



Board Agenda Item 13

DATE: August 7, 2018

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director
Department of Public Works and Planning

SUBJECT: Variance Application No. 4039 (Appellant/Applicant: Iulia Vorobchevici)

RECOMMENDED ACTION(S):

Consider appeal of Condition of Approval Nos. 2 and 3 of the Planning Commission's approval of Variance Application No. 4039, requiring certification be provided that a segment of Reno Road has been improved to not less than the A-15 County Road Improvement standard across the frontage of proposed Parcel 1 and Parcel 2 to Auberry Road, and the requirement to provide for ongoing maintenance of this road segment.

The project site is located on the south side of E. Reno Road, approximately 700 feet west of Auberry Road, approximately one mile northeast of the nearest city limits of the City of Fresno (12789 Auberry Road) (APN 580-010-24).

This item comes before your Board on appeal of the Planning Commission's approval of the subject application (7 to 0, with two Commissioners absent) at its February 15, 2018 hearing. The Appellant/Applicant is appealing Condition of Approval Nos. 2 and 3, requiring that a segment of Reno Road across the proposed parcel frontages be improved to an A-15 Standard up to Auberry Road, and that the developer provide for ongoing maintenance of this road segment prior to approval of a subsequent mapping application.

The Appellant/Applicant provided an updated letter to the Department of Public Works and Planning dated June 6, 2018 clarifying the appeal of both conditions. In an April 23, 2018 letter, the Appellant/Applicant requested removal of both conditions; however, the June 6, 2018 letter requests modification to Condition of Approval No. 3 to remove or modify any requirements to pay deposits and fees associated with annexation to County Service Area 35, Zone AJ. A copy of both letters are included in Attachment A.

In the appeal of the conditions imposed by the Planning Commission, Department staff notes that Zoning Ordinance, section 877-C(a) requires your Board to determine simply whether the conditions under appeal shall be imposed or not imposed. A copy of the Planning Commission's action is included as Attachment B and a copy of the February 15, 2018 Planning Commission Staff Report is included as Attachment C. This item pertains to a location in District 5.

ALTERNATIVE ACTION(S):

If your Board determines that the conditions under appeal are to be imposed for Variance Application No. 4039, with all Conditions of Approval as approved by the Planning Commission, a motion to deny the appeal

and uphold the Planning Commission's decision, including the road improvement and maintenance conditions for Reno Road, would be appropriate.

FISCAL IMPACT:

Pursuant to the County's Master Schedule of Fees, the Appellant/Applicant has paid \$6,673 in land use processing fees to the County for the processing of the Variance request. The Appellant/Applicant also paid \$508 in fees to appeal the Planning Commission's approval.

DISCUSSION:

An appeal to the Planning Commission's February 15, 2018 approval of Variance Application No. 4039 was filed by the Appellant/Applicant on February 16, 2018. The appeal stated that the Appellant/Applicant was appealing the Conditions of Approval for the Variance, but did not elaborate as to which of the three conditions were being appealed.

The subject parcel is generally square in shape and the proposed new property line runs north to south through the center of the parcel. There are currently two residential structures on the property. With the division of the property, each parcel will have one residence.

At its hearing of February 15, 2018, the Planning Commission considered Department staff's presentation and testimony from the Appellant/Applicant's representative who stated his disagreement with staff's recommendation for denial, reaffirming his belief the findings could be made, and that the map presented of the area does not accurately depict its residential density. The Appellant/Applicant was present at the hearing, but did not speak to the Commission regarding her Variance request. No one spoke in opposition to the request; however, one letter of opposition expressing concerns about increasing residential density in a water-short area was received by staff and distributed to the Commission at the hearing (Attachment D). After the Planning Commission considered public testimony, a motion was made to approve the application and to make the required Variance Findings.

Subsequent to the Appellant/Applicant appealing the subject conditions of approval, staff received additional correspondence related to this appeal, included as Attachment E. The correspondence includes a letter of clarification from the Appellant/Applicant, a letter of support, five letters of opposition from neighboring property owners, and a letter from the Applicant's engineer stating the position that Reno Road does not need additional substantial improvement.

