

CITY OF BEVERLY HILLS

Design Review Commission

SPECIAL MEETING MINUTES

455 N. Rexford Drive, Beverly Hills, CA 90210
City Council Chambers Meeting Room 280-B

Thursday, January 21, 2010

3:00 P.M.

OPEN MEETING

ROLL CALL AT 3:10 PM

Commissioners Present: M. Weiss, G. Gilbar, H. Szabo, and Vice Chair S. Strauss

Commissioners Absent: None

Commissioners Recused: Chair H. Gabbay

Staff Present: D. Jerex, I. Nguyen, R. Gohlich, and C. Bond (Community Development) and D. Snow (Assistant City Attorney)

APPROVAL OF AGENDA

COMMUNICATIONS FROM THE AUDIENCE: None

DISCUSSION ITEMS

- 1. 264 South Rodeo Drive (PL 093 2605)**
Request for an R-1 Design Review Permit to allow fence and wall revisions to a previously approved two-story single-family residence, located in the Central Area of the City, south of Santa Monica Boulevard at **264 South Rodeo Drive**.

The appeal of the Commission's conditional approval of this project has been called up for review by the City Council. The purpose of this Special Meeting is to discuss how the Commission will organize its presentation to the Council on this matter.

Senior Planner Jerex presented the case and introduced Assistant City Attorney Snow. She explained that he was there to assist in explaining procedures; how the discussion should be handled; and how to proceed with the item on the City Council Agenda.

Assistant City Attorney Snow said the key thing was that the Commission had made a decision and that decision had been memorialized in the resolution which had already

been adopted. He explained there were certain limitations on reconsiderations of decisions and that this was not the purpose of the meeting. The purpose of the meeting was to talk about the decision that was made and how that would be presented to the City Council. It should not be viewed as an opportunity to reconsider what the Commission has already done, but instead how to present things to the City Council. The Council will be considering this item when it is called up in a "de novo hearing"; which means they can consider anything and everything.

Commissioner Gilbar clarified that for him there were two issues in terms of a de novo hearing:

1) The case itself and the merits of the case which was an explanation of how the DRC came about the decision and what the legal underpinnings of that decision were; and 2) to raise the whole issue of process. He thought that normally the purpose of a de novo hearing was that the issue is very controversial and therefore the political decisions may override the technical. The City is set up with Commissions and the idea for each Commission is to insulate the City Council from making every decision within the City. He felt that instead of doing this as a de novo hearing it should follow the normal appeal process, which would be to have the item heard by the Planning Commission. There was no urgency, people were not being kept out of their house, and there was no reason to expedite the hearing. There is no compelling, overriding reason that it should go directly to Council.

Vice Chair Strauss inquired what would the process be once the decision had been made by Council?

Assistant City Attorney Snow advised that City Council had already made the decision to call up the item for review. From a legal perspective "de novo" simply means it is a fresh hearing and any new evidence could be considered.

Commissioner Szabo asked which criteria the City uses in determining whether a case would be brought up before the City Council de novo as opposed to the normal appeal process.

Assistant City Attorney Snow responded stating that the City Council could call up any case at its own discretion; there were no criteria. If the Council thinks it is important enough that it warrants consideration; it can be called up by majority vote of the Council.

Commissioner Weiss stated she thought there was some concern about the cost to bring it to the Planning Commission – approximately \$3,600 or \$4,600 and that if it went to the Council there would be no cost to the applicant, even if the issue gets remanded to the Planning Commission for review.

Assistant City Attorney Snow stated that a typical appeal in this City is a de novo review. There are specific provisions regarding this Commission's decisions and the ability to just stake out a small part of that decision for consideration on appeal. A Planning Commission decision that is appealed to the City Council is de novo as a matter of course. He believed that the same was true of the Architectural Commission, but they do not have the limiting language that is available in the Design Review Commission decision. The Council call-up procedure versus following the typical "file your appeal application with the City" process;

the distinction is that there is a lot of discretion on the Council's part. If they think something warrants going directly to the Council, then they can call that up. There are no specific criteria that have to be met.

Commissioner Szabo stated that the Commission was asking for an opportunity to be heard so people can hear the facts -- specifically without hearsay, gossip or rumors. The decision can then be made on the merits.

Senior Planner Jerex passed out the two copies of the confidential City Attorney memorandums. One is dated May 1st, 2009 and the other October, 29, 2009.

For informational purposes, Commissioner Szabo divulged that he had called Assistant City Attorney Snow a few days ago as he thought it would be helpful for the City Council to have these memos which explained it is within the purview of the Design Review Commission to consider fences and landscaping in connection with a new development.

Assistant City Attorney Snow confirmed that his office would be sending copies of both memos to the City Council. He added that there would be a cover memo saying that these were memos prepared to assist the commission in reaching its decision.

Senior Planner Jerex explained that there were two separately scheduled meetings before the City Council regarding DRC issues. One meeting on March 2nd has a placeholder waiting to see if all the parties can make it. She explained that date was the next available space on the Agenda. The other thing that is tentatively scheduled for February 16th is the study session to discuss the merging of the Architectural and Design Review Commissions. She noted that at the January 12th meeting there was an item on the Agenda regarding all City Commissioners whose terms were ending in 2010. That is something routinely done by the City Clerk. As part of that discussion, the Mayor mentioned that they were considering merging the two commissions. This was part of the Matrix Study (the audit of the Community Development Department conducted in 2006).

Commissioner Szabo inquired when the City Council hearing on the issue of the commission restructuring would take place. The response was February 16th. He asked if the DRC would have an opportunity to talk about addressing the Council on the restructuring issue. Staff responded that it could be placed on the next DRC Agenda for discussion.

Vice Chair Strauss asked Assistant City Attorney Snow, "Does the fact that the approval of the fence was within code have any effect on the DRC's decision? The fence was approved per code."

Assistant City Attorney Snow responded that the DRC still has discretion over a fence height even though it is allowed by right under the code. When you are seeking discretionary review, the DRC has the authority to impose conditions in order to make the required findings. The Commission could say that a fence height needs to be lower than what is allowed per code so that the findings can be made.

Vice Chair Strauss inquired if there was anything else to add as far as the case is concerned.

Commissioner Weiss added that the DRC followed the 5 code criteria in making its decision. It was a nice agreeable discussion, a mutually agreeable decision; no anger; no mention of appeal. That never happened. She felt it was really important to explain 1) That the fence was reviewed based on the Code criteria, based on compatibility with the surrounding neighborhood; and based on the fact that it was a mutually agreeable decision; and, 2) No one (the applicant) ever came back, as they are allowed to, and asked to make a change later and to explain why they wanted to make a change.

Commissioner Gilbar asked Senior Planner Jerex to obtain the number of cases the Commission has handled to date.

Commissioner Gilbar asked if Assistant City Attorney Snow would be addressing the whole issue regarding the building department approval/permit issuance and code; and the DRC's discretion within the code.

The Assistant City Attorney responded that the information would be provided to the Council.

COMMUNICATIONS FROM THE COMMISSION

There were no communications from the audience.

ORAL COMMUNICATIONS

None

THIS MEETING WAS ADJOURNED AT 4:12 P.M.

PASSED AND APPROVED THIS 6TH DAY OF MAY 2010.

Susan Strauss, Chair

Submitted by Donna Jerex, Secretary