



City of Huntington Beach Planning and Building Department
STAFF REPORT

TO: Planning Commission
FROM: Scott Hess, AICP, Director of Planning and Building
BY: Tess Nguyen, Associate Planner *TN*
DATE: August 12, 2014

SUBJECT: VARIANCE NO. 14-001 – APPEAL (Gupta Residence Addition)

APPELLANT: Norman and Tsarina Branyan, 19631 Dearborne Circle, Huntington Beach CA 92648

APPLICANT: John Stutzel, 3130 Airway Avenue, Costa Mesa CA 92626

PROPERTY

OWNER: Shalesh and Indu Gupta, 19636 Village Oaks Circle, Huntington Beach CA 92648

LOCATION: 19636 Village Oaks Circle, 92648 (east side of Village Oaks Circle, south of Dewberry Drive)

STATEMENT OF ISSUE:

- ♦ Variance (VAR) No. 14-001 request:
 - Allow a 12 ft. rear yard setback in lieu of a minimum 20 ft. setback required for a 394 sq. ft. first story addition to an existing two-story single family residence. The project also includes a 119 sq. ft. enclosure of an existing second-story balcony at the current setback.

- ♦ Staff's Recommendation:

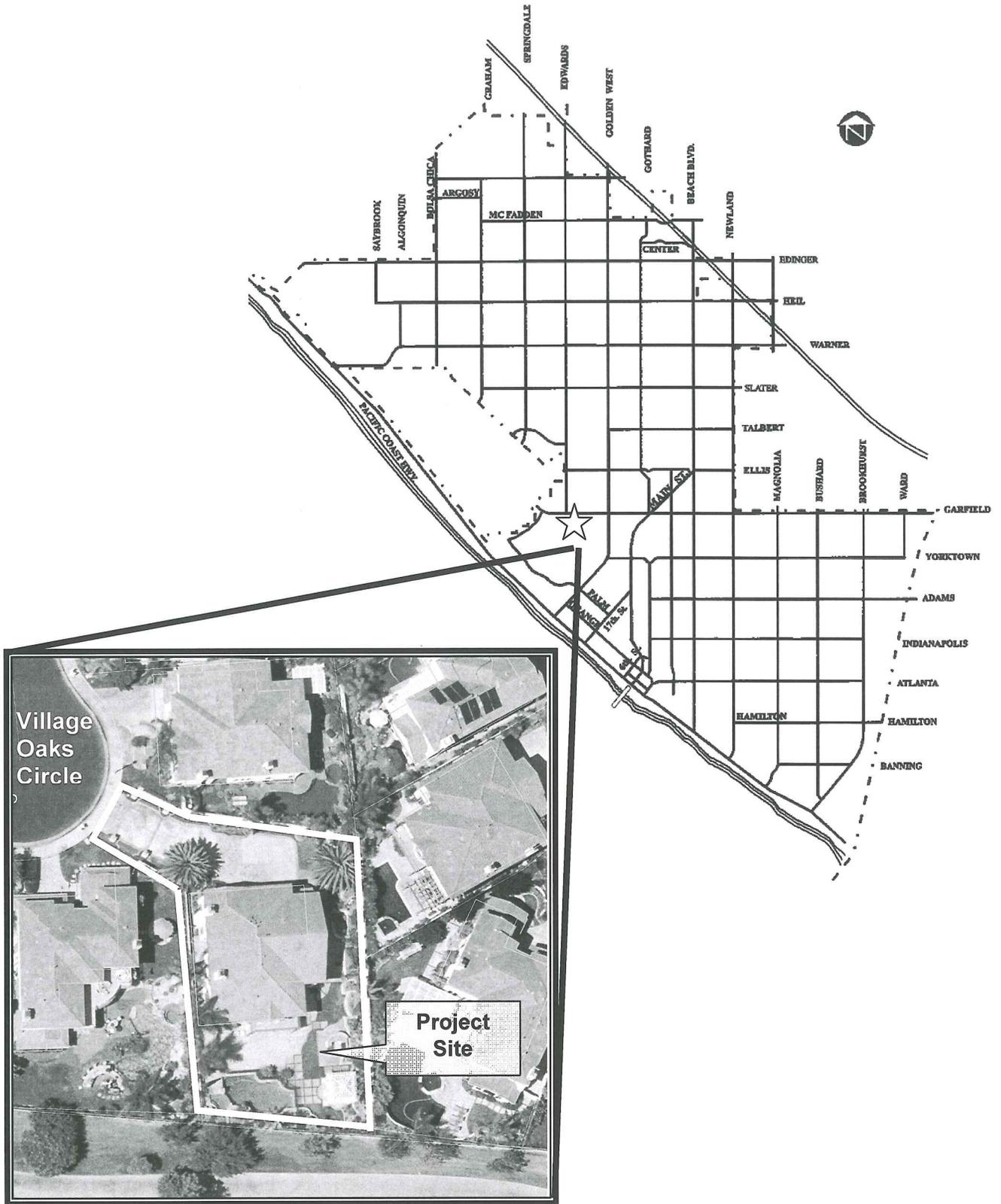
Approve VAR No. 14-001 based upon the following:

 - Does not constitute a grant of special privilege because there were previously approved special permits and variances for rear yard setbacks in the vicinity.
 - Special circumstances including lot shape and location warrant approval of the requested variance.
 - Necessary to preserve the enjoyment of one or more substantial property rights and allow the expansion of the existing residence to be designed in the same manner as the properties with the same lot configuration.
 - Will not be materially detrimental to the public welfare or injurious to properties in the same zone, since the proposed addition will be architecturally consistent with the existing residence.

RECOMMENDATION:

Motion to:

“Approve Variance No. 14-001 with findings and suggested conditions of approval (Attachment No. 1).”



**VICINITY MAP
 VARIANCE NO. 14-001
 (GUPTA RESIDENCE ADDITION—19636 VILLAGE OAKS CIRCLE)**

ALTERNATIVE ACTION(S):

The Planning Commission may take alternative actions such as:

- A. "Continue Variance No. 14-001 and direct staff accordingly."
- B. "Deny Variance No. 14-001 with findings for denial."

PROJECT PROPOSAL:

Variance No. 14-001 represents a request to allow a 12 ft. rear yard setback in lieu of a minimum 20 ft. setback required for a 394 sq. ft. first story addition to an existing two-story single family residence pursuant to Section III.D.2(i) of the Holly-Seacliff Specific Plan (SP9). The project also includes a 119 sq. ft. enclosure of an existing second-story balcony at the current setback.

The proposed 513 sq. ft. addition will be for a new media room and prayer room on the first floor and an extension of a bedroom on the second floor. It will match the colors, materials, and design of the existing structure. The property owner has indicated that the request is necessary to provide additional living space and a prayer room, which plays an important role in the homeowners' lives and is fundamental to their religious beliefs (Attachment No. 4).

The project site consists of a 4,368 sq. ft. two-story single family residence with a three-car garage on an approximately 12,576 sq. ft. lot. The site is surrounded to the north, east, and west by single family residences and to the south by the Seacliff golf course.

Background:

In 1994, the Planning Commission approved the subdivision of 397 residential units at the southwest corner of Garfield Avenue and Goldenwest Street. The project site (19636 Village Oaks Circle) and the appellant's site (19631 Dearborne Circle) were among the 397 residential units in Tract 15082 within the Peninsula in Holly-Seacliff.

In 1997, the Planning Commission approved modifications to previously approved site plans, floor plans, and elevations for 101 lots within the approved subdivision. The modifications included 13 special permits and 12 variances for reduced rear yard setbacks for dwellings and/or balconies. The subject site was allowed to change the building plan from Plan No. 1R to Plan No. 3R and the appellant's site was granted a special permit to construct the dwelling with an 18 ft. rear yard setback in lieu of the minimum 20 ft. required setback.

It should be noted that at the time of original tract construction the subject yard was considered a side yard. Although constructed with a 24 ft. setback, 5 ft. would have been permitted as a side yard. Since then, definitions have become more precise and the subject lot now has two rear yards, each with a minimum 20 ft. setback required.

Zoning Administrator Action:

On January 17, 2014, the applicant filed for a Variance to request a 10 ft. rear yard setback in lieu of a minimum 20 ft. setback required for a 1,012 sq. ft. first and second story addition to an existing two-story single family residence (Attachment No. 5). The proposed variance was considered by the Zoning Administrator at a public hearing on March 19, 2014 (Attachment No. 9). Staff gave an overview presentation on the project and the homeowner and applicant gave verbal testimony in support of the project. Comments at the hearing were received from Norman and Tsarina Branyan (property owners of an adjacent lot—the appellant) who spoke in opposition, citing concerns with blocking the sun from the adjacent property, blocking the view of the ocean and golf course, loss of privacy in backyard and pool, visibility of the proposed building, and a decrease in home value.

