of the water easement (approximately 52 feet from the property line) or within the easement in the center of the two water lines (approximately 25 feet from the front property line). Either way, the fence would be located through the center of the approved parking area in the southern portion of the site, impacting circulation, access and availability of parking spaces, and would cut through the grassy area in front of the sanctuary entrance.
2. Construct a fence with the maximum height reduced to 42 inches on the property line or within the front setback - The church does not feel that a 42-inch-high fence would provide adequate security for their campus.
3. Construct a six-foot fence in the setback along the parking lot as proposed, stepping back to the setback line in front of / or connecting to the sanctuary – The fence could be tied into the sanctuary building on both ends, securing the remainder of the campus and leaving the area in front of the sanctuary open as traditionally occurs with churches. A Variance would be required for the southerly portion of this option, which is what was approved by the Planning Commission.
4. Construct a six-foot high fence within the front setback as proposed by the applicant. - A Variance would be needed for the entire request.

Variances are intended to be used in cases where there is a unique hardship or when conformance with the development standards would result in an inability to use a property in a manner consistent with other properties in the same zone. According to Zoning Code Section 33-1224, four findings must be made in order to approve a Variance. There shall be exceptional or extraordinary

circumstances applicable to the property or the intended use of the property that do not apply generally to a property or class of use in the same zone or vicinity. Granting the proposed Variance shall not be materially detrimental to the public health, safety or welfare, or injurious to the property or improvements. Granting the Variance shall be necessary for the preservation and enjoyment of a substantial property right of the applicant, which is possessed by other property in the same zone or vicinity. Lastly, granting the Variance will not adversely affect the General Plan.

Staff and the Planning Commission feel the request for a reduced front yard setback in the southern portion of the site (within the parking lot) does meet the required findings for approval of a Variance. It would be difficult for the church to provide adequate security fencing of that portion of the site due to the location of the water easement, and the Variance would provide a basic property right. Locating the fence two feet from the property line would not be detrimental to the public health, safety or welfare, visibility would not be blocked, and a wide landscaping area would be provided. However, staff and the Planning Commission do not feel that extending the Variance request to reduce the front yard setback along the entire Conway Drive frontage would meet the required findings. While the easement constrains improvements allowed within the front yard, the Planning Commission and staff feel there are alternatives for providing adequate security fencing by a combination of fence locations that maintain the residential character of the property in a manner that is compatible with the surrounding single-family residences which may perceive similar security needs.

APPLICANT'S PERSPECTIVE:

The applicant is requesting the Variance be continued along the entire property boundary for continuity of appearance and security purposes. The applicants feel the Variance should be approved as originally requested, since it would help to provide security to the large church campus after hours, preventing vandalism and security breeches, and providing general safety to students and staff. The church feels they are not allowed the same enjoyment of a property right as their neighbors without approval of the entire Variance to construct a security fence within the setback, due to the location of the San Diego County Water Authority easement and water lines. They feel a three and one-half foot-high fence in conformance with setbacks would not provide adequate security of the campus due to its low height. The church indicates they have experienced several attempted break-ins recently. There have been at least three reports to the Police Department of vandalism and graffiti since the end of December, 2009.

Although the Planning Commission approved a portion of the requested Variance, adjusting the fence to meet the required setbacks in the northern portion of the site would reduce the area in front of the sanctuary, bisecting the usable space. The space is used for gatherings during weddings, funerals and other events. The existing sanctuary will be a short-term use until the new sanctuary is constructed. It will then become an office or a classroom and will be located on the back side of the new campus layout, where additional security may be needed. Placing the fence in the approved location also would require the removal of mature landscaping, impacting the church's existing gardens. The church is requesting that they be allowed a Variance for the fence setback along the entire frontage on Conway Drive to provide the most security, consistency in appearance, and preservation of existing landscaping and the gathering area in front of the sanctuary building.

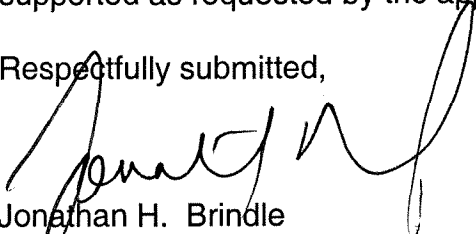
PUBLIC COMMENT:

Staff received no telephone calls or written correspondence regarding the Variance prior to the Planning Commission meeting. In addition to the applicant, one member of the public spoke at the Planning Commission hearing. He had a concern that a fence located too close to the curb near the sanctuary would impact views and be unsightly. No other correspondence has been received from the public regarding the project.

CONCLUSION:

Staff and the Planning Commission support the variance request for the fencing along the parking lot, and recommend the fencing along the front of the sanctuary conform to front yard setbacks to maintain the functionality of the grassy area for church events, provide adequate site security and provide an attractive streetscape appearance (Option 3). Should the City Council determine that the water easement combined with the unique security needs of the church campus necessitate construction of the fence to allow the church to enjoy their property rights, the variance could be supported as requested by the applicant (Option 4).

Respectfully submitted,



Jonathan H. Brindle
Director of Community Development



Kristina Owens
Assistant Planner II

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Agenda Item No.: D

FOR STUDY ONLY

CITY OF ESCONDIDO

MINUTES OF THE REGULAR MEETING OF THE ESCONDIDO PLANNING COMMISSION

December 8, 2009

The meeting of the Escondido Planning Commission was called to order at 7:00 p.m. by Chairman Caster, in the City Council Chambers, 201 North Broadway, Escondido, California.

Commissioners present: Darol Caster, Chairman; Jack Campbell, Commissioner; Edward Lehman, Commissioner; Bob McQuead, Commissioner; Guy Winton, Commissioner; and Jeffery Weber, Commissioner.

Commissioners absent: Barry Newman, Vice-chairman.

Staff present: Bill Martin, Principal Planner; Homi Namdari, Assistant City Engineer; Barbara Redlitz, Assistant Planning Director; Jay Petrek, Principal Planner; and Ty Paulson, Minutes Clerk.

MINUTES:

Moved by Commissioner Weber, seconded by Commissioner Lehman, to approve the minutes of the November 24, 2009, meeting. Motion carried unanimously. (6-0)

WRITTEN COMMUNICATIONS – None.

NEIGHBORHOOD MEETINGS – None.

CITY COUNCIL UPDATE – None.

PUBLIC HEARINGS:

1. VARIANCE– PHG 09-0039:

REQUEST: A request for a Variance from the Zoning Code to reduce the required front-yard setback at a church in the R-1-8 zone from 15 feet to two feet for the construction of a six-foot-high, wrought iron fence.

LOCATION: Approximately 11.04 acres on the southwestern corner of Sheridan Avenue and Conway Drive, addressed as 1445 Conway Drive.

Bill Martin, Principal Planner, referenced the staff report and noted staff issues were whether the proposed Variance meets the required findings for approval. Staff recommended approval based on the following: 1) There were exceptional or extraordinary circumstances related to the subject property that would justify

approval of a portion of the Variance request. Staff feels that granting the Variance along the southern portion of the site, at the parking area, is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the vicinity, due to the location of San Diego County Water Authority waterlines. Without the Variance it would be difficult for the church to adequately provide security to the campus. However, staff feels that granting the Variance request for the northern portion of the fence in front of the main sanctuary building where there is no paved parking area, would not be justifiable, since a six-foot-high fence which is in conformance with required setbacks could be located in that area and provide adequate security.

Commissioner McQuead and staff discussed the options for sight distance.

Commissioner Weber asked if the Water Authority right-of-ways would override the subject variance.