The Reno Road neighborhood has been the subject of other variance requests including parcels adjacent to the Appellant/Applicant's property. For additional information pages three through six of the Planning Commission Staff Report dated February 15, 2018 includes discussion of the history regarding variances approved within the vicinity. For Variance Application No. 3932 (immediately to the west of the Appellant/Applicant's property), approved by the Planning Commission in 2013, the subsequent Parcel Map was conditioned to improve Reno Road to an A-15 Standard from the property frontage to Auberry Road. In November 2017, Variance Application No. 4025 (immediately east of the Appellant/Applicant's property) was filed and ultimately approved by your Board on appeal. That variance was also conditioned to improve Reno Road to the A-15 Standard from the property frontage to Auberry Road and provide for maintenance of the road.

Reno Road is a public road maintained through County Service Area (CSA) 35, Zone AJ. At a February 2018 community meeting, neighborhood property owners shared concerns about the deteriorating condition of Reno Road with Department staff. Neither the Appellant/Applicant's property nor the two adjacent properties have annexed to CSA 35, Zone AJ; however, because those properties receive a special benefit from access to Reno Road, the County, through CSA 35, Zone AJ, has included those properties in a special benefit assessment for road maintenance. The assessment is collected on the property tax bills for

those properties. If approved, Appellant/Applicant's Variance and subsequent parcel split will cause the special benefit assessment to become ineffective on her property, and could cause CSA 35, Zone AJ to become underfunded. Appellant/Applicant's annexation into CSA 35, Zone AJ is the most efficient and administratively feasible method to ensure Appellant/Applicant continues to provide for maintenance of the road.

Appellant/Applicant's annexation into CSA 35, Zone AJ requires a proceeding under Proposition 218. Part of that proceeding includes the preparation of an assessment engineer's report to substantiate the special benefit assessment as a whole, and to account for Appellant/Applicant's creation of an additional lot as her intended use in Variance Application No. 4039. Specific costs to the Appellant/Applicant from the County for annexation include \$4,242 for annexation into a zone of benefit for CSA 35, and a \$3,000 deposit as part of the Reimbursement Agreement for Department staff costs associated with annexation review.

As noted above, following the filing of the land use appeal, Department staff received a copy of a letter previously submitted by the Applicant's engineer indicating that the condition of Reno Road was within the standard for rural road use and did not merit significant reconstructive work. This letter, previously reviewed by staff, has been included as the last letter in Attachment E. Staff noted that the letter lacked key information for an adequate staff evaluation of the road condition statement. Information lacking included right-of-way dedication in compliance with the County private road standard; evidence that minimum pavement width was installed in compliance with the County private road standard; and, whether adequate soils compaction had been achieved and the structural section constructed again in compliance with the County private road standard. Further, recent staff inspection of Reno Road and its existing condition do not support the findings of this letter.

The Appellant/Applicant's requirement to improve Reno Road and provide for its ongoing maintenance as Conditions of Approval (which other applicants within the same area have been subject to) can be a shared cost amongst all the applicants that are pending annexation to the CSA. Department staff supports the road improvement and maintenance conditions and recommends your Board deny the Appellant/Applicant's appeal, and uphold the Planning Commission's approval of Variance Application No. 4039 with no modification to the conditions.

1. If your Board determines that the conditions under appeal should be imposed for Variance Application No. 4039, with inclusion of all other all Conditions of Approval as approved by the Planning Commission, a motion to deny the appeal and uphold the Planning Commission's decision, including the Reno Road improvement and maintenance conditions, would be appropriate.
2. If your Board determines that the conditions under appeal should not be imposed, a motion to modify the Conditions of Approval for Variance No. 4039, deleting Condition of Approval No. 2 related to road improvements, and deleting or modifying Condition of Approval No. 3 related to road maintenance, would be appropriate.

If your Board approves Variance Application No. 4039, with modified Conditions of Approval removing Condition of Approval No. 2 and removing or modifying Condition of Approval No. 3, Department staff recommends inclusion of an additional Condition of Approval requiring the following:

- The Appellant/Applicant shall enter into an agreement indemnifying the County for all legal costs associated with its approval of Variance Application No. 4039.

REFERENCE MATERIAL:

BAI #9, November 14, 2017
BAI #10, June 3, 2014

ATTACHMENTS INCLUDED AND/OR ON FILE:

Attachments A - E

CAO ANALYST:

Sonia M. De La Rosa