The Zoning Administrator approved the request based on the following:

- project site’s location at the terminus of a cul-de-sac
- project site’s unique flag lot configuration with two rear yards
- existence of two similarly shaped lots at the terminus of cul-de-sacs that have less than 20 ft. setback along one rear yard
- allow the opportunity for site design in the same manner as nearby properties with similar lot configuration and under identical zone classification

Appeal:

The Zoning Administrator’s action on Variance No. 14-001 was appealed to the Planning Commission by Norman and Tsarina Branyan for reasons cited in the appeal letter received March 31, 2014 (Attachment No. 6). The Branyans’ reasons for the appeal are listed below:

1. The variance will grant special privilege to the Guptas, allowing a variance that no other homeowner in the Peninsula Community has obtained.
2. The variance will reduce the rear yard setback by 50% that is beyond the City Huntington Beach’s 10% waiver standard.
3. The variance will reduce the minimum distance of the rear of any home to any other home in the Peninsula Community from at least 45 ft. to 30 ft.
4. The variance will impose at least five injuries to the Branyans, including the loss of view of the golf course and ocean, loss of privacy in backyard and pool, blocking the sun from the adjacent property, sight of building 10 ft. from the rear property line, and a decrease in home value.

Subsequent to the appeal, the applicant submitted revised plans and a response to the appeal letter on May 28, 2014 (Attachment No. 7). The overall size and scale of the proposed addition has been reduced. The addition has been decreased by 499 sq. ft. and the proposed setback has been increased by two feet. The revised proposed project is a request to allow a 12 ft. rear yard setback in lieu of a minimum 20 ft. setback required for a 394 sq. ft. first story addition to the existing residence. The 394 sq. ft. first story addition includes a new media and prayer room at a 12 ft. rear yard setback. The 119 sq. ft. second story addition includes the enclosure of an existing balcony at the existing setback of 24 ft. (Attachment No. 4).

ISSUES:

Subject Property and Surrounding Land Use, Zoning and General Plan Designations:

LOCATION	GENERAL PLAN	ZONING	LAND USE
Subject Property:	RL-7-sp (Residential Low Density – 7 du/ac max – Specific Plan Overlay)	SP-9 (Holly Seacliff Specific Plan)—Residential Low Density 2	Single Family Residence
North, East, and West of Subject Property:	RL-7-sp (Residential Low Density – 7 du/ac max – Specific Plan Overlay)	SP-9 (Holly Seacliff Specific Plan)—Residential Low Density 2	Single Family Residences
South of Subject Property:	OS-CR (Open Space – Commercial Recreation)	OS-PR (Open Space – Parks and Recreation Subdistrict)	Huntington Seacliff Golf Course

General Plan Conformance:

The General Plan Land Use Map designation on the subject property is Residential Low Density – 7 du/ac max – Specific Plan Overlay. The proposed project is consistent with the Land Use Element designation on the subject site, including the following policy.

Policy LU 7.1.2: Require that development be designed to account for the unique characteristics of project sites and objectives for community character as appropriate.

The requested variance accounts for the unique configuration of the subject property resulting from the property’s location at the terminus of a cul-de-sac, creating a flag lot with two rear yards. Granting a reduced setback for the proposed addition would allow the subject property the opportunity to be designed in the same manner as nearby properties with similar lot configuration and under the identical zone classification.

Zoning Compliance:

The project is located within the Holly Seacliff Specific Plan (SP9) and complies with the requirements of the Specific Plan except for the requested variance. A list of City Code Requirements of the applicable provisions of the SP9 and the Huntington Beach Zoning and Subdivision Ordinance (HBZSO) and Municipal Code has been provided to the applicant and attached to this report (Attachment No. 8) for informational purposes only.

Urban Design Guidelines Conformance: Not applicable

Environmental Status:

The proposed project is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15301 of the CEQA Guidelines, because the project consists of an addition to an existing structure that will not result in an increase of more than 50 percent of the floor area.

Coastal Status: Not applicable.

Design Review Board: Not applicable

Subdivision Committee: Not applicable.

Other Departments Concerns and Requirements:

The Departments of Public Works, Fire, and Planning and Building have reviewed the project and identified a list of recommended conditions that are incorporated into the suggested conditions of approval as well as code requirements (Attachment No. 8).

Public Notification:

Legal notice was published in the Huntington Beach/Fountain Valley Independent on July 31, 2014, and notices were sent to property owners of record and tenants within a 500 ft. radius of the subject property, individuals/organizations requesting notification (Planning Division's Notification Matrix), applicant, appellant, and interested parties. As of August 4, 2014, no additional communication supporting or opposing the revised request has been received.

Application Processing Dates:

DATE OF COMPLETE APPLICATION:

February 14, 2014

MANDATORY PROCESSING DATE(S):

April 14, 2014 (within 60-days)

Variance No. 14-001 was filed on January 17, 2014 and deemed complete on February 14, 2014. The Zoning Administrator acted on the application on March 19, 2014, in compliance with mandatory processing. Variance No. 14-001 was subsequently appealed on March 31, 2014 (Attachment No. 6).

ANALYSIS:

The primary issues to consider include the required findings for a Variance and the issues raised in the appeal.

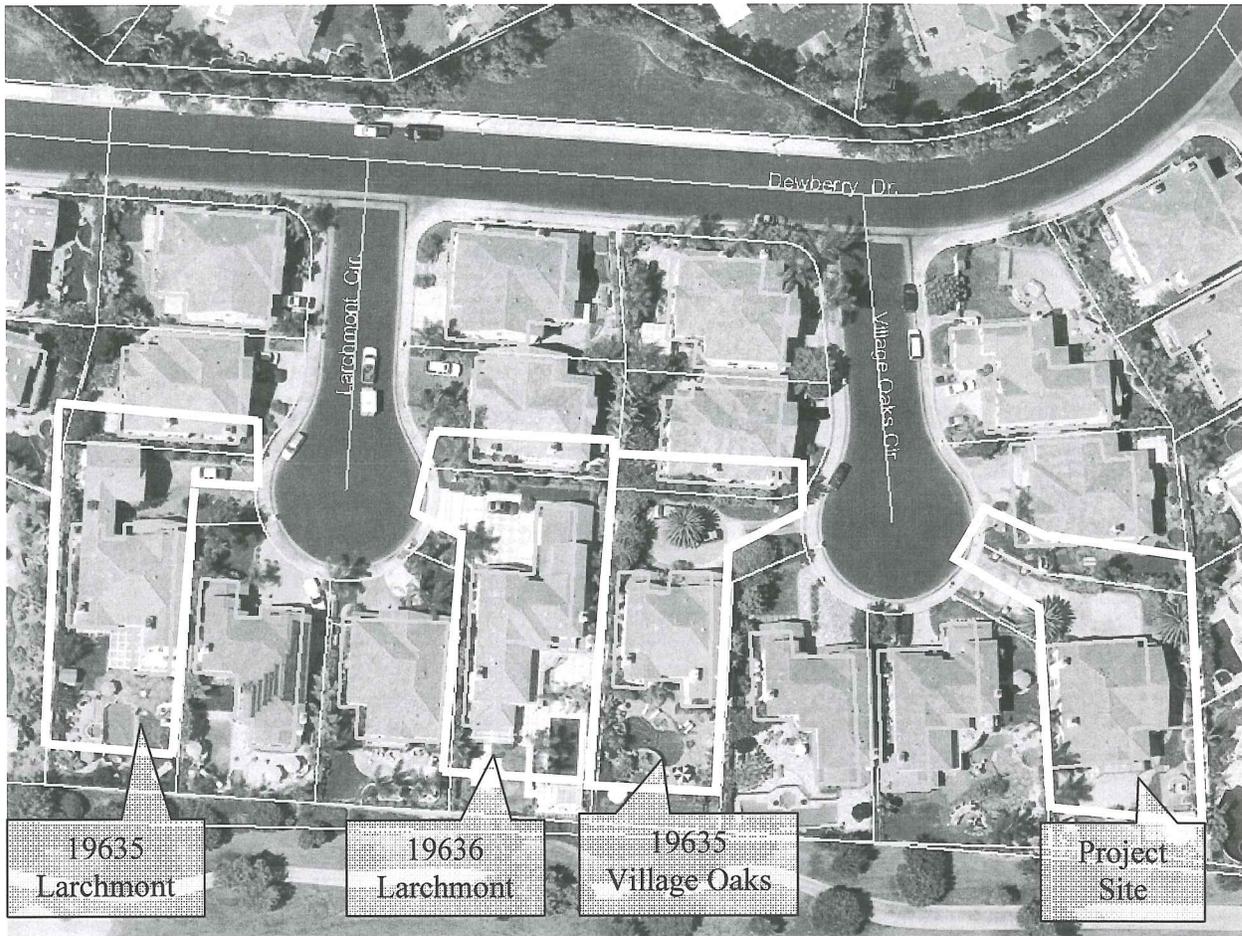
Required Findings

There are four required findings for approval of a variance. Each finding is discussed below.

▪ **Grant of Special Privilege**

The granting of the variance for a 12 ft. rear yard setback in lieu of a 20 ft. setback (8 ft. reduction) for a 394 sq. ft. addition will not constitute a grant of special privilege inconsistent with limitations upon other properties in the vicinity and under an identical zone classification. The subject property is located at the terminus of a cul-de-sac creating a flag lot configuration with two rear yards. There are three similarly shaped lots at the terminus of cul-de-sacs in the vicinity of the project site (see map below), which have residences with less than 20 ft. setback along one rear yard. The setbacks are as follows:

<i>Address</i>	<i>Setback</i>
19636 Village Oaks Circle (project site)	12 ft. (proposed)
19635 Village Oaks Circle	6.36 ft. approx.
19636 Larchmont Circle	15.84 ft. approx.
19635 Larchmont Circle	10.56 ft. approx.