Charles Kruger, Architect for the project, concurred with staff's recommendation with the exception of the proposed fence location near the sanctuary. He stated that connecting the fence to the existing sanctuary would expose it to vandalism occurring currently. He noted that the Water Authority was very specific with regard to keeping the fence away from their waterline and what materials could be used. He asked that they be allowed to install the fence in a straight line which would allow enough room away from the pipeline and be more aesthetically pleasing.

Commissioner McQuead asked Mr. Kruger when the current sanctuary would be changed to meeting rooms. Mr. Kruger noted it would be changed in approximately five years.

Commissioner Lehman asked if the recently approved master plan for the church had the same location for the proposed fence. Mr. Kruger replied in the affirmative.

Commissioner Weber asked if the Water Authority had limitations for the fence going east and west. Mr. Kruger noted that the only limitation had to do with the types of material they could use for the fence footings.

Commissioner McQuead asked if the site had security cameras.

Christine Whitten, Church of the Resurrection, replied in the negative. She also noted that they had received quotes for lighting and cameras but were told that it would probably not help.

Commissioner McQuead and Ms. Whitten discussed the proposed access to the site.

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FOR STUDY ONLY

Commissioner Winton asked if the recently approved Master Plan showed the fence in the subject location. Ms. Redlitz responded affirmatively and noted that a fence would be allowed. However, the height of the fence resulted in the need for a Variance.

Samuel Dean, Escondido, noted he lived in close proximity to the subject property. He was concerned with the proposed fence near the sanctuary being located two feet from the curb and impacting views and being unsightly. He was in favor of placing the fence further back towards the sanctuary as recommended by staff.

Commissioner McQuead expressed support for the applicant's desire to see a uniform appearance for the fence location and not leave the front of the sanctuary unprotected.

Chairman Caster was in favor of the applicant's proposed location for the fence.

ACTION

Moved by Commissioner Weber, seconded by Commissioner Lehman, to approve staff's recommendation. Motion carried. Ayes: Campbell, Lehman, McQuead, Weber, and Winton. Noes: Caster. (5-1)

2. MODIFICATION TO A CONDITIONAL USE PERMIT – PHG 09-0031:

REQUEST: Modification to a Conditional Use Permit to add additional antennas to an existing 80-foot-high Sprint/Nextel wireless communication facility. Clearwire proposes to use the existing upper array on the pole and remove several of the existing Spring/Nextel antennas to accommodate up to five new rectangular panel antennas and five circular antennas. The upper array is approved for a maximum of 12 antennas. With the removal of existing antennas and the installation of the new antennas, there would be up to a total of 14 antennas mounted onto the upper array. The supporting equipment cabinet would be located within the existing Sprint/Nextel equipment building.

LOCATION: On the southern side of Hubbard Avenue, between Conway Drive and Ash Street, addressed as 1255 Hubbard Avenue (APN 227-430-25).

Bill Martin, Principal Planner, referenced the staff report and noted staff issues were whether the design and location of the proposed facility was appropriate for the site and consistent with the Wireless Facility Guidelines. Staff recommended approval based on the following: 1) The proposed facility would be consistent with the Communication Antennas Ordinance since the facility would co-locate on an existing communications antenna. The number of new panels would be limited to be in scale with the existing antenna array. The proposed equipment cabinets would be placed within an existing enclosure area and landscaping

CITY OF ESCONDIDO
CITY CLERKS OFFICE



2009 DEC 21

CITY OF ESCONDIDO

City Clerk
201 North Broadway
Escondido, CA 92025
(760) 839-4617
Fax: (760) 735-5782

FOR CITY USE ONLY

Application Code(s)	1,740
Fee (Non-Refundable)	420314
Receipt No.	12-21-09
Date Filed	1-27-10
Council Hearing Date	09-0039
Planning Case File No. (if applicable)	

APPLICATION TO APPEAL A DECISION TO THE CITY COUNCIL

Applicant: Craig D. Prestininzi, Kluger Architects Phone: (562) 498-2400
(Print)

Mailing Address: 1855 Coronado Ave. Signal Hill 90755
(Street) (City) (Zip)

E-mail: cprestininzi@klugerarchitects.com Fax: (562) 498-2422

Legal Owner: Roman Catholic Bishop of San Diego Phone: (562) 498-2400
(Print)

Property Address: 1445 Conway Drive, Escondido, CA 92027
(Subject of Appeal)

Assessor Parcel Number: 227-410-41

Project Case Number (if appropriate): PHG 09-0039

Is legal owner aware of this application? ☒ Yes ☐ No

Justification for appeal (Use additional paper, if necessary):

The Owner wishes to appeal the decision by the Escondido Planning Commission (Case File

No. PHG 09-0039) on December 9, 2009.

A variance along the length of the front of the property (Conway Drive) is requested for the preservation
& enjoyment of property rights possessed by other nearby properties. The existence of a 100-foot-wide
San Diego County Water Authority (SDCWA) easement is preventing these rights without the full
variance of the City being approved.

(continued, see additional attached sheets)

Distribution:
Planning Division
City Manager
City Clerk
Other _____
Applicant _____

Signature of Applicant
12-21-09
Date

Application to Appeal Planning Commission Decision

The Owner wishes to appeal the decision by the Escondido Planning Commission (Case File No. PHG 09-0039) on December 9, 2009.

A variance along the length of the front of the property (Conway Drive) is requested for the preservation and enjoyment of property rights possessed by other nearby properties. The existence of a 100-foot-wide San Diego County Water Authority (SDCWA) easement is preventing these rights without the full variance of the City being approved.

The Owner requires a fence of 6'-0" high in order to secure the property during the hours the church and school is not in session. Per Section 33-1081.1, a fence of this height must be constructed 15' from the front property line.

The SDCWA Easement prevents the installation of a fence in that location. Their strict requirements will not permit a fence to be placed within 10'-0" of the centerline of their water lines. There are two lines that run roughly parallel to each other on the interior side of the property. The locations of these lines mean that a fence of any height must be placed only at the three possible locations:

1. At a minimum of 2'-0" of the eastern property line (Conway Drive), east of both of the SDCWA lines;
2. More than 30 feet into the lot, between the 2 SDCWA lines;
3. More than 54 feet into the lot, to the west of both SDCWA lines

The two latter options would have a serious impact on the use of the property as it would prevent the development of the property as approved by CUP 2005-68 and still be able to secure the site.

If a fence is placed at the first option, the City will only permit one of a maximum of 42" high and therefore a variance was applied for to increase the allowable height from 42" to 72". A fence of 42" high is easily accessed by anyone wishing to do harm to property. A fence of 72" will allow the Owner to secure the property during non-business hours with a steel tube decorative fence that runs parallel to Conway Drive at a location of 2'-0" west of the property line before turning west at the northern property line along Sheridan Ave.

On November 5, 2009, the Design Review Board unanimously approved the design and location of the fence as proposed by the Owner. This was then taken to the Planning Commission where a decision was approved to only allow the variance on the southern part of the property, allowing the 6'-0" fence to be placed within that setback only where it occurs at the parking lot. It was decided that the remainder of the fence of that height must then turn west to the interior of the property and be placed at either Option 2 or 3 as noted above.

This decision creates a couple of problems, both functionally and aesthetically, and therefore we want to appeal the specific direction that the section of the fence that would occur in front of the existing Sanctuary must be placed deep into the property.

First, a fence this close to the entry to the building prevents the use of many events that the Church currently enjoys that allow people to freely congregate at the front doors. A fence in this location would bisect the entire front yard, essentially reducing in half the usable space for weddings, funerals, and other events where people would normally meet.

Second, the fence would require the removal of mature landscaping on the interior of the property. The gardens would be impacted severely with a 6'-0" fence running through the middle of it.

