



STAFF REPORT
CITY OF BEVERLY HILLS

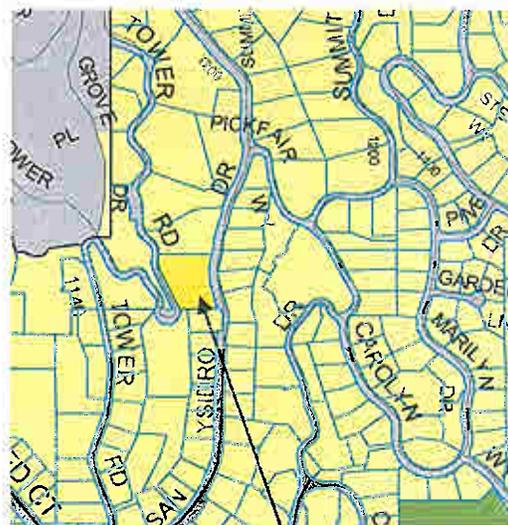
**For the Planning
Commission Meeting of
December 11, 2008**

TO: Planning Commission

FROM: Rita Naziri, Senior Planner

THROUGH: Jonathan Lait, AICP, City Planner

SUBJECT: Resolution approving a Hillside R-1 Permit to allow a six-foot high wall and two new pilasters in excess of three feet in height within the required front yard and a resolution to deny a variance request to allow construction of a series of retaining walls in excess of 7-feet in height at 1150 Tower Road.



Project Site

RECOMMENDATION

It is recommended that the Planning Commission adopt a resolution conditionally approving a Hillside R-1 Permit to allow a six-foot high wall and two pilasters in excess of three feet in height within the required front yard setback and to deny a variance request to construct a series of retaining walls in excess 7 feet in height for a property located at 1150 Tower Road.

ISSUE

At its meeting of November 20, 2008, the Planning Commission held a public hearing to consider the matter and requested that staff prepare a resolution approving the Hillside R-1 Permit request and to deny the requested variance.

Rita Naziri
RITA NAZIRI

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS APPROVING A HILLSIDE R-1 PERMIT TO ALLOW A SIX-FOOT HIGH WALL AND TWO NEW PILASTERS IN EXCESS OF THREE FEET IN HEIGHT WITHIN THE REQUIRED FRONT YARD AND DENYING A VARIANCE REQUEST TO ALLOW CONSTRUCTION OF A SERIES OF RETAINING WALLS IN EXCESS OF SEVEN-FEET IN HEIGHT AT **1150 TOWER ROAD**.

The Planning Commission of the City of Beverly Hills hereby finds, resolves, and determines as follows:

Section 1. Daniel Holgate on behalf of the property owners, Michael and Dru Hammer (hereinafter referred to as the "Applicant"), have submitted applications for a Hillside R-1 Permit to allow a six-foot high retaining wall and two new pilasters in excess of three feet in height within the required front property line and a variance to allow construction of retaining walls with a maximum height of 7.5 feet within the required front yard /side setback in excess of three feet height limitation and series of retaining walls with a maximum of 16 feet to be located within the side and rear yards in excess of the 7-foot height limitation at **1150 Tower Road** (the "Project").

The Planning Commission may allow walls and pilasters up to six feet in height within the front yard of properties in the Hillside area pursuant to Beverly Hills Municipal Code Section 10-3-2516(C). In addition, pursuant to Beverly Hills Municipal Code section 10-3-3700, the Planning Commission sitting as a Board of Zoning Adjustments may grant a variance to construct a series of retaining walls retaining walls in excess of seven feet if the required findings can be made.

Section 2. This project has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. It has been determined that this request is qualifies for a Class

3 (e) Categorical Exemption under the authority provided by the CEQA Guidelines Section No. 15303 (e) because only minor accessory structures are proposed, and no significant environmental impacts are anticipated.