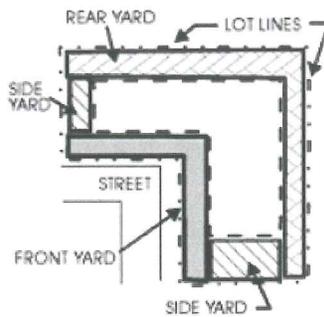


As noted in the Background section above, these flag lots were likely considered to have only one rear yard, adjacent to the golf course. The minimum side yard setback is 5 ft. Other homeowners in the Peninsula Community have received special permits and variances for various setback reductions. In 1997, the Planning Commission approved modifications (13 special permits and 12 variances) for reduced rear setbacks. The appellant's property at 19631 Dearborne Circle received a special permit for an 18 ft. rear setback for the dwelling. Below are the lists of special permits and variances:

	<i>Rear Setback</i>	<i>Address</i>
<i>Special Permits</i>	18 ft. balcony	6611 Pageant Drive 6716 Montford Drive 19601 Summer Grove Lane 6551 Havenwood Circle 19536 Elderwood Circle
	18 ft. dwelling	19631 Dearborne Circle 6675 Pageant Drive 19571 Summer Grove Lane 19506 Elderwood Circle
	19 ft. balcony	19645 Dearborne Circle
	19 ft. dwelling	19632 Larchmont Circle 19631 Larchmont Circle 6491 Havenwood Circle
<i>Variances</i>	14 ft. balcony	6675 Pageant Drive
	15 ft. balcony	6651 Pageant Drive 6488 Havenwood Circle
	15 ft. dwelling	6562 Radcliff Circle 6488 Havenwood Circle
	16 ft. balcony	6661 Pageant Drive 6685 Pageant Drive 19516 Elderwood Circle
	17 ft. balcony	19636 Dearborne Circle 19632 Village Oaks Circle 6706 Montford Drive
	17 ft. dwelling	6716 Montford Drive

▪ Special Circumstances

The subject site is located at the terminus of a cul-de-sac, which creates a narrow front property line resulting in a flag lot configuration with two rear yards. Therefore, because of special circumstances applicable to the subject property, including shape and location, the strict application of the zoning ordinance is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification. The shape of the lot and the two rear yards deprive the property owner of the ability to construct an addition that meets the rear yard setback on the side of the house. Below is a graphic showing the different required yard areas for an odd-shaped lot from HBZSO Chapter 203, Definitions.



- Preservation of Property Rights

The granting of a variance is necessary to preserve the enjoyment of one or more substantial property rights because it will allow the expansion of existing residence. Due to the odd shape of the lot created by the property's location at the terminus of a cul-de-sac, the resulting flag lot has two rear yards, which is similar to nearby properties. The proposed addition will allow the subject property to be designed in the same manner as properties with the similar flag lot configuration. The property will have a site coverage of 25.5 percent with the addition which is still far below the intensity that the code allows the property owner to construct.

- Impact to Public Welfare

The granting of the variance will not be materially detrimental to the public welfare or injurious to property in the same zone classification. The proposed addition is designed to match the architectural style and exterior finishes of the existing residence. The proposed addition has been approved by the Peninsula HOA (Attachment No. 10). In addition, adequate building separation will be provided between the proposed addition and the single-family dwelling abutting the rear of the lot. No detrimental impacts to surrounding properties are anticipated.

Appeal Issues

The appellant asserts that no other homeowners have received reduced setbacks within the community. Please refer to the discussion under Grant of Special Privilege for a list of approved setback reductions throughout the tract.

The appellant's appeal letter states that the zoning code does not allow more than a 10% reduction deviation. However, the Director can act on any waiver of development standards up to a 10% deviation. Variance requests for more than a 10% deviation are subject to review by the Zoning Administrator or Planning Commission, depending on the issue.

The appellant states that all properties have a minimum of 45 ft. between structures. However, due to the overall tract layout, several odd-shaped lots, and previously approved setbacks reductions, the minimum distance between two homes in the rear yard may be at 35 ft. and would be 10 ft. in a side yard to side yard configuration. It should be noted that the SP9 development standards do not include a minimum distance between residential structures on separate parcels.

Finally, the appellant cites several reasons for objecting to the proposed variance, including loss of view, privacy and sun, visibility of the room addition, and decrease in property value. The proposed addition

meets all other minimum development standards relating to maximum height, site coverage, other setbacks, and parking. Out of a total rear property length of approximately 139 ft., the proposed addition is approximately 37 ft., or 27% of the total property line length. The addition will be architecturally compatible with the existing residential design and consistent with the neighborhood.

SUMMARY:

Staff recommends approval of Variance No. 14-001 based on the following:

- The granting of the variance will not constitute a grant of special privilege because there were previously approved variances for rear yard setbacks in the vicinity.
- The irregular lot configuration of the project site (flag lot with two rear yards) as a result of its location at the terminus of a cul-de-sac impedes on the property owner's ability to construct an addition on the side of the house and to enjoy the same privileges by similar properties in the vicinity and under identical zone classification.
- The granting of the variance is necessary to preserve the enjoyment of one or more substantial property rights because it will allow the expansion of the existing residence. The proposed addition will allow the subject property to be designed in the same manner as the property with the similar flag lot configuration.
- The proposed addition will be designed to match the architectural style and exterior finishes of the existing residence. Adequate building separation will be provided between the proposed addition and the single-family residence abutting the rear of the lot.

ATTACHMENTS:

1. Suggested Findings and Conditions of Approval for Variance No. 14-001
2. Site Plan, Floor Plans and Elevations received and dated May 28, 2014 (Revised Plans Submitted After Appeal)
3. Site Plan, Floor Plans and Elevations received and dated January 17, 2014 (Original Request Approved by the Zoning Administrator)
4. Project Narrative received and dated June 12, 2014 and June 24, 2014
5. Project Narrative received and dated January 17, 2014
6. Appeal Letter received and dated March 31, 2014
7. Response to the Appeal received and dated May 28, 2014
8. Code Requirements Letter dated June 23, 2014 (for informational purposes only)
9. Zoning Administrator Notice of Action dated March 20, 2014
10. Peninsula HOA Approval received June 16, 2014

SH:JJ:tn:kd

ATTACHMENT NO. 1

SUGGESTED FINDINGS AND CONDITIONS OF APPROVAL

VARIANCE NO. 14-001

SUGGESTED FINDINGS FOR PROJECTS EXEMPT FROM CEQA:

The Planning Commission finds that the project will not have any significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15301 of the CEQA Guidelines, because the project consists of an addition to an existing structure that will not result in an increase of more than 50 percent of the floor area.

SUGGESTED FINDINGS FOR APPROVAL – VARIANCE NO. 14-001:

1. The granting of Variance No. 14-001 for a 12 ft. rear yard setback in lieu of a 20 ft. setback (8 ft. reduction) for a 394 sq. ft. first story addition to an existing two-story single family residence will not constitute a grant of special privilege inconsistent with limitations upon other properties in the vicinity and under an identical zone classification. The subject property is located at the terminus of a cul-de-sac creating a flag lot configuration with two rear yards. There are three similarly shaped lots at the terminus of cul-de-sacs, which have residences with less than 20 ft. setback along one rear yard. The setback at 19635 Village Oaks Circle is 6.36 ft., the setback at 19635 Larchmont Circle is 10.56 ft., and the setback at 19636 Larchmont is 15.86 ft. In addition, variances have been granted for reduced rear yard setbacks for properties in the immediate vicinity and under the identical zone classification. The proposed setback of 12 ft. along one rear yard for an addition at the subject site is consistent with other properties in the vicinity and under an identical zone classification.
2. Because of special circumstances applicable to the subject property, including shape and location, the strict application of the zoning ordinance is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification. The subject site is located at the terminus of a cul-de-sac, which creates a narrow front property line resulting in a flag lot configuration with two rear yards. The shape of the lot and the two rear yards impede the property owner's ability to construct an addition that meets the rear yard setback on the side of the house and to enjoy the same privileges by similar properties in the vicinity and under identical zone classification.
3. The granting of a variance is necessary to preserve the enjoyment of one or more substantial property rights because it will allow the addition to occur which will afford the property owner an increased living area. Due to the odd shape of the lot created by the property's location at the terminus of a cul-de-sac, the resulting flag lot has two rear yards, which is similar to nearby properties. The proposed addition will allow the subject property to be designed in the same manner as the property with the similar flag lot configuration. The property will have a site coverage of 25.5 percent with the addition which is still far below the intensity that the code allows the property owner to construct.
4. The granting of the variance will not be materially detrimental to the public welfare or injurious to property in the same zone classification. The proposed addition is designed to match the architectural style and exterior finishes of the existing residence. The proposed addition has been approved by the

Peninsula HOA. In addition, adequate building separation will be provided between the proposed addition and the single-family dwelling abutting the rear of the lot. No detrimental impacts to surrounding properties are anticipated.

5. The granting of the variance will not adversely affect the General Plan. It is consistent with the Land Use Element designation of RL-7-sp (Residential Low Density–7 units/acre–Specific Plan) on the subject property, including the following policy.

LU 7.1.2: Require that development be designed to account for the unique characteristics of project sites and objectives for community character as appropriate.