Thirdly, the location of a fence that runs the length of the property from end to end allows the most security and allows for easier surveillance

Fourthly, it is more aesthetically pleasing than a fence that offsets into the site halfway along the length. A continuous fence provides a harmonious and consistent view of the property by pedestrians and street traffic, while an uneven placement of the fence will appear to both the casual observer and long time residents as a fence that was not well thought out and broken in appearance.

Finally, we have also learned that placing a fence between the SDCWA at any location may not be their preferred location. The SDCWA may prefer a consistent approach to accessing their lines in case of an emergency, not having some lines behind a fence on the same property and some outside of it.

We ask that the City Council consider the Owner's concerns and we look forward to presenting our case in front of the community at the earliest opportunity to resolve the matter.

The text of the original Application for a Variance follows below:

A Variance is requested to relax the fence setback requirements of Section 33-1081.1 of the Escondido Municipal Code to allow the construction of a 6'-0" high fence of open materials (tube steel) to be constructed within the 15' front yard set back (along Conway Drive). This request is being made because the San Diego County Water Authority (SDCWA) has an easement that extends approximately 60' inside the property's eastern property line. The SDCWA has a very strict set of restrictions of what is permitted within their easements and will not allow any fence to be constructed within 10' of the centerline of their waterlines if the fence runs parallel to those lines. This requirement would cause us to place the fence to either more than 50' into the interior of the property, through the parking lot, or place it to the east of the SDCWA waterlines, approximately 2' inside the property line.

Since we cannot place it west of those lines and have a fence that bisects our parking lot, the only remaining option is to place it east of the lines to within 2' of the property line. At this distance, the City code would only allow a fence of 42" maximum height. As this is a church and school, there is serious concern for security during non-business hours. A 3'-6" perimeter fence is simply not sufficient to provide a secure site during those times, yet the SDCWA easement will not allow us to place the desired fence at the required City setbacks. This conflict is requiring us to request this Variance.

The Church of the Resurrection will require a site that can be secured during non-business hours in order to prevent vandalism, security breaches, and general safety of the students and staff. A 42" high fence can be easily scaled by just about any individual. The additional height at the fence, and associated gates, would provide that needed security. As this is a fairly open campus, there are few opportunities to provide additional rings of higher fencing at the interior of the campus and still provide the security they require at individual buildings. Also, the installation of two sets of gates and fences would cause significant cost to the client and egress issues for emergency services. The only option is to provide a single fence at the needed height at the perimeter of the site.

Along Conway Drive (the front setback) the property line is approximately 12'-6" from the street curb, so if measured from the curb face, the site fence would be 14'-6" from the street, and nearly meets the spirit of

the stated setbacks, yet can conform to SDCWA requirements. This setback also would allow for the necessary sightline distances at the driveways as the plans indicate.

We request that the site fence be consistent in the distance it would be placed from the property line, from the southeast corner to the northeast corner. Any jogging of the fence at the northeast would go through existing mature landscaping and interfere with the main entrance of the existing sanctuary. Placing it parallel to the street at the same distance where it would be placed near the parking lot will allow us to have a clean, harmonious appearance from the street.

It is not the intent of the client to be allowed special rights to build fences that their neighbors do are not permitted, but due to the severe restrictions placed on them by the San Diego County Water Authority, and the need to have a fence that can provide a reasonable amount of security for the church and their property, are pursuing this variance as a balanced approach to these issues.



CITY OF ESCONDIDO
201 North Broadway • Escondido, California 92025

RECEIPT

Receipt No.

420314

Date 12-21-09

Received From Church of the Resurrection

Address 1445 Conway dr. Escondido CA 92027

Revenue Description	*(Required)			(Optional)		Revenue Code	Collected Amount		
	Account	Fund	Dept	Program	Project				
Appeal Planning Commission Decision							1740	00	
Total ▶							1740	00	

*Account & fund to be filled out if revenue is coded to a clearing (Abate) account; Department required if the account is an expenditure account.

Received By R. Zornaga

Department CITY CLERK


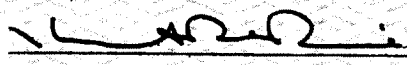
Phone No. X 4561

1001 (4/02)

WHITE - Finance

PINK - Customer Copy

YELLOW - Originating Department

CHURCH OF THE RESURRECTION BUILDING FUND CHECKING PH. 760-747-2322 1445 CONWAY DRIVE ESCONDIDO, CA 92027		90-3730/1222 312000001	818
DATE <u>12/21/2009</u>			
PAY TO THE ORDER OF <u>CITY OF ESCONDIDO</u>	\$ <u>1,740.00</u>		
<u>ONE THOUSAND SEVEN HUNDRED FORTY</u> DOLLARS			
 FIRST CALIFORNIA BANK 355 West Grand Avenue, Escondido, California 92025			
MEMO <u>CITY COUNCIL APPEAL</u>			
			
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PLANNING COMMISSION

Agenda Item No.: G.1
Date: December 8, 2009

CASE NUMBER: PHG 09-0039

APPLICANT: Church of the Resurrection

LOCATION: Approximately 11.04 acres on the southwestern corner of Sheridan Avenue and Conway Drive, addressed as 1445 Conway Drive.

TYPE OF PROJECT: Variance

PROJECT DESCRIPTION: A request for a Variance from the Zoning Code to reduce the required front-yard setback at a church in the R-1-8 zone from 15 feet to two feet for the construction of a six-foot-high, wrought iron fence.

STAFF RECOMMENDATION: Approval of a Variance for a portion of the requested fence length along Conway Drive.

GENERAL PLAN DESIGNATION/TIER: Urban I
Tier 1-Midway subarea

ZONING: R-1-8 (Single-family residential, 8,000 SF minimum lot size)

BACKGROUND/SUMMARY OF ISSUES: A Conditional Use Permit (CUP) was approved to establish the Church of the Resurrection at its current location in 1971 (71-91-CU). Several modifications to the original CUP have been approved over the following 38 years, including a phased, multi-year, master construction/development plan (2005-68-CUP), which was approved by the Planning Commission on January 22, 2008. The master plan includes an expanded parking area, a new sanctuary building, new administration and classroom buildings for a pre-K through grade-8 school, and improvements/conversions of existing buildings.

As part of the expansion of the church and school, fencing was approved to provide security to the site during non-business hours. The entire site would be fenced when the construction phasing is complete, but the church would like to secure the eastern portion of the site during the first phase of the project, which includes expansion of the parking area. A six-foot-high wrought iron fence is proposed along portions of the northern and southern property boundaries, aligning with existing fences or structures, and extending along the entire eastern boundary. While the fence would meet required setbacks along the northern and southern property boundaries, it would be located two feet from the eastern property line (Conway Drive), where a 15-foot setback is required. The San Diego County Water Authority has two 48-inch water lines within an existing easement along the entire eastern frontage of the site. The easement extends parallel through Conway Drive and into the property approximately 60 feet. The Water Authority will not allow a parallel fence to be located within 10 feet of the centerline of either water line. If the fence is located between the two waterlines, 10 feet from each, it would be located through the center of an approved parking area. The church requests a Variance to locate the fence two feet from the front property line along the entire frontage on Conway Drive, including gates at two driveways.

