



MEMORANDUM

Agenda Item #: 1
Meeting Date: 2/19/13

TO: PLANNING COMMISSION

FROM: ROBERT M. SMITH, ASSISTANT CITY ATTORNEY

SUBJECT: ZC-2/M-902-13; ZONE CHANGE AND MISCELLANEOUS APPLICATIONS FOR THE PROPERTY LOCATED AT 900 VIA PANORAMA. PORTION OF LOT A, TRACT 7540.

APPLICANT: BOLTON ENGINEERING
25834 NARBONNE AVENUE, #210
LOMITA, CA 90717

OWNER: LUGLIANI TRUST
900 VIA PANORAMA
PALOS VERDES ESTATES, CA 90274

DATE: FEBRUARY 19, 2013

Overview

This application arises from an unusual context. The application before the Planning Commission tonight affects minor accessory uses on a small portion of an otherwise deed-restricted open space lot adjacent to a residential lot. The application, however, is a small part of a much larger multi-agency initiative to remove legal doubt over the enforceability of PVHA's deed restrictions on property owned by the School District citywide, to preserve from development open space parcels known as Lots C and D and to discourage the School District from ever installing lights on the field at PV High. This cooperative venture among the City, the PVHA, the District and the Applicant was designed to promote and protect the City's primary interest in preserving neighborhood character, through open space and dark skies.

Type of Application

The project involves a Zone Change application for existing Open Space on a portion of the property adjacent to 900 Via Panorama, and a Miscellaneous Application to allow an after-the-fact approval for existing retaining walls over 6.5 feet in height. The area proposed to be rezoned to Single Family Residential (R-1) is designated as "Parcel A" on the submitted plans. The retaining walls in question are located in "Area 3" on the submitted plans and vary in height from 7 ft. to 21 ft.

The approval of the application would permit the construction of certain accessory structures in the area designated as "Area 3" on submitted plans; the MOU included the recordation of deed restrictions on the remainder of Parcel A which would prohibit further development of the area and preserve the remaining area as open space. As further described below, regardless of whether Parcel A is zoned R-1 or Open Space, no additional structures will be permitted on the majority of Parcel A.

The Planning Commission may take action on the Miscellaneous Application to permit the after-the-fact approval of existing retaining walls without City Council approval. Pursuant to the Municipal Code, the Zone Change requires City Council approval. Upon receipt of the Planning Commission's recommendation, the Zone Change application will be set for a public hearing with the City Council. The Planning Commission must also make a recommendation on the negative declaration analyzing the project's environmental impacts.

Applicable Restrictions and Regulations

The OS zoned is defined in the Zoning Ordinance as follows: "The open space zone land consists of all publicly owned land including all city-owned land, including parklands and street rights-of-way, except any land within the coastal zone as defined by the California Coastal Commission, all school sites utilized or owned by the Palos Verdes Peninsula Unified School District, all sites utilized or owned by the Palos Verdes Peninsula Library District, and all land owned or which could be owned by the Palos Verdes Homes Association as a result of the exercise of any reversionary rights." PVEMC §18.16.010 (emphasis added).

The R-1 zone generally permits single-family dwellings and accessory buildings and uses, limited to private recreational facilities; private bath house, greenhouse, or gardens; and/or private shed or workshop. PVEMC § 18.04.010.

The project site was conveyed from the PVHA to the current property owners subject to several deed restrictions. The deed provides that:

"Unless expressly provided for herein, [the property owner] shall not construct any structure on the Property and the Property shall be restricted to open space. It is the intent of the parties, subject to compliance with the requirements for such development of accessory structures of the City and [PVHA], that [the property owner] may construct any of the following: a gazebo, sports court, retaining wall, landscaping, barbeque, and/or any other uninhabitable 'accessory structure,' as defined by . . . PVEMC Section 18.32.010.D within the area . . . shown as Area 3 . . . [the property owner] shall apply for approval of any such permitted structures by [PVHA] and the City in accordance with the standard procedure and in conformance with applicable covenants, ordinances, and codes. Any such structure shall comply with any and all requirements of City, [PVHA], and the Art Jury including but not limited to height, size, orientation, design, and setback."

Further, in Palos Verdes Estates, all property is subject to certain conditions, restrictions and reservations in favor of the Homes Association as stated in the *Palos Verdes Homes Association's Protective Restrictions of Palos Verdes Estates*. As part thereof, all property is

subject to a reversionary right in favor of the Homes Association that is triggered in the event of a breach of the protective restrictions. This means that if a property is in violation of the Homes Association restrictions, ownership of the property may revert to the Homes Association as a remedy for the breach.

The property located at 900 Via Panorama is subject to the Local Protective Restrictions, Conditions, Covenants, Reservations, Liens, and Charges Affecting Real Property Known as Tract No. 8652 (Montemalaga) and the Homes Association right of reversion set forth at Article VI, section 6 of the *Palos Verdes Estates Protective Restrictions*. The deed conveying ownership of the parcel from the Homes Association to the property owners provides that the property remains subject to all of the Homes Association conditions, restrictions and reservations, thus preserving the right of reversion as set forth in the *Palos Verdes Homes Association's Protective Restrictions of Palos Verdes Estates* as the Homes Association's remedy in the event of a breach. Should the property owner install structures on Parcel A other than those permitted in the Grant Deed, PVHA could require their immediate removal and/or seek reversion of the property.