The requested variance accounts for the unique configuration of the subject property resulting from the property's location at the terminus of a cul-de-sac, creating a flag lot with two rear yards. Granting a reduced setback for the proposed addition would allow the subject property the opportunity to be designed in the same manner as nearby properties with similar lot configuration and under the identical zone classification.

SUGGESTED CONDITIONS OF APPROVAL – VARIANCE NO. 14-001:

1. The site plan, floor plans, and elevations received and dated May 28, 2014 shall be the conceptually approved design.
2. Prior to submittal for building permits, zoning entitlement conditions of approval, code requirements identified herein and code requirements identified in separately transmitted memorandum from the Departments of Building & Planning, Fire and Public Works shall be printed verbatim on one of the first three pages of all the working drawing sets used for issuance of building permits (architectural, structural, electrical, mechanical and plumbing) and shall be referenced in the sheet index. The minimum font size utilized for printed text shall be 12 point.
3. VAR No. 14-001 shall become null and void unless exercised within two years of the date of final approval or such extension of time as may be granted by the Director pursuant to a written request submitted to the Planning and Building Department a minimum 30 days prior to the expiration date.
4. The applicant and/or applicant's representative shall be responsible for ensuring the accuracy of all plans and information submitted to the City for review and approval.
5. The Development Services Departments and divisions (Building Safety, Fire, Planning, and Public Works) shall be responsible for ensuring compliance with all applicable code requirements and conditions of approval. The Director of Planning and Building may approve minor amendments to plans and/or conditions of approval as appropriate based on changed circumstances, new information or other relevant factors. Any proposed plan/project revisions shall be called out on the plan sets submitted for building permits. Permits shall not be issued until the Development Services Departments have reviewed and approved the proposed changes for conformance with the intent of the Planning Commission's action. If the proposed changes are of a substantial nature, an amendment to the original entitlement reviewed by the Planning Commission may be required pursuant to the provisions of HBZSO Section 241.18.

6. Incorporating sustainable or “green” building practices into the design of the proposed structures and associated site improvements is highly encouraged. Sustainable building practices may include (but are not limited to) those recommended by the U.S. Green Building Council’s Leadership in Energy and Environmental Design (LEED) Program certification (<http://www.usgbc.org/DisplayPage.aspx?CategoryID=19>) or Build It Green’s Green Building Guidelines and Rating Systems (<http://www.builditgreen.org/green-building-guidelines-rating>).

INDEMNIFICATION AND HOLD HARMLESS CONDITION:

The owner of the property which is the subject of this project and the project applicant if different from the property owner, and each of their heirs, successors and assigns, shall defend, indemnify and hold harmless the City of Huntington Beach and its agents, officers, and employees from any claim, action or proceedings, liability cost, including attorney’s fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, including but not limited to any approval granted by the City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the applicant of any claim, action or proceeding and should cooperate fully in the defense thereof.

PROJECT DATA

SCOPE OF WORK
SINGLE STORY ADDITION TO EXISTING TWO STORY RESIDENCE, INCLUDING MEDIA ROOM, PRAYER ROOM, AND BALCONY.

EXISTING
BEDROOMS 4
BATHROOMS 4
POWDER ROOM 1

PROPOSED
BEDROOMS 4
BATHROOMS 4
POWDER ROOM 1

ZONE
R-3 SINGLE FAMILY RESIDENCE

CONSTRUCTION
TYPE: CAS
FIRE SPRINKLERED

PERMIT ADDRESS
19636 VILLAGE OAKS CIRCLE
HUNTINGTON BEACH, CA
92648

APN
10-146-14

LEGAL DESCRIPTION
LOT 14, TRACT 8082,
RECORDS OF ORANGE COUNTY, CA.

SITE COVERAGE
LOT AREA 12,216 S.F. APPROX.
PROPOSED LOT COVERAGE 3,202 S.F.
BUILDING, GARAGE AND COVERED PATIO 2,538

LOT COVERAGE RATIO
25.3%

ZONING MATRIX, SEE (IN LEE) 1

MIN. BUILDING SETBACKS

MINIMUM SETBACKS: 20
FRONT: 5
REAR (EAST SIDE): 20
REAR (WEST SIDE): 20
MAX. FT. DWELLING: 35'-0"
MAX. LOT COVERAGE (N): 50

PROCESSED
12,216 APPROX. (RWS)

REQUIRED
1,000

EXISTING
1,478 S.F.
2,275 S.F.
4,280 S.F.
313 S.F.

ADDITION
84 S.F.
325 S.F.
4,280 S.F.
313 S.F.

TOTAL
1,562 S.F.
2,600 S.F.
8,560 S.F.
626 S.F.

COVERED GARAGE
3 SPACES
TOTAL 6 SPACES

PARKING PROVIDED
18 SPACES
TOTAL 24 SPACES

SHEET INDEX
A01 COVER SHEET / SITE PLAN
A02 FIRST FLOOR PLAN
A03 SECOND FLOOR PLAN
A04 EXTERIOR ELEVATIONS
A05 INTERIOR ELEVATIONS

APPLICANT
JOHN STUTZEL
STUTZEL DESIGN
3130 AIRWAY AVE
COSTA MESA, CA
714-926-0043

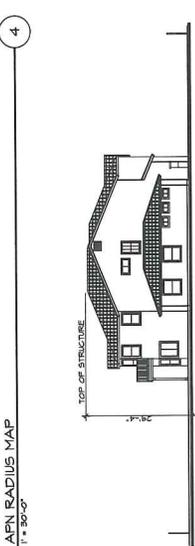
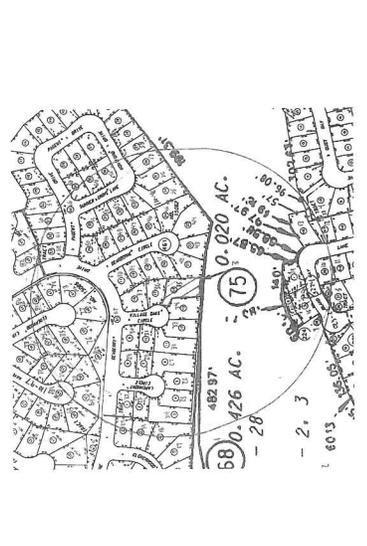
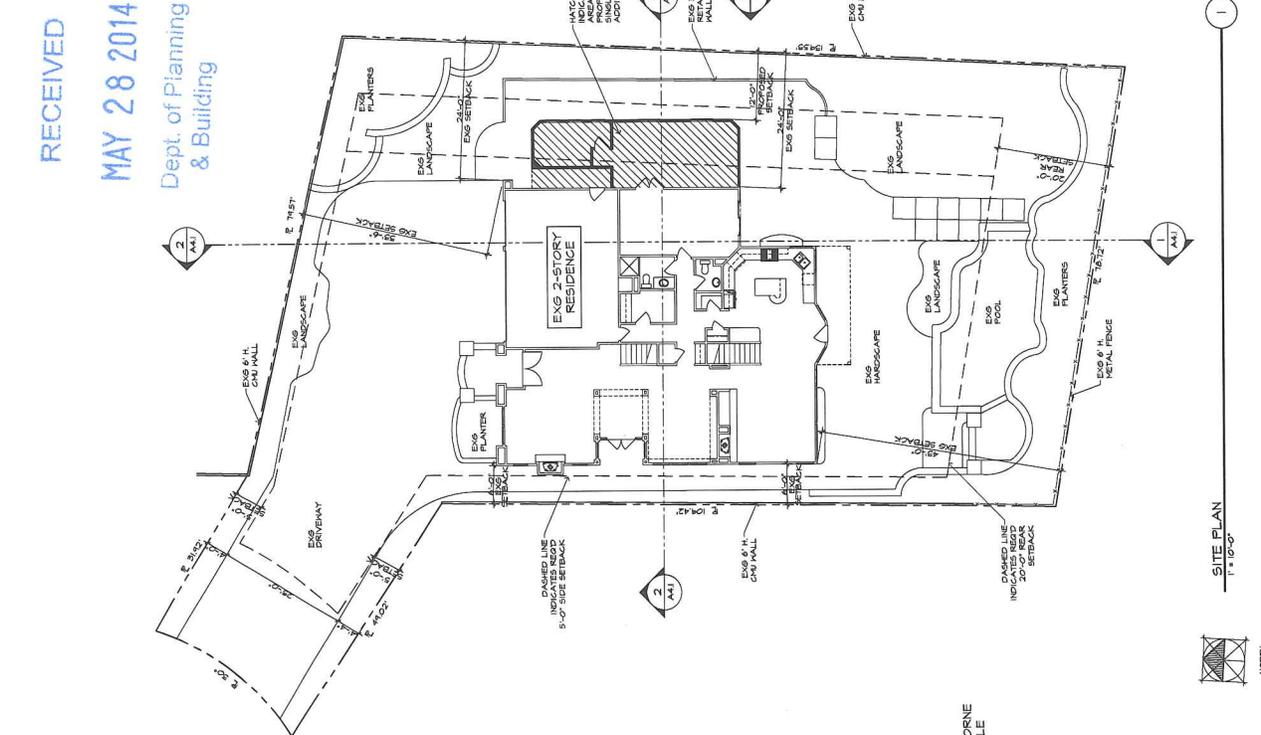
OWNER
SHALESH GUPTA
19636 VILLAGE OAKS CIRCLE
HUNTINGTON BEACH, CA
562-212-4008