Staff feels that the issue is as follows:

1. Whether the proposed Variance meets the required findings for approval.

REASONS FOR STAFF RECOMMENDATION:

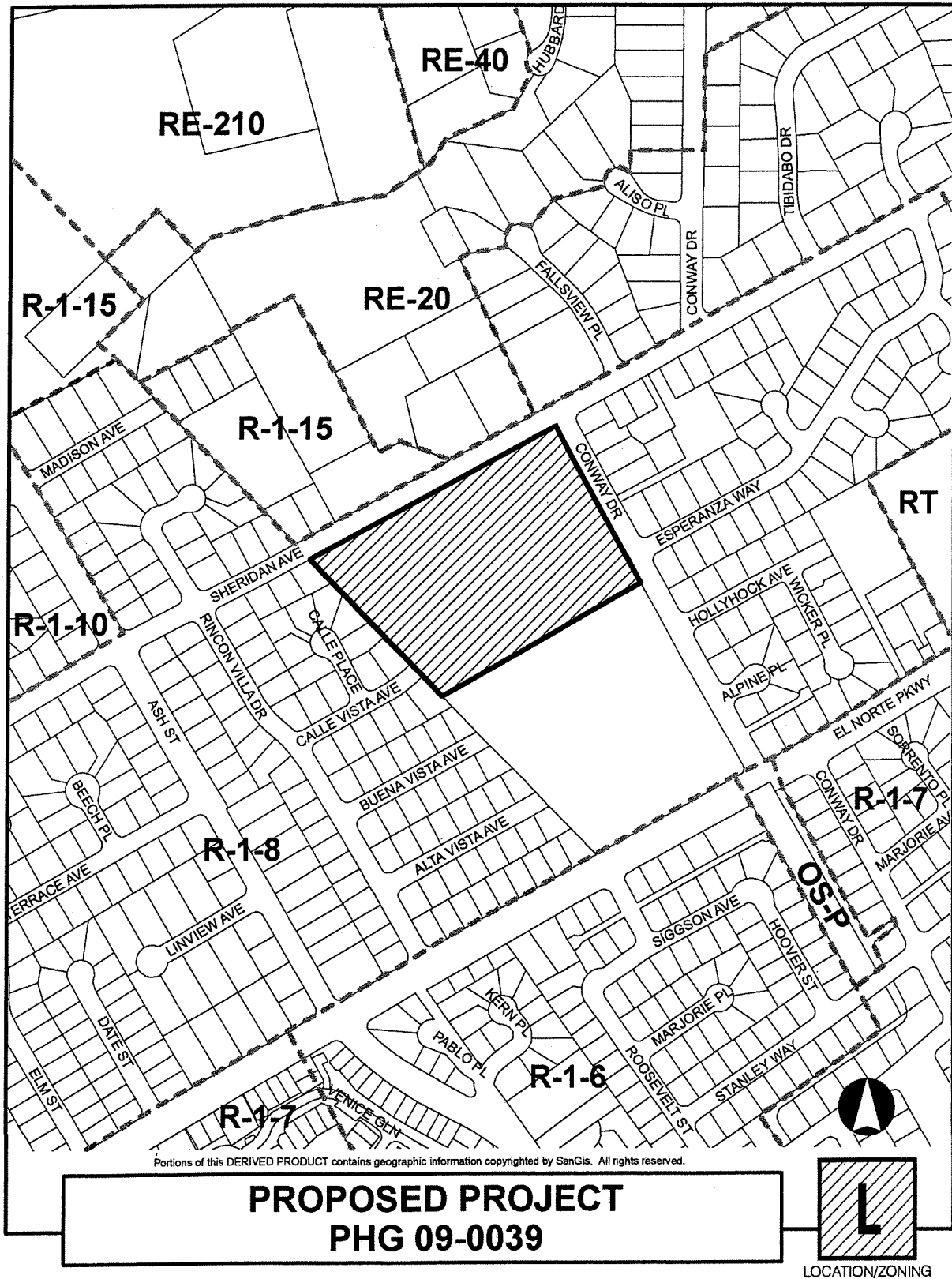
1. There are exceptional or extraordinary circumstances related to the subject property that would justify approval of a portion of the Variance request. Staff feels that granting the Variance along the southern portion of the site, at the parking area, is necessary for the preservation and enjoyment of a substantial property right possessed by other

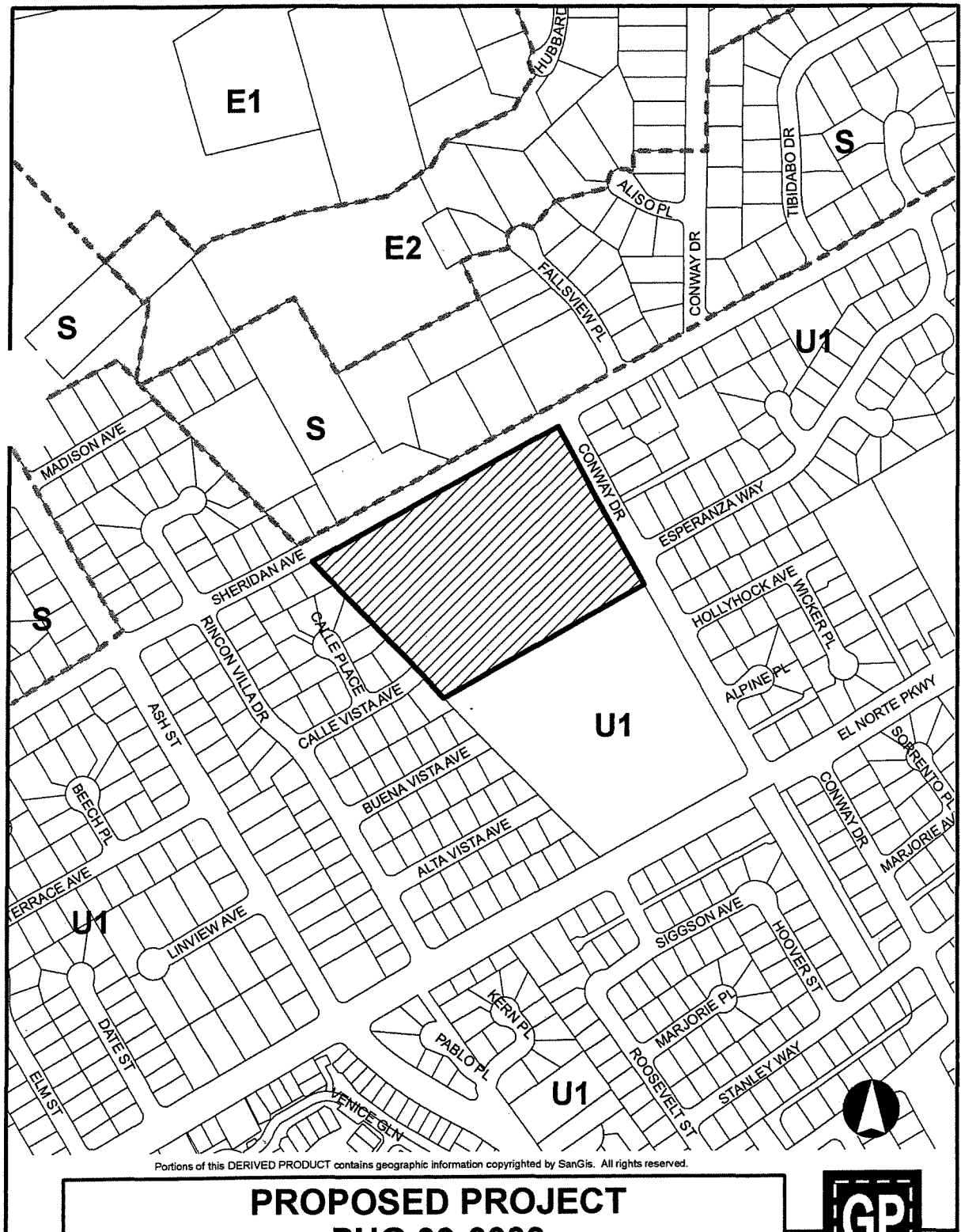
properties in the vicinity, due to the location of San Diego County Water Authority waterlines. Without the Variance it would be difficult for the church to adequately provide security to the campus. However, staff feels that granting the Variance request for the northern portion of the fence in front of the main sanctuary building where there is no paved parking area, would not be justifiable, since a six-foot-high fence which is in conformance with required setbacks could be located in that area and provide adequate security.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kristina Owens', written in a cursive style.