Section 3. Notice of the proposed project and public hearing was mailed on November 7, 2008 to all single-family zoned properties within 500 feet from the exterior boundaries of the property. The hearing notice was published in the *Beverly Hills Courier* on Friday, November 7, 2008 and the *Beverly Hills Weekly* on Thursday, November 13, 2008.

Section 4. On November 20, 2008, the Planning Commission visited the project site, and thereafter held a duly noticed public hearing to consider the application. Evidence, both written and oral, was presented at said hearing.

Section 5. The subject site is located off of Benedict Canyon Drive, on the east side of Tower Road, just north of a sharp hairpin turn in the street. The site is in the Hillside area of the City. The subject property is a through lot, having frontages on two streets, Tower Road which the site access is provided and San Ysidoro Drive with no access available due to extreme lot slope. The existing site contains one large level pad of about 23,619 square foot area with an existing 9,686 square feet, two-story residence with an attached three car garage.

The residence is supported by a conventional foundation system and utilizes a raised wood floor. The garage has a slab on grade. Concrete decking extends to brick decking which provides walkways and patios in the rear yard east of the dwelling. The northeastern portion of the rear pad is occupied by an existing pool to remain. The rear deck extends from the existing building around the pool which is located at the northeast pad corner. The existing deck also extends southerly along the east of residence wall where a lawn and planters exist. The eastern of the pad is adjoined by a slope

which descends to San Ysidero Drive Below. The slope areas are covered by a moderate growth of ivy, natural weeds and low shrubs. Walls and hedges enclose the front yards of the surrounding properties along Tower Road. The abutting property to the north includes a circular driveway with a fence enclosure that is set back about five feet from the front property line, including mature planting in front of the fence.

Section 6. In accordance with Beverly Hills Municipal Code Section 10-3-2516(C), when reviewing the application for the Hillside R-1 Permit to allow walls or fences located in the front yard setback to be a maximum height of six (6) feet, the Planning Commission considers whether the wall would have a substantial adverse impact on the:

- 1) Scale and massing of the streetscape; or
- 2) Garden Quality of the City.

Section 7. Based upon the evidence presented in the record on this matter, including the staff report and oral and written testimony, the Planning Commission hereby finds, as follows, with respect to the Hillside R-1 Permit:

7.1 The proposed walls and pilaster will provide security and unify the streetscape on Tower Road. The streetscape character along Tower Road Drive includes solid walls and gates, open to view fences, hedges and mature landscaping in the front yard. Due to the existence of other walls, fences and gates and hedges with the front yards of adjacent properties, the proposed pilasters and fence will unify the streetscape character along Tower Road and will not create a substantial adverse impact on scale and mass. In order to accommodate vehicle safety, the driveway gates (existing) are setback from the front lot line to provide an off-street space for waiting cars. Therefore, due to its location and design, the proposed walls and fences with the front setback area are consistent with the

character of the streetscape along Tower Road and will not create a substantial adverse impact on scale and mass. As conditioned, the proposed landscape plan would contribute to the garden quality objectives of the City. The new landscaping would add more color and greenery to an existing area along Tower Road and San Ysidro Road. Therefore, the proposal will not result in any substantial adverse impact to the garden quality of the City, but will improve the appearance of the property.

Section 8. Pursuant to Beverly Hills Municipal Code Section 10-3-3700, the Planning Commission may grant a variance if, on the basis of special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, the strict application of the provisions of the zoning code is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification. Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorizes shall not constitute a grant of special privileges in the vicinity and zone in which the subject property is situated.