REVISIONS: 14 JAN 14
VARIANCE SUBMITTAL
27 MAY 14
REVISION 1

DATE: 14 JAN 14
27 MAY 14

COVER SHEET
SITE PLAN
A0.1

RECEIVED
MAY 28 2014
Dept. of Planning & Building



GUPTA RESIDENCE

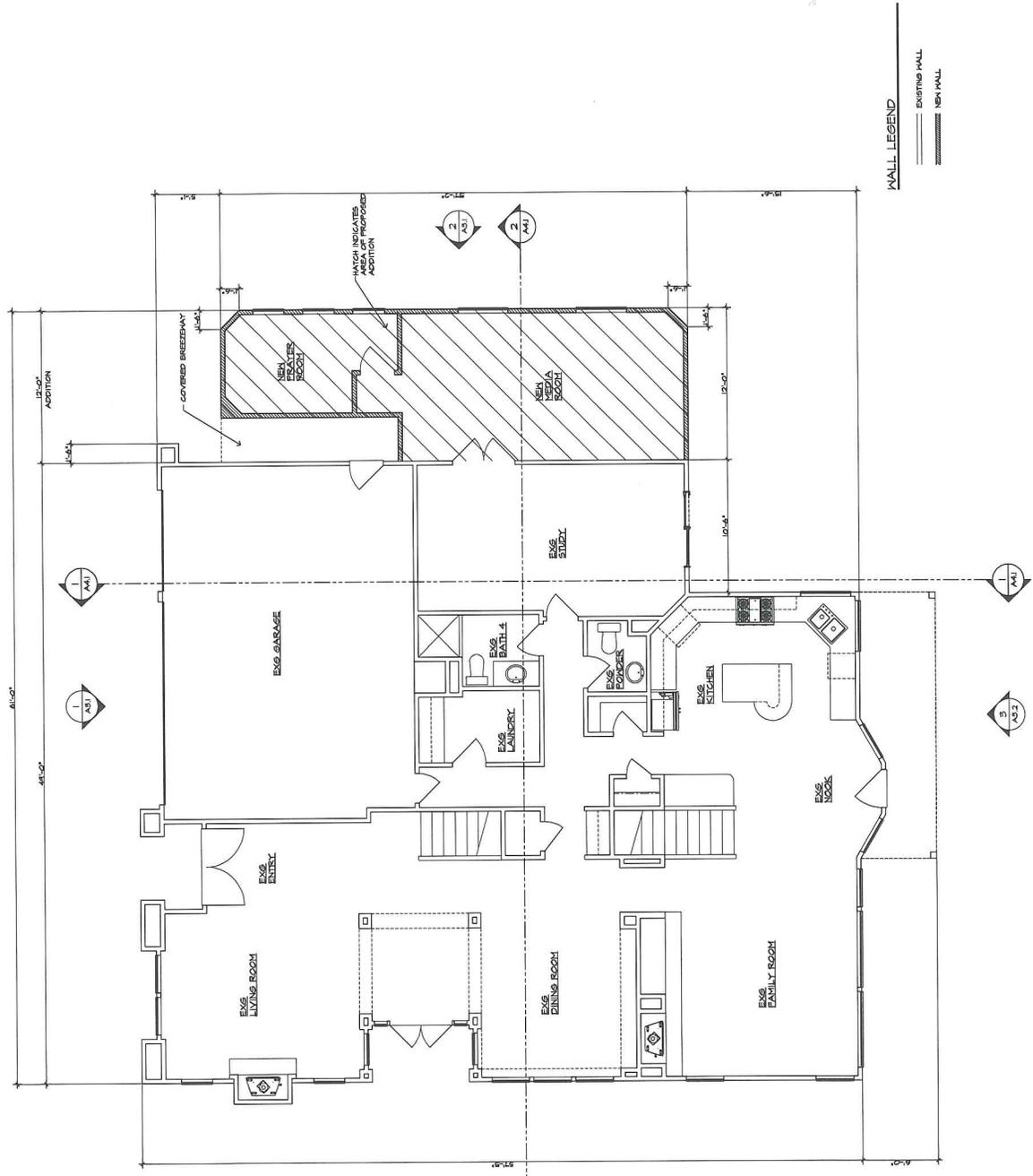
19636 Village Oaks Circle
Huntington Beach, CA

REVISIONS	DATE
VARIANCE SUBMITTAL	14 JAN 14
VARIANCE RETURN	21 MAY 14

THE USE OF THESE PLANS AND SPECIFICATIONS SHALL BE LIMITED TO THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. ANY OTHER USE OF THESE PLANS OR SPECIFICATIONS WITHOUT THE WRITTEN CONSENT OF STÜTZEL DESIGN SHALL BE THE RESPONSIBILITY OF THE USER.

JOB NO. _____
DRAWN BY _____
CHECKED BY _____

FIRST FLOOR PLAN
A2.1



MALL LEGEND

===== EXISTING MALL
----- NEW MALL

FIRST FLOOR PLAN
1/4" = 1'-0"

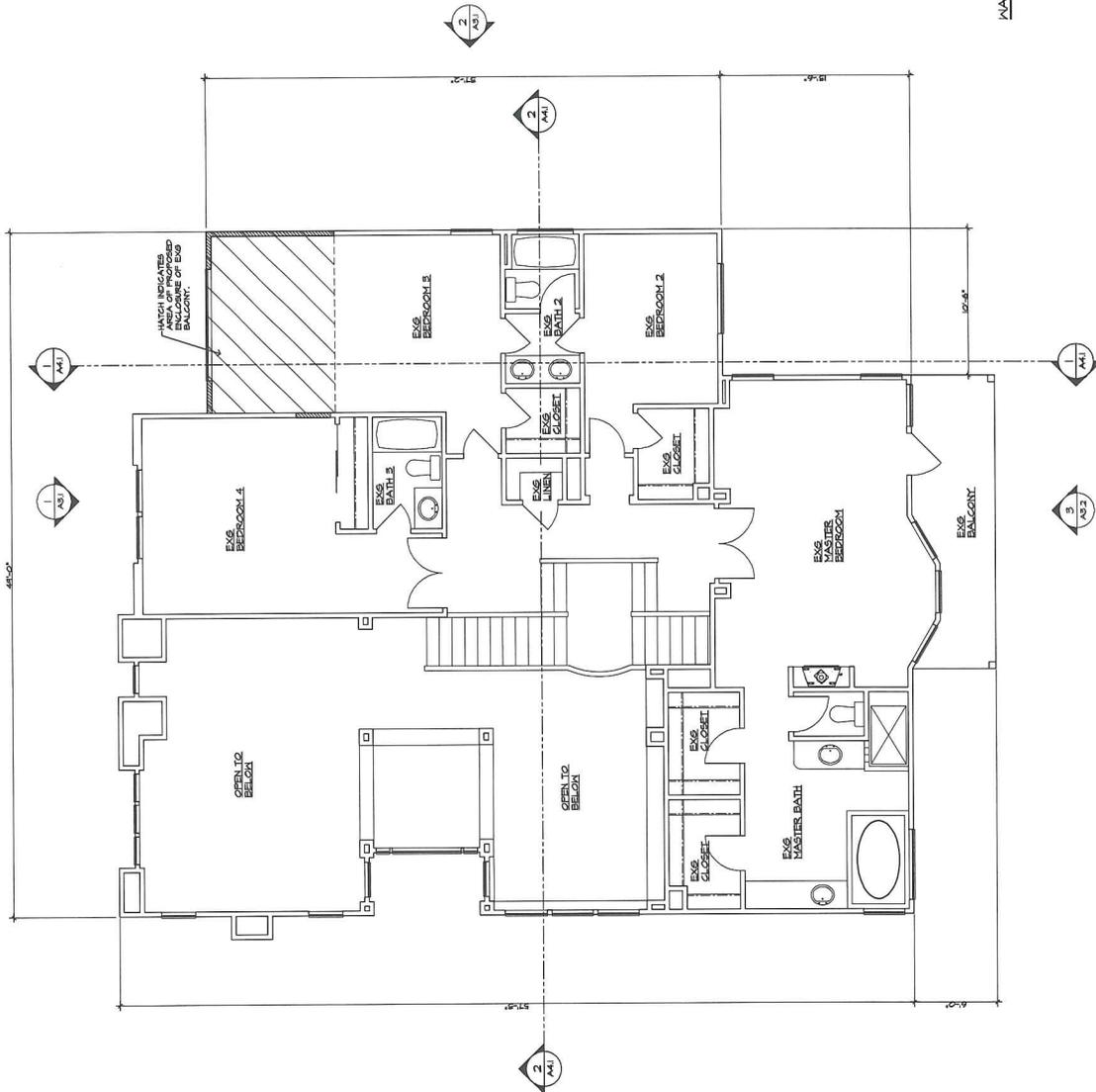
REVISIONS	DATE
VARIANCE SUBMITTAL	14 JAN 14
VARIANCE RETURN	27 MAY 14

THE USE OF THESE PLANS AND SPECIFICATIONS SHALL BE LIMITED TO THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. ANY OTHER USE OF THESE PLANS OR SPECIFICATIONS WITHOUT THE WRITTEN CONSENT OF STÜTZEL DESIGN SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO STÜTZEL DESIGN.