Kristina Owens
Assistant Planner II

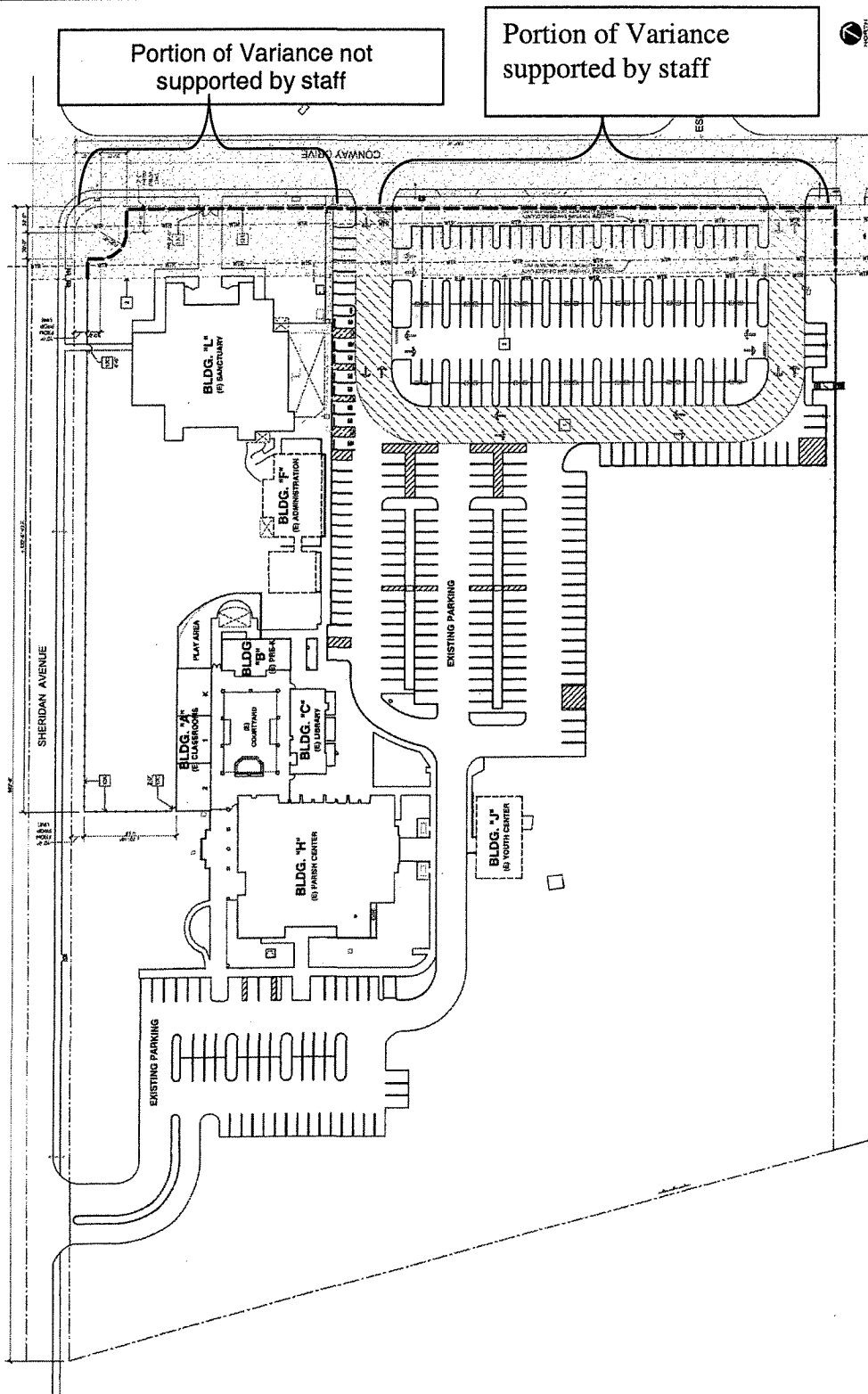




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PROPOSED PROJECT
PHG 09-0039