Section 9. Based upon the evidence presented in the record on this matter, the Planning Commission hereby denies the requested variance for construction of a series of retaining walls over seven-feet in height. The Planning Commission finds that there are no special circumstances applicable to the subject property, such as size, shape, surroundings, location or topography which, when strictly applying the provision of the zoning ordinance, would deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification. Adjacent properties are similar to the subject property in that they have substantial sloped areas and are also classified as through lots with lot frontages on two streets. Although the Commission noted that the zoning code contains provisions to allow measures to remediate an existing slope instability

issues, in this case no evidence has been presented that any such instability exists. Further, and denial of the requested variance does not deprive the property owner of any privilege enjoyed by other property owners in the vicinity because the property accommodates a large residence, garage, driveway area, flat lawn areas, and a swimming pool, similar to what other lots in the vicinity and in the zone enjoy.

Section 10. Based on the foregoing, the Planning Commission hereby grants a Hillside R-1 Permit for the, subject to the following conditions:

1. The project shall comply with the plans submitted and reviewed by the Planning Commission at its meeting of November 20, 2008 in regards to the walls and pilasters within the front setback area.
2. The proposed landscaped area shall be irrigated by automatic sprinkler or drip irrigation systems.
3. A drainage plan shall be submitted prior to issuance of any grading or building permits.
4. All construction related parking shall occur on-site and shall not be permitted on residential streets.
5. All hauling activities shall be in accordance with a hauling plan which shall be submitted for review and approval by the Department of Public Works and Transportation, Engineering Division, prior to the issuance of any grading or building permit.
6. All trees to be retained on the property shall be adequately protected during grading and construction activities and maintained in good health.
7. All exterior lighting fixtures must be down light type fixtures.

8. This resolution approving a Hillside R-1 Permit shall not become effective until the owner of the Project site records a covenant, satisfactory in form and content to the City Attorney, accepting the conditions of approval set forth in this resolution. The covenant shall include a copy of this resolution as an exhibit. The Applicant shall deliver the executed covenant to the Department of Planning and Community Development **within 60 days** of the Planning Commission decision. At the time that the Applicant delivers the covenant to the City, the Applicant shall also provide the City with all fees necessary to record the document with the County Recorder. If the Applicant fails to deliver the executed covenant within the required 60 days, this resolution approving the Approvals shall be **null and void and of no further effect**. Notwithstanding the foregoing, the Director of Planning and Community Development may, upon a request by the Applicant, grant a waiver from the 60-day time limit if, at the time of the request, the Director determines that there have been no substantial changes to any federal, state or local law that will affect the City's ability to approve a Variance and Hillside R-1 Permit.

10. A cash deposit of \$2,500 shall be deposited with the City to ensure compliance with the condition of this Resolution regarding construction activities. Such deposit shall be returned to the Applicant upon completion of all construction activities and in the event that no more than two violations of such conditions or the Beverly Hill Municipal Code occur. In the event that three or more such violation occur, the City may: (a) retain the deposit to cover costs of enforcement; (b) notify the Applicant that the Applicant may request a hearing before the City within ten days of the notice; and (c) issue a stop work notice until such time that an additional deposit of \$5,000.00 is deposited with the City to cover the cost associated with subsequent violations. Work shall not resume for a minimum of two day after the day that the additional deposit is received by the City. If

the Applicant timely request a hearing, said deposit will not be forfeited until after such time that the Applicant has been provided an opportunity to appear and offer evidence to the City, and the City determines that substantial evidence supports forfeiture. Any subsequent violation will trigger forfeiture of the additional deposit, the issuance of a stop work notice, and the deposit of an addition \$5,000.00, pursuant to the procedure set forth herein above. All amounts deposited with the City shall be deposited in an interest bearing account. The Applicant shall be reimbursed all interest accruing on monies deposited.

Requirements of this condition are in addition to any other remedy that the City may have in law or equity and shall not be the sole remedy of the City in the event of a violation of the conditions of the Resolution or the Beverly Hills Municipal Code.

Section 11. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted: December 11, 2008

Kathy Reims
Chair of the Planning Commission
of the City of Beverly Hills

ATTEST:

Secretary

Approved as to form:

Approved as to content:

David M. Snow
Assistant City Attorney

Jonathan Lait, AICP
City Planner