JOB NO. 08008

SECOND FLOOR PLAN

A2.2



MALL LEGEND
 ——— EXISTING MALL
 ===== NEW MALL

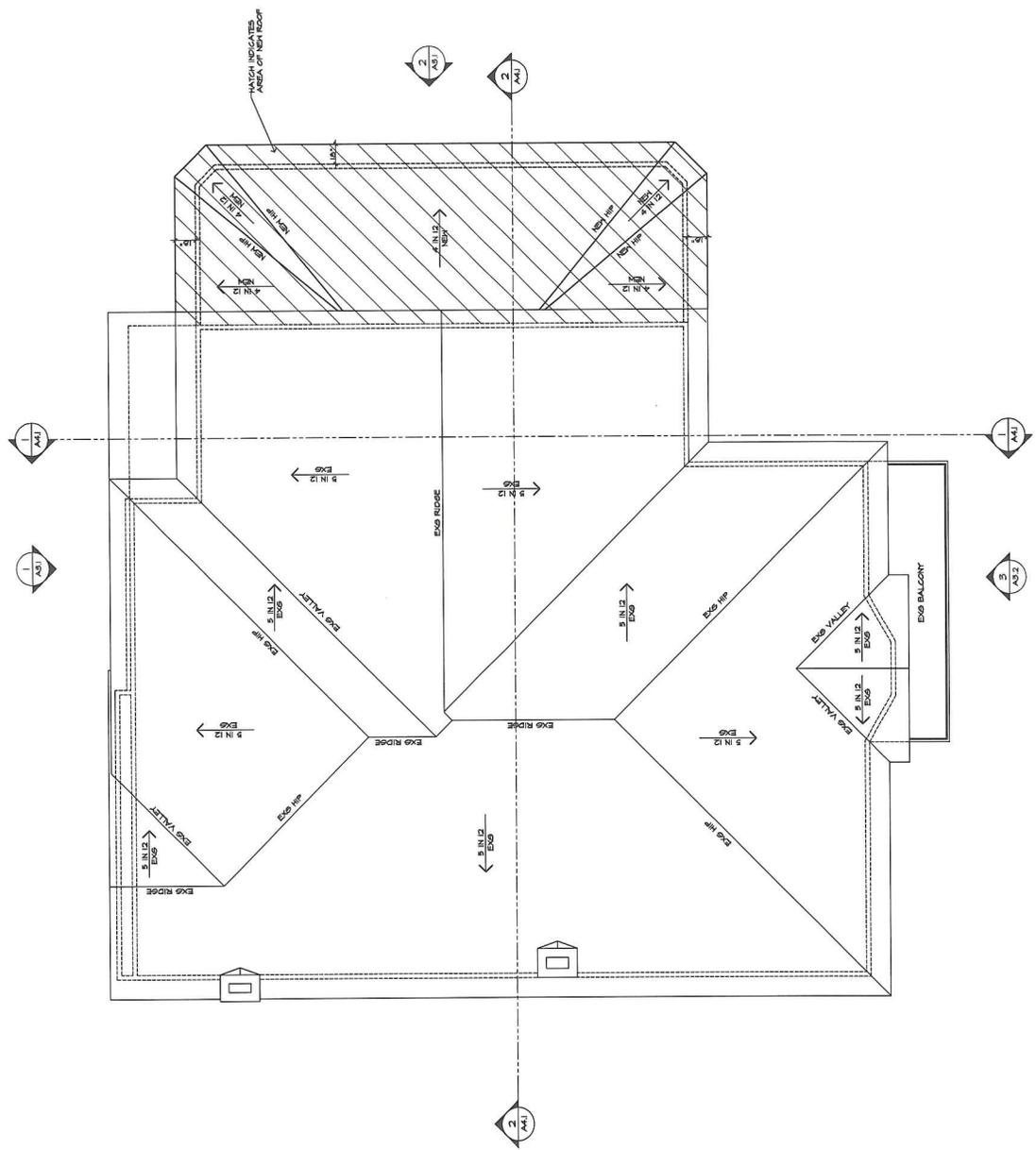
1

SECOND FLOOR PLAN
1/8" = 1'-0"

REVISIONS	DATE
VARIANCE SUBMITTAL	14 JUN 14
VARIANCE RETURN	21 MAY 14

THE USE OF THESE PLANS AND SPECIFICATIONS SHALL BE LIMITED TO THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. ANY REUSE OF THESE PLANS FOR ANY OTHER PROJECT WITHOUT THE WRITTEN CONSENT OF STÜTZEL DESIGN SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO STÜTZEL DESIGN.

ROOF PLAN
A2.3



1

ROOF PLAN
1/4" = 1'-0"

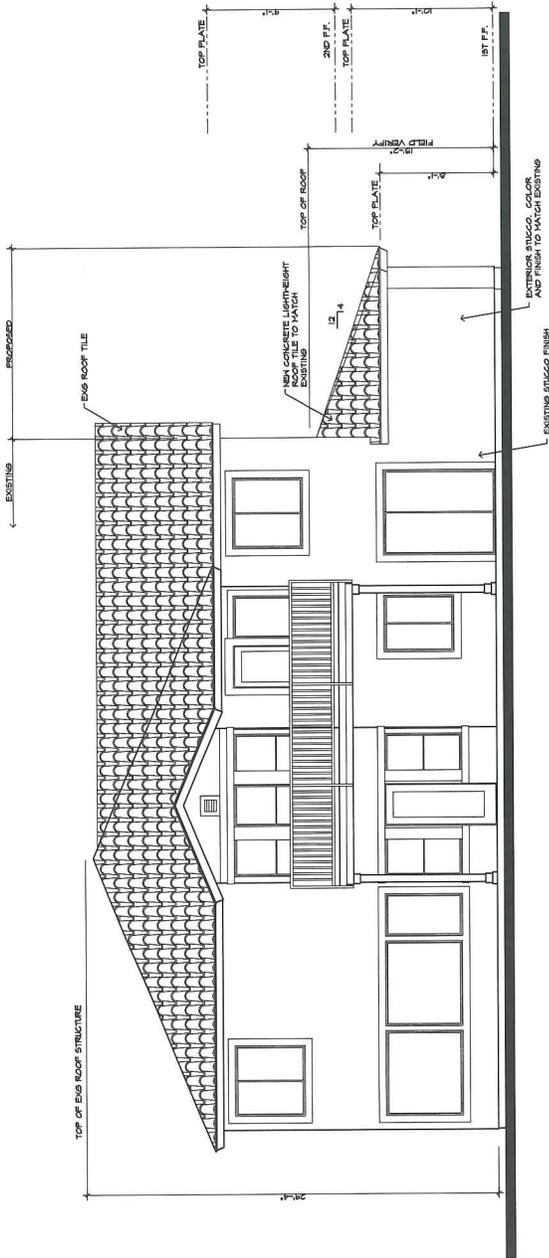
REVISION	DATE
VARIANCE SUBMITTAL	14 JUN 14
VARIANCE REVISION	21 MAY 14

THE USE OF THESE PLANS AND SPECIFICATIONS SHALL BE LIMITED TO THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON AND THE EXACTING AGENCIES. ANY REUSE OF THESE PLANS FOR ANY OTHER PROJECT OR AT ANY OTHER LOCATION IS STRICTLY PROHIBITED. THE ARCHITECT ASSUMES NO LIABILITY FOR ANY DAMAGE OR INJURY TO PERSONS OR PROPERTY ARISING FROM THE USE OF THESE PLANS OR SPECIFICATIONS.

JOB NO. 125205

ELEVATION

A3.2



3

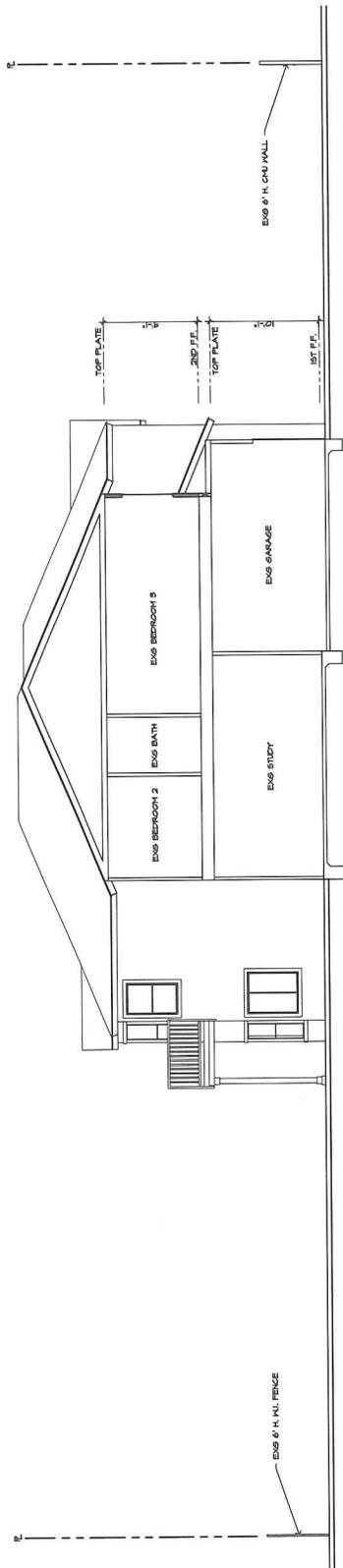
REAR ELEVATION
1/4" = 1'-0"