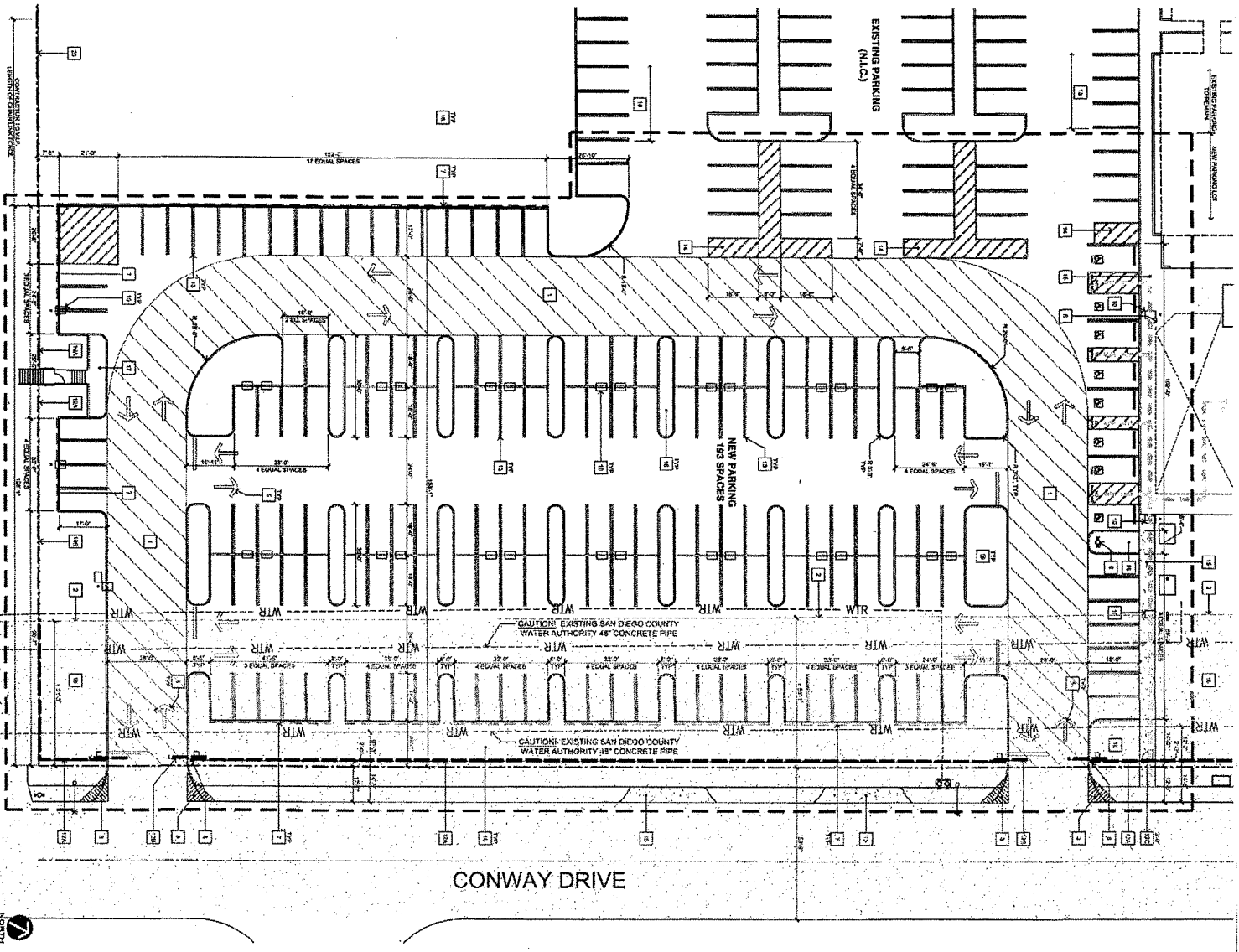


OVERALL SITE PLAN: PHASE ONE

**PROPOSED PROJECT
PHG 09-0039**



SITE PLAN



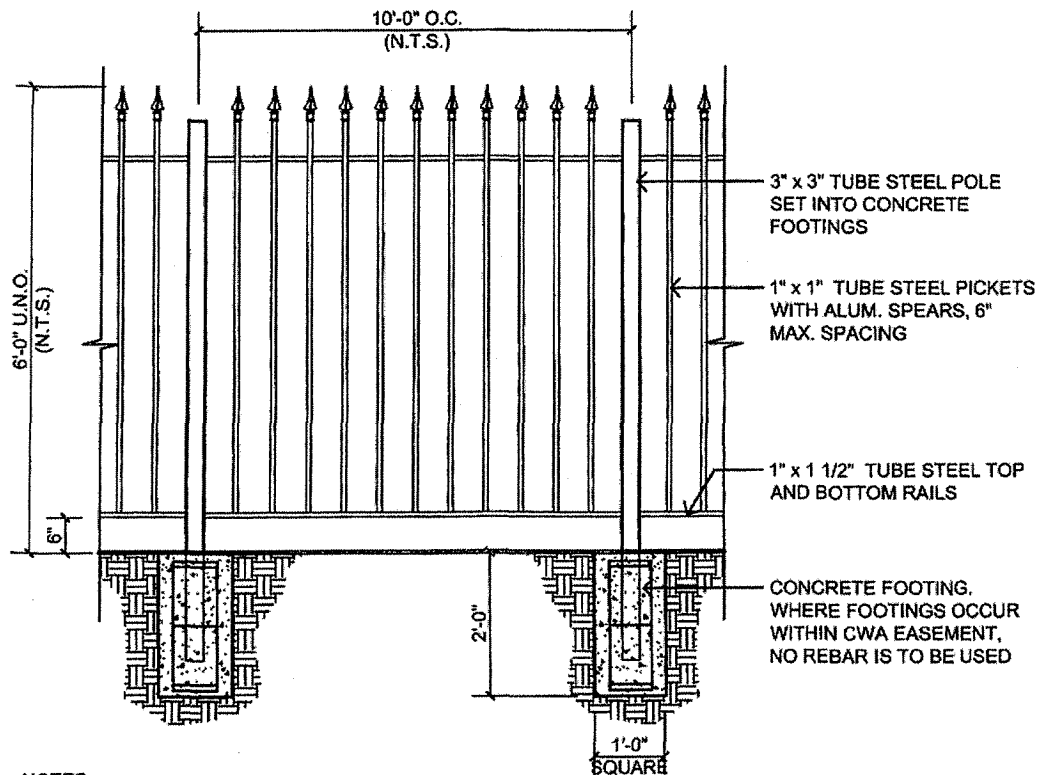
ENLARGED SITE PLAN - RECONSTRUCTION



PROPOSED PROJECT PHG 09-0039



SITE PLAN



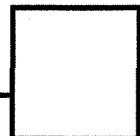
NOTES:

1. FOOTINGS AND OTHER FENCE COMPONENTS SHALL CONFORM TO ALL CITY AND CWA REQUIREMENTS.
2. PRIME AND PAINT ALL EXPOSED METAL COMPONENTS AND WELDS.
3. FOR MORE INFORMATION, SEE _____

3

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TUBE STEEL FENCE



FENCE DETAIL

ANALYSIS

A. LAND USE COMPATIBILITY/SURROUNDING ZONING

NORTH– R-1-15 (Single-family residential, 15,000 SF minimum lot size) and RE-20 (Residential Estates, 20,000 SF minimum lot size) zoning / Single-family residences on lots approximately \pm 1 acre in size are located to the north of the site, across Sheridan Avenue.

SOUTH– R-1-8 zoning/ Conway Elementary School is located to the south of the site.

EAST - R-1-8 zoning/ Single-family residences on lots approximately 8,000 SF in size are located to the east of the site, across Conway Drive.

WEST - R-1-8 zoning/ Single-family residences on lots approximately 8,000 SF in size are located to the west of the site.

B. AVAILABILITY OF PUBLIC SERVICES

1. Effect on Police Service – The Police Department has expressed no concern regarding their ability to continue to provide service to the site.
2. Effect on Fire Service – The site is served by Fire Station No. 7, located at 1220 North Ash Street, which is within the response time mandated by the General Plan. The Fire Department has indicated that adequate services can continue to be provided to the site and the proposed Variance for fence setbacks would not impact levels of service.
3. Traffic – The project site fronts on and takes access from Sheridan Avenue, which is classified as a Local Collector (66' r.o.w.) in the City's General Plan Circulation Element and Conway Drive, which is an unclassified residential street. The proposed Variance is for a setback for fencing only and would not add any additional Average Daily Trips (ADTs) to the roadway. The Engineering Division has indicated that the proposed Variance would not have a sight distance impact on surrounding roadways.
4. Utilities – City sewer and water mains with sufficient capacity to serve the project are existing and available within the adjoining street or easement. The project does not materially degrade the levels of service of the public sewer and water systems.
5. Drainage – The project site is not located within a 100-year Flood Zone as indicated on current FEMA maps. The proposed Variance would not materially degrade the levels of service of the existing drainage facilities.

C. ENVIRONMENTAL STATUS

1. The proposed project is exempt from environmental review, pursuant to CEQA Section 15061(b)(3), "General Rule."
2. In staff's opinion, no significant issues remain unresolved through compliance with code requirements and the recommended conditions of approval.
3. The project will have no impact on fish and wildlife resources as no sensitive or protected habitat occurs on-site or will be impacted by the proposed development.

D. CONFORMANCE WITH CITY POLICY/ANALYSIS

General Plan

The General Plan land use designation on the site is Urban I, which allows single-family residential development with a maximum density of 5.5 dwelling units per acre and a minimum lot size of 6,000 SF. A church is existing on the site. The proposed Variance is not inconsistent with the General Plan.

Whether the Proposed Variance Meets the Required Findings for Approval

The applicant is requesting approval of a Variance to construct a six-foot-high wrought iron fence within the required front yard setback. Zoning Code Section 33-1080 permits fences/walls up to six feet in height to be located within interior side and rear yard setbacks, but limits the height of open fences within the front yard setback to three and one-half feet. Open fences exceeding three and one-half feet in height in the front yard must be located at the setback line for principle structures. The required front yard setback in the R-1-8 zone is 15 feet and the applicant proposes a six-foot-high wrought iron fence to be located two feet from the front property line (along Conway Drive). The Variance request is for the reduced front-yard setback.

The San Diego County Water Authority has two 48-inch water lines and an approximately 100-foot-wide easement along the entire eastern frontage of the church site. The easement extends through Conway Drive and into the property approximately 60 feet. The Water Authority will not allow a parallel fence to be located within 10 feet of the centerline of either water line. If the proposed fence is located between the two waterlines, approximately 10 feet from each, it would be located through the center of the approved parking area in the southern portion of the site, impacting circulation, access and availability of parking spaces. The church proposes to relocate the fence easterly away from the pavement and the waterlines to within two feet of the property line. The fence is proposed to continue in the same location along the entire eastern property boundary to the northeastern corner of the site, in front of the existing sanctuary. Electronic gates, which would be open during business hours, would be installed across the two driveways on Conway Drive.