Background

This application arises out of a complex settlement of various issues involving the City, the Palos Verdes Peninsula Unified School District ("PVPUSD"), the Palos Verdes Homes Association, and the property owners of 900 Via Panorama. In May 2012, the City Council adopted Resolution No. R12-11, approving the MOU among the four parties. Generally, the MOU reaffirmed the enforceability of the deed restrictions on property owned by PVPUSD in the City; resolved the dispute regarding certain existing encroachments adjacent to 900 Via Panorama; provided for the preservation of certain open space properties subject to litigation between PVPUSD and the Homes Association (Lots C and D); and prohibited the installation of nighttime lighting at Palos Verdes High School. The Staff Report for the public hearing on the matter, which includes a detailed history and explanation of the reasons for the MOU, is attached hereto as Exhibit A.

900 Via Panorama

900 Via Panorama is located at the end of a cul-du-sac and is adjacent to City-owned parkland on three sides. The parkland adjacent to 900 Via Panorama is relatively inaccessible and steep, but for a small section located to the west of the 900 Via Panorama property, which was previously graded and stabilized with retaining walls without a City permit. The graded area is shown as Area 3 on the submitted plans. Given the steep grade of the slopes, the primary benefit of the parkland is to preserve views and to contribute to the open feel of the neighborhood.

On the graded pad, the previous property owners landscaped and improved a section of the parkland and installed retaining walls. The current property owners later installed a gazebo and other accessory, non-habitable structures. At the City's direction, the current property owners removed the structures encroaching on the City's parkland and applied for an after-the-fact permit for the retaining walls.

As part of the MOU, the City agreed to convey Parcel A to the Homes Association and receive Lots C and D (which under the MOU reverted back to the Homes Association ownership). The Homes Association agreed to sell Parcel A (subject to the deed restrictions identified below) to the owners of 900 Via Panorama. This transfer of ownership relieved the City of any liability or responsibilities relating to the retaining walls or the hillside, while retaining the open space benefits on undisturbed portions of Parcel A and reserving several utility-related easements on Parcel A in favor of the City.

Current Application

The application seeks a zone change for Parcel A from Open Space to R-1 and after-the-fact approval of the retaining walls in Area 3. No additional development is proposed on the 900 Via Panorama parcel. In general, lots zoned as R-1 can have a variety of uses including, but not limited to, single-family residences and accessory structures; however, the MOU imposed a number of deed restrictions on Parcel A that significantly limits future development on the site and preserves the majority of the site as open space. The entirety of Parcel A is deed-restricted to provide for an open space easement in favor of the City. The only exceptions to the open space restriction are that the owners may apply for (1) an after-the-fact permit to retain the existing retaining walls and (2) approval of construction of specified non-habitable accessory structures in Area 3. The accessory structures would be subject to Art Jury review.

The City generally has a general policy to prohibit structures in City-owned parkland. While this policy disfavors granting permits for after-the-fact structures in open space or rezoning open space areas to R-1 areas, there have been limited unique circumstances in the past where the City has granted an exception to this policy based on the specific circumstances of the application. For example, a stairway permitting fire access on a steep slope was permitted to be retained in City open space pursuant to an after-the-fact permit.

The present application appears to be similarly unique. First, Parcel A is very steep and, other than the previously graded portion identified as Area 3, is generally unusable for traditional open space uses, such as recreational uses, parks, or playgrounds. Its primary use is to preserve the views in the surrounding neighborhood and open character of the community. The accessory structures would be built on Area 3 and, given the significant height of the existing upper retaining wall, would not be able to be seen by most viewpoints from the street above. Therefore, it is unlikely to change the character of the open space from most (if not all) viewpoints. The deed restrictions recorded as part of the MOU would prohibit any other additional development on the parcel.

This application is contemplated as part of a larger MOU, which allowed the City to resolve litigation which challenged the Homes Association deed restrictions to PVPUSD property within the City and permitted the retention of Lots C and D by the Homes Association in their current undeveloped state. The result of this settlement allowed the retention of other key open space lots within the City. The existing retaining walls, which will be maintained by the current owner, stabilize a steep hillside that may otherwise be subject to geologic instability or erosion. In the event that the property owner installs structures not permitted pursuant to the Grant Deed, the PVHA could seek removal of the structures or reversion of Parcel A to PVHA.

Potential Issues

- The retaining walls exist at the site and removal could be detrimental to the surrounding slope.

Correspondence Received

Any items of correspondence received regarding the current plans have been attached to the staff report.

Environmental Considerations

Pursuant to the California Environmental Quality Act (CEQA), staff prepared an Initial Study. The Initial Study confirmed that the project does not have the potential to result in significant impacts on the environment. Consequently, a negative declaration was prepared.

Findings Required to Approve

The Municipal Code does not contain specific findings regarding approval of a Zone Change. In order to recommend approval of the requested zone change, the Planning Commission must adopt the negative declaration and find that the proposed zone change is consistent with the general plan and any applicable specific plan.

The project is consistent with the General Plan. The application is part of a larger multi-party agreement which results in the preservation of vital open space on Lots C and D in the City. Further, while the project would result in the construction of small accessory structures on a portion of the property, the structures would be installed on property previously disturbed by prior development, and the majority of the property would be restricted to remain open space in perpetuity. The minimal development contemplated as part of the MOU reflects the City Council's legislative choice to allow a minor deviation from the City's open space restrictions in return for certainty that other PVPUSD parcels would remain subject to PVHA deed restrictions, in addition to other public benefits obtained for City residents pursuant to the MOU. There are no applicable specific plans.

Permit Streamlining Act

Application was accepted as complete on January 28, 2013. Because this is a legislative action, the Permit Streamlining Act does not apply. However, Government Code section 65852.9 expresses the Legislature's intent that the statute "expedite the process of zoning the property to avoid unnecessary costs and delays to the school district." The City must avoid unnecessary delays in processing the application.