REVISIONS	DATE
VARIANCE SUBMITTAL	14 JAN 14
VARIANCE RETURN	27 MAY 14

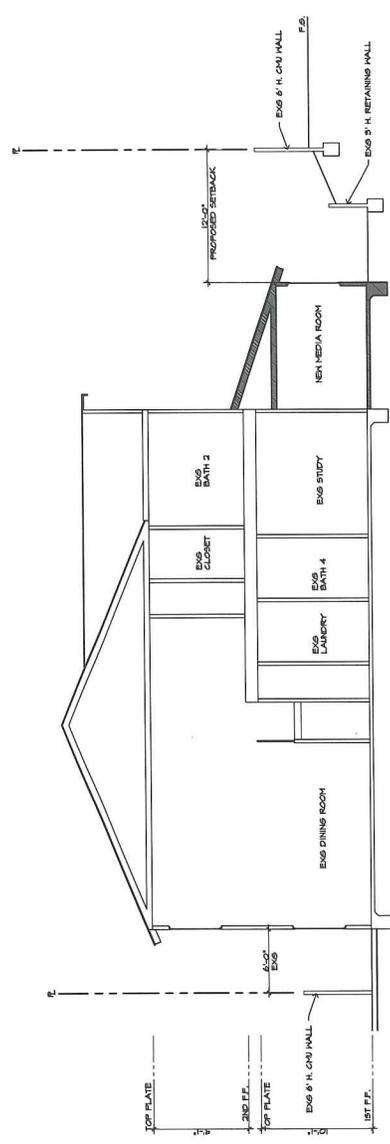
THE USE OF THESE PLANS AND SPECIFICATIONS SHALL BE LIMITED TO THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON AND THE DRAWING NUMBER IS GENERAL. ANY REUSE OF THESE PLANS OR SPECIFICATIONS FOR ANY OTHER PROJECT SHALL BE AT THE USER'S SOLE RISK AND WITHOUT THE LIABILITY OF THE ARCHITECT.

JOB NO.	102006
---------	--------

SECTIONS
A4.1



SITE SECTION
3/8" = 1'-0"



SITE SECTION
3/8" = 1'-0"

PROJECT DATA

SCOPE OF WORK:
2-STORY ADDITION INCLUDING BONUS ROOM, MEDIA ROOM,
BALCONY AND EXTERIOR SPINAL STAIRCASE

EXISTING: PROPOSED
4 4
3 3
1 1

REASONING:
BATHROOMS
BONUS ROOM
PONDING ROOM

ZONE: SFM

CONSTRUCTION:
TYPE V&B
TWO STORY
FIRE SPRINKLERED

OCCUPANCY: R-3 SINGLE FAMILY RESIDENCE

PROJECT ADDRESS: 19636 VILLAGE OAKS CIRCLE
HUNTINGTON BEACH, CA
92648

APN: 110-44-14

LEGAL DESCRIPTION: LOT 14, TRACT 80092,
RECORDS OF ORANGE COUNTY, CA

SITE COVERAGE: 12379 SF. APPROX.

LOT AREA: 55666 SF.

PROPOSED LOT COVERAGE: 55666 SF.

BUILDING GARAGE AND COVERED PATIO: 24.8%

LOT COVERAGE RATIO: 24.8%

ZONING MATRIX (SPIN LINE FEET)

MIN BUILDING SETBACKS	REQUIRED	PROPOSED
FRONT	20	20
SIDE	5	5
REAR (BASE SIDE)	20	20
REAR (SOOTH SIDE)	20	20
MAX. FT. DRILLING	95'-0"	91'-4" (85%)
MAX. LOT COVERAGE (N)		28.9

BUILDING AREA	EXISTING	ADDITION	TOTAL
FIRST FLOOR	1044 SF.	864 SF.	1908 SF.
SECOND FLOOR	4568 SF.	2028 SF.	6596 SF.
TOTAL	5612 SF.	3092 SF.	8704 SF.
GARAGE	544 SF.	0 SF.	544 SF.
REAR COVERED PATIO	110 SF.	45 SF.	155 SF.
REAR EXTERIOR BALCONY	110 SF.	44 SF.	154 SF.
TOTAL	768 SF.	94 SF.	862 SF.

PARKING PROVIDED:

COVERED GARAGE: 5 SPACES

NON-COVERED: 5 SPACES

TOTAL: 10 SPACES

SHEET INDEX:

A01 COVER SHEET / SITE PLAN

A02 FIRST FLOOR PLAN

A03 SECOND FLOOR PLAN

A04 EXTERIOR ELEVATIONS

A05 EXTERIOR ELEVATIONS

A06 SECTIONS

APPLICANT:

JOHN STUTZEL
STUTZEL DESIGN
3180 ARROYO AVE
COSTA MESA, CA
714-926-0043

OWNER:

SHALESH GUPTA
19636 VILLAGE OAKS CIRCLE
HUNTINGTON BEACH, CA
562-212-4008

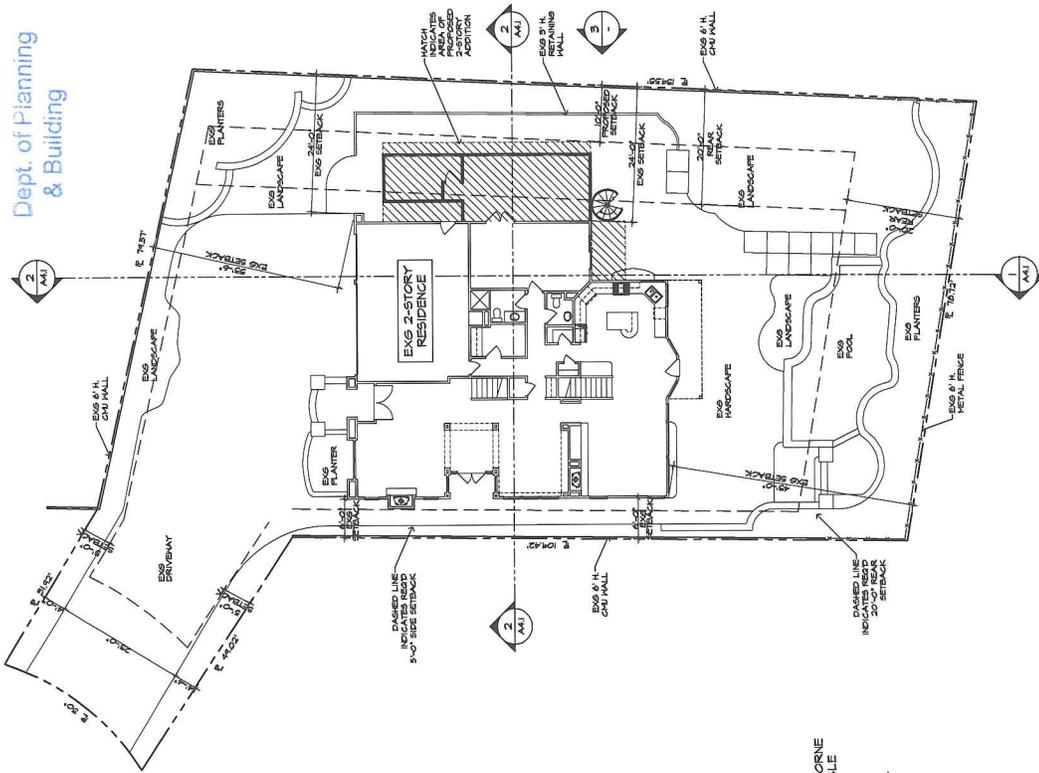
THE USE OF THESE PLANS AND SPECIFICATIONS SHALL BE LIMITED TO THE PROJECT AND SITE DESCRIBED HEREIN. ANY REUSE OF THESE PLANS AND SPECIFICATIONS FOR ANY OTHER PROJECT SHALL BE AT THE USER'S RISK AND WITHOUT LIABILITY TO THE DESIGNER. THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL, STATE OR FEDERAL AGENCIES.