The applicant feels the Variance should be approved as it would help to provide security to the large church campus after hours, preventing vandalism and security breeches, and providing general safety to students and staff. There is a 12.5-foot-wide parkway area between the property line along Conway Drive and the curb face, providing a large landscaped area similar to what the required setback would be. An approximately 23-foot-wide landscape strip would be planted between the parking area and Conway Drive. The church feels they are not allowed the same enjoyment of a security fence as their neighbors without approval of the Variance to construct a fence within the setback, due to the location of the San Diego County Water Authority easement and water lines. The disparate location of the various buildings on the site would preclude fencing between buildings to provide adequate security. Also, a three and one-half foot-high fence in conformance with setbacks would not provide adequate security of the campus due to its low height. The church is requesting that they be allowed a Variance for the fence setback along the entire frontage on Conway Drive to provide consistency in appearance and to preserve the existing landscaping in front of the sanctuary building.

On November 5, 2009, the Design Review Board voted 6-0 to approve the fence location. They expressed no concern with the appearance of a six-foot-high fence two feet from the front property line, due to the wide landscaped area.

Variances are intended to be used in cases where there is a unique hardship or when conformance with the development standards would result in an inability to use a property in a manner consistent with other properties in the same zone. The granting of variances is regulated by both state law (Government Code Section 65906) and the Escondido Zoning Code (Section 33-1220 et.seq.). Government Code Section 65906 states:

“Variances from the terms of the zoning ordinances shall be granted only when, because of special circumstances applicable to the property, including size, shape, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.”

According to Zoning Code Section 33-1224, four findings must be made in order to approve a Variance. There shall be exceptional or extraordinary circumstances applicable to the property or the intended use of the property that do not apply generally to a property or class of use in the same zone or vicinity. Granting the proposed Variance shall not be materially detrimental to the public health, safety or welfare, or injurious to the property or improvements. Granting the Variance shall be necessary for the preservation and enjoyment of a substantial property right of the applicant, which is possessed by other property in the same zone or vicinity. Lastly, granting the Variance will not adversely affect the General Plan. In general, a Variance shall not be granted if it would adversely affect the interests of the public or other residents or property owners within the vicinity, and it should not grant a “special privilege” inconsistent with the limitations on nearby properties.

In order for a Variance to be granted, all four of the required findings must be met. Staff feels the request for a reduced front yard setback in the southern portion of the site does meet the required findings for approval of a Variance. It would

be difficult for the church to provide adequate security fencing of the site due to the location of the easement. The Variance would assist in providing the property right of basic security to the site. Also, locating the fence two feet from the property line would not be detrimental to the public health, safety or welfare. Visibility would not be blocked and a wide landscaping area would be provided. However, staff does not feel that extending the Variance request to reduce the front yard setback along the entire Conway Drive frontage would meet the required findings. There are no highly unusual, exceptional or extraordinary circumstances related to the portion of the subject property in front of the sanctuary building that do not apply to other nearby properties. Although the easement is located along the entire frontage, there is no paving, parking spaces, or structures between the sanctuary and the property line on Conway Drive. The applicant is requesting the Variance be continued for continuity of appearance. There are alternatives for providing security fencing in this portion of the site without having an adverse appearance alongside the remainder of the fence. The proposed fence could be located in front of the existing sanctuary building, between the two waterlines, approximately 25 feet from the front property line. It also could be tied into the sanctuary building on both the south and north ends, securing the remainder of the site and leaving the area in front of the sanctuary open as traditionally occurs with churches. Staff feels approving the Variance along the entire property frontage would establish a precedent and grant a special privilege, as six-foot-high fencing can be provided without the Variance in the northern portion of the site. Granting the Variance in the southern 390-foot portion of the site is, however, necessary for the property owner's preservation and enjoyment of property rights to provide a property right that is otherwise not available to the church.

**FINDINGS OF FACT
PHG 09-0039
EXHIBIT "A"**

Variance

1. There are unusual circumstances applicable to the property that do not generally apply to other properties in the R-1-8 zone, other properties in the surrounding neighborhood, or other churches. There is a 100-foot-wide San Diego County Water Authority easement running parallel along the property's eastern boundary that limits what can be placed within its boundaries. Granting the Variance would be appropriate, since the proposed setback reduction would allow the site to be secured with a six-foot-high fence. Otherwise, due to the location of the San Diego County Water Authority easement, the church would be required to reconfigure their new parking area or try to secure the site with a three-and-one-half-foot-high fence.
2. Granting the proposed Variance would not be detrimental to the public health, safety or welfare, or injurious to property or improvements in the area. The Variance for setbacks would only be approved for the southern portion of the eastern site boundary, where a large landscaped strip has been approved. The fence would appear to be located at or near the required setback along the front property line, since there is a 12.5-foot-wide parkway between the eastern property line and the curb along Conway Drive. The Variance is only for a six-foot-high fence and all other structures would be in conformance with required setbacks. In addition, the fence would be in conformance with all requirements of the Engineering Division for sight distance.
3. The proposed Variance is necessary for the preservation and enjoyment of property rights possessed by other nearby properties. The existence of the San Diego County Water Authority easement impacts the ability to locate a fence high enough to adequately to secure the site after hours. Other nearby properties have the ability to locate security fences due to the configuration of their lots or the absence of an easement.
4. Granting the proposed Variance would not adversely affect the General Plan, since the church is existing, no new floor area is proposed, and the Variance is not in conflict with any General Plan policies.

CONDITIONS OF APPROVAL
PHG 09-0039
EXHIBIT "B"

General

1. The developer shall be required to pay all development fees of the City then in effect at the time and in such amounts as may prevail when Building Permits are issued, including any applicable citywide facilities fees.
2. All construction and grading shall comply with all applicable requirements of the Escondido Zoning Code and requirements of the Planning Division, Engineering Division, Building Division, and Fire Department.
3. The legal description attached to the application has been provided by the applicant and neither the City of Escondido nor any of its employees assume responsibility for the accuracy of said legal description.
4. Colors, materials and design of the project shall conform to the exhibits and references in the staff report to the satisfaction of the Planning Division.
5. The Variance shall be for a fence only, up to six-feet in height, two feet from the Conway Drive property line. It shall extend from the southeastern corner of the site northerly approximately 390 feet to the terminus of the parking area. Any fencing shall meet the required setback (15 feet) from that point to the northeastern corner of the site. All other fencing shall be in conformance with required setbacks.
6. The gates across both driveways on Conway Drive shall remain open during the hours of operation of the school and/or the church.
7. This Variance shall become null and void unless utilized within twelve months of the effective date of approval.
8. All gated entrances shall be equipped with electric switches accessible from both sides and operable by dual-keyed switches for both fire and police. Electric gates shall be operable by Fire Department strobe detectors and allow free exiting.
9. The City of Escondido hereby notifies the applicant that the County Clerk's office requires a documentary handling fee of \$50.00 in order to file a Notice of Exemption for the project (environmental determination for the project). In order to file the Notice of Exemption with the County Clerk, in conformance with the California Environmental Quality Act (CEQA) Section 15062, the applicant should remit to the City of Escondido Planning Division, within two working days of the final approval of the project (the final approval being the hearing date of the Planning Commission or City Council, if applicable), a certified check payable to the "County Clerk" in the amount of \$50.00. The filing of a Notice of Exemption and the posting with the County Clerk starts a 35 day statute of limitations period on legal challenges to the agency's decision that the project is exempt from CEQA. Failure to submit the required fee within the specific time noted above will result in the Notice of Exemption not being filed with the County Clerk, and a 180 day statute of limitations will apply.



CITY OF ESCONDIDO
PLANNING DIVISION
201 NORTH BROADWAY
ESCONDIDO, CA 92025-2798
(760) 839-4671

Notice of Exemption

To: San Diego County Recorder's Office
Attn: Linda Kesian
P.O. Box 121750
San Diego, CA 92112-1750

From: City of Escondido
Planning Division
201 North Broadway
Escondido, CA 92025

Project Title/Case No.: PHG 09-0039

Project Location - Specific: On the southwestern corner of Sheridan Avenue and Conway Drive, addressed as 1445 Conway Drive.

Project Location - City: Escondido, **Project Location - County:** San Diego

Description of Project: A proposed Variance to reduce the required front-yard setback at an existing church in the R-1-8 zone from 15 feet to 2 feet for the construction of a six-foot-high fence.

Name of Public Agency Approving Project: City of Escondido

Name of Person or Agency Carrying Out Project:

Name: Craig Prestininzi, Kluger Architects

Telephone: (562) 498-2400

Address: 1855 Coronado Avenue, Signal Hill, CA 90755

X Private entity ☐ School district ☐ Local public agency ☐ State agency ☐ Other special district

Exempt Status:

Categorical Exemption. Type and section number: 15061(b)(3), General Rule Provisions

Reasons why project is exempt:

1. The Variance would not result in any changes in existing land use or density and will have no significant effect on the environment.
2. All service, access and utilities to the facility to local standards are existing and are not impacted by the proposed Variance.
3. The proposed Variance consists of reducing the required front yard setback for a wrought iron fence from 15 feet to two feet.
4. The proposed Variance would not result in the removal of any sensitive habitat. The site is not located in an environmentally sensitive area, since the site has been developed with a church and is surrounded by existing single-family residences.

Lead Agency Contact Person: Kristina Owens Area Code/Telephone/Extension (760) 839-4310

Signature: Kristina Owens
Assistant Planner II

11/23/09
Date

☐ Signed by Lead Agency

Date received for filing at OPR:

☐ Signed by Applicant

Applicant's Justification Variance Application

A Variance is requested to relax the fence setback requirements of Section 33-1081.1 of the Escondido Municipal Code to allow the construction of a 6'-0" high fence of open materials (tube steel) to be constructed within the 15' front yard set back (along Conway Drive). This request is being made because the San Diego County Water Authority (SDCWA) has an easement that extends approximately 60' inside the property's eastern property line. The SDCWA has a very strict set of restrictions of what is permitted within their easements and will not allow any fence to be constructed within 10' of the centerline of their waterlines if the fence runs parallel to those lines. This requirement would cause us to place the fence to either more than 50' into the interior of the property, through the parking lot, or place it to the east of the SDCWA waterlines, approximately 2' inside the property line.

Since we cannot place it west of those lines and have a fence that bisects our parking lot, the only remaining option is to place it east of the lines to within 2' of the property line. At this distance, the City code would only allow a fence of 42" maximum height. As this is a church and school, there is serious concern for security during non-business hours. A 3'-6" perimeter fence is simply not sufficient to provide a secure site during those times, yet the SDCWA easement will not allow us to place the desired fence at the required City setbacks. This conflict is requiring us to request this Variance.

The Church of the Resurrection will require a site that can be secured during non-business hours in order to prevent vandalism, security breaches, and general safety of the students and staff. A 42" high fence can be easily scaled by just about any individual. The additional height at the fence, and associated gates, would provide that needed security. As this is a fairly open campus, there are few opportunities to provide additional rings of higher fencing at the interior of the campus and still provide the security they require at individual buildings. Also, the installation of two sets of gates and fences would cause significant cost to the client and egress issues for emergency services. The only option is to provide a single fence at the needed height at the perimeter of the site.

Along Conway Drive (the front setback) the property line is approximately 12'-6" from the street curb, so if measured from the curb face, the site fence would be 14'-6" from the street, and nearly meets the spirit of the stated setbacks, yet can conform to SDCWA requirements. This setback also would allow for the necessary sightline distances at the driveways as the plans indicate.

We request that the site fence be consistent in the distance it would be placed from the property line, from the southeast corner to the northeast corner. Any jogging of the fence at the northeast would go through existing mature landscaping and interfere with the main entrance of the existing sanctuary. Placing it parallel to the street at the same distance where it would be placed near the parking lot will allow us to have a clean, harmonious appearance from the street.

It is not the intent of the client to be allowed special rights to build fences that their neighbors do are not permitted, but due to the severe restrictions placed on them by the San Diego County Water Authority, and the need to have a fence that can provide a reasonable amount of security for the church and their property, are pursuing this variance as a balanced approach to these issues.

RESOLUTION NO. 2010-11

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
DENYING AN APPEAL OF A PLANNING
COMMISSION DECISION TO APPROVE A
PORTION OF A VARIANCE REQUEST

Applicant: Craig Prestininzi for Church of the
Resurrection
Planning Case No.: PHG 09-0039

WHEREAS, pursuant to Article 61 of the Escondido Zoning Code, the Planning Commission did on December 8, 2009, consider and by Resolution No. 5881, partially approve a request for a Variance to reduce a front yard setback at 1445 Conway Drive. The applicant requested a Variance to reduce the required front-yard setback at a church in the R-1-8 zone from 15 feet to two feet, for the construction of a six-foot-high, wrought iron fence. The Planning Commission approved the Variance along only the southern portion of the front property boundary. The site is located on the southwestern corner of Sheridan Avenue and Conway Drive, addressed as 1445 Conway Drive; and

WHEREAS, the applicant for PHG 09-0039 now seeks approval of an appeal of the Planning Commission decision from the City Council, in accordance with Zoning Code Section 33-1303; and

WHEREAS, this City Council has held a duly noticed public hearing and considered the staff report, a copy of which is on file in the Planning Division, and the recommendation of the Planning Commission; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to deny said appeal.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

1. That the above recitations are true.
2. That the City Council has reviewed and considered the Notice of Exemption for the project, which was issued in conformance with CEQA Section 15061(b)(3), "General Rule," and has determined that it adequately addresses all the environmental uses associated with the project.
3. That upon consideration of the Notice of Exemption, all material in the staff report (a copy of which is on file in the Planning Division), the Planning Commission recommendation, public testimony presented at the hearing, and all other oral and written evidence on this project, the City Council hereby denies said appeal and upholds the approval of a portion of the requested Variance (PHG 09-0039), subject to the conditions of approval set forth in Exhibit "A," which is attached to this resolution and incorporated by this reference.

CONDITIONS OF APPROVAL

General

1. The developer shall be required to pay all development fees of the City then in effect at the time and in such amounts as may prevail when Building Permits are issued, including any applicable citywide facilities fees.
2. All construction and grading shall comply with all applicable requirements of the Escondido Zoning Code and requirements of the Planning Division, Engineering Division, Building Division, and Fire Department.
3. The legal description attached to the application has been provided by the applicant and neither the City of Escondido nor any of its employees assume responsibility for the accuracy of said legal description.
4. Colors, materials and design of the project shall conform to the exhibits and references in the staff report to the satisfaction of the Planning Division.
5. The Variance shall be for a fence only, up to six-feet in height, two feet from the Conway Drive property line. It shall extend from the southeastern corner of the site northerly approximately 390 feet to the terminus of the parking area. Any fencing shall meet the required setback (15 feet) from that point to the northeastern corner of the site. All other fencing shall be in conformance with required setbacks.
6. The gates across both driveways on Conway Drive shall remain open during the hours of operation of the school and/or the church.
7. This Variance shall become null and void unless utilized within twelve months of the effective date of approval.
8. All gated entrances shall be equipped with electric switches accessible from both sides and operable by dual-keyed switches for both fire and police. Electric gates shall be operable by Fire Department strobe detectors and allow free exiting.
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