DATE: 14-JAN-14

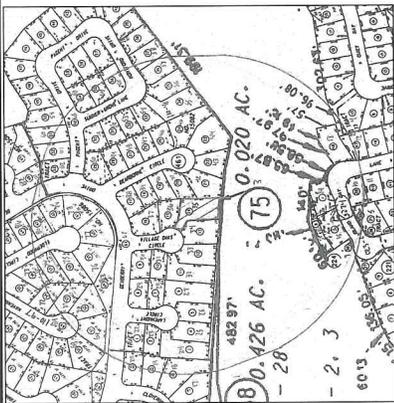
VARIANCE: ESSENTIAL

REVISIONS:

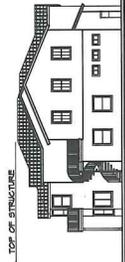
RECEIVED
JAN 17 2014
Dept. of Planning & Building



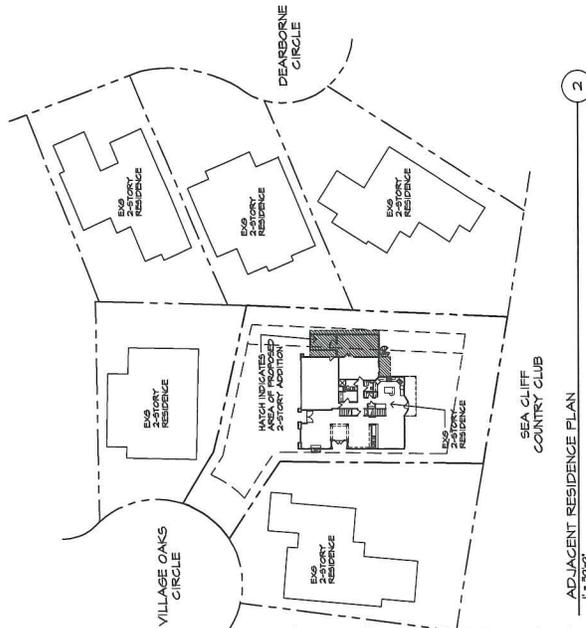
SITE PLAN
1" = 10'-0"



APN RADIUS MAP
1" = 50'-0"



SIDE ELEVATION
1/8" = 1'-0"



ADJACENT RESIDENCE PLAN
1" = 50'-0"

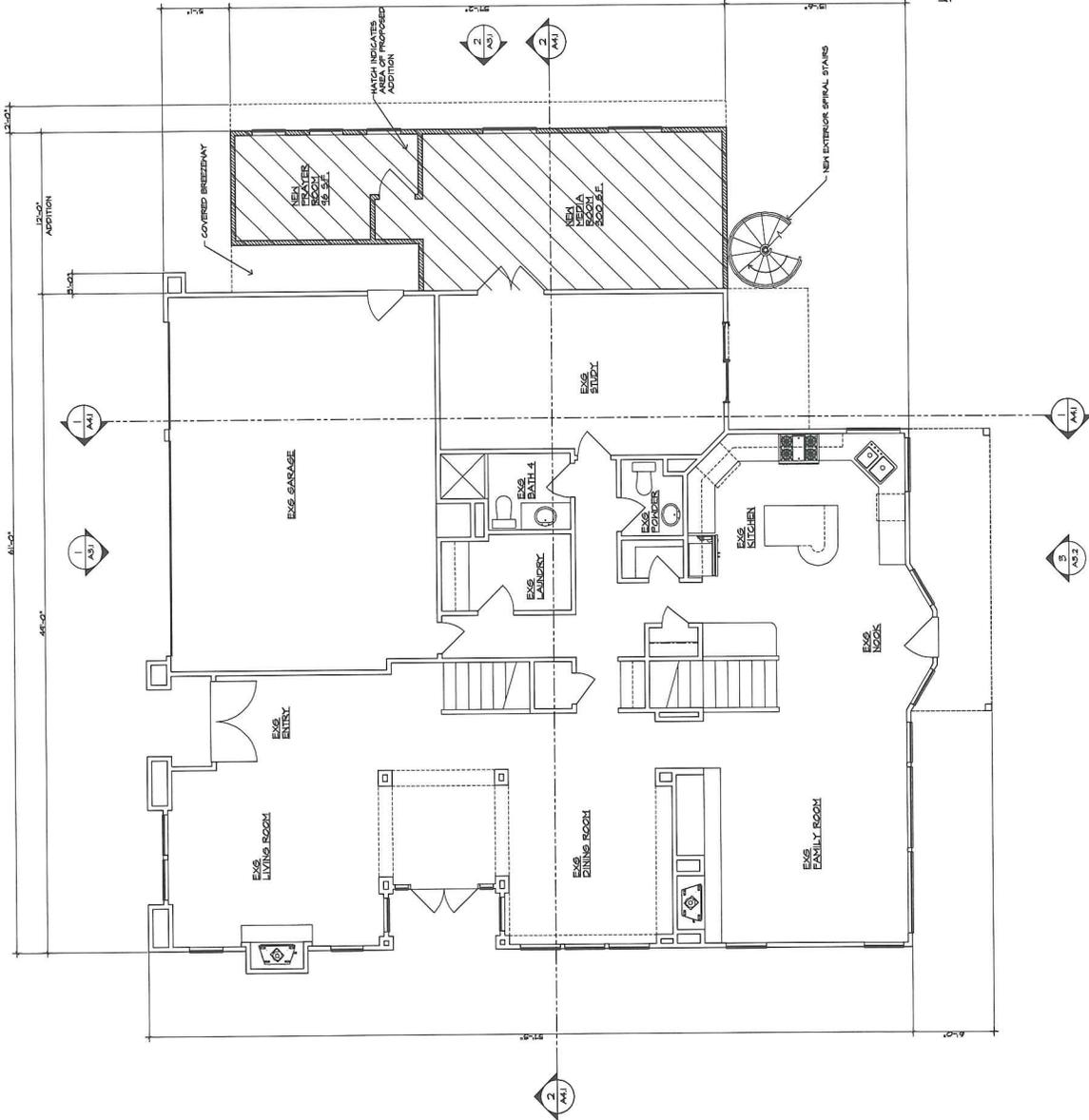
REVISIONS	DATE
VARIANCE SUBMITTAL	14 JUN 14

THE USE OF THESE PLANS AND SPECIFICATIONS SHALL BE LIMITED TO THE PROJECT AND SITE DESCRIBED HEREIN. ANY OTHER USE OF THESE PLANS OR SPECIFICATIONS WITHOUT THE WRITTEN CONSENT OF STÜTZEL DESIGN SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO STÜTZEL DESIGN.

DATE: 05/06

FIRST FLOOR PLAN

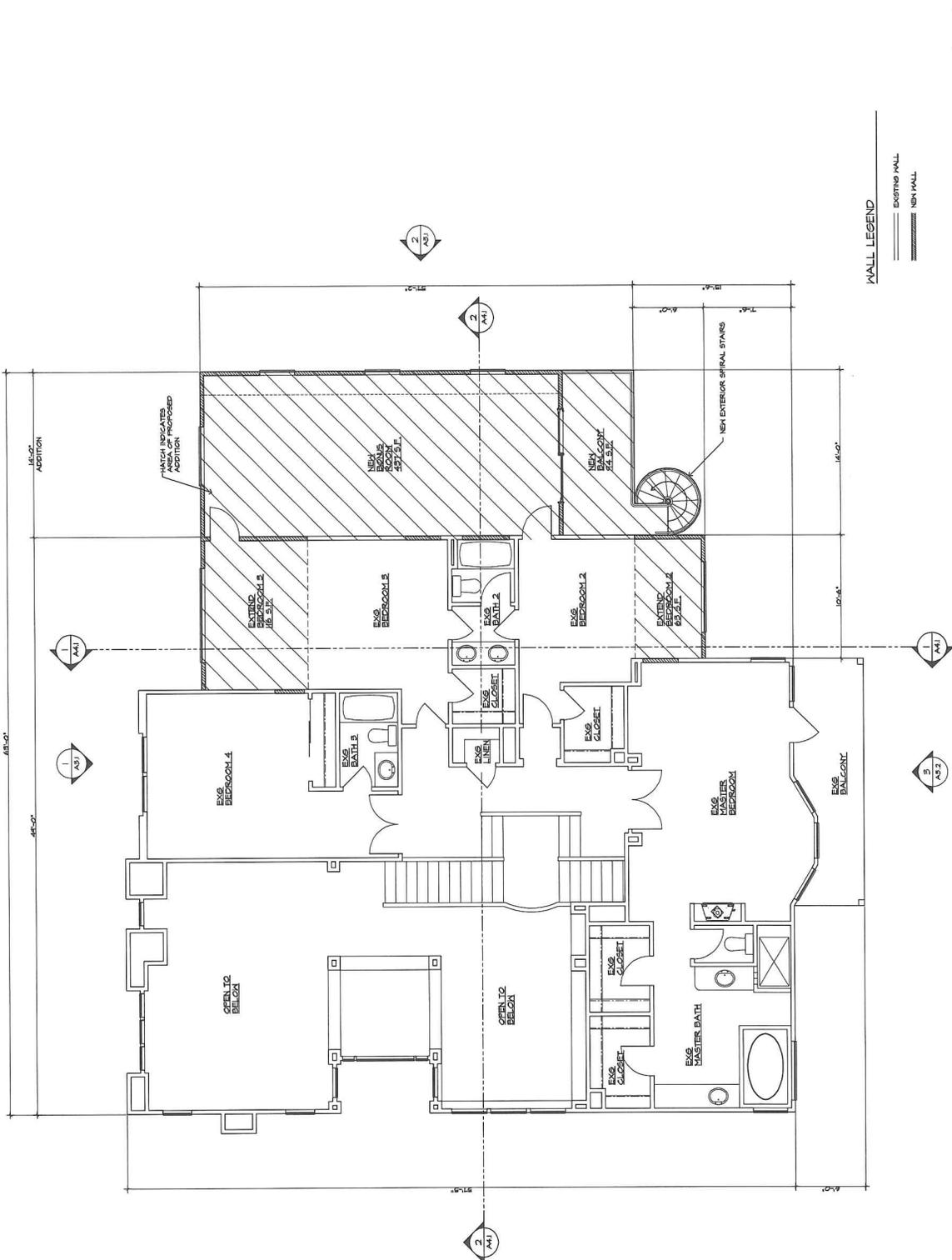
A2.1



MALL LEGEND

- EXISTING MALL
- NEW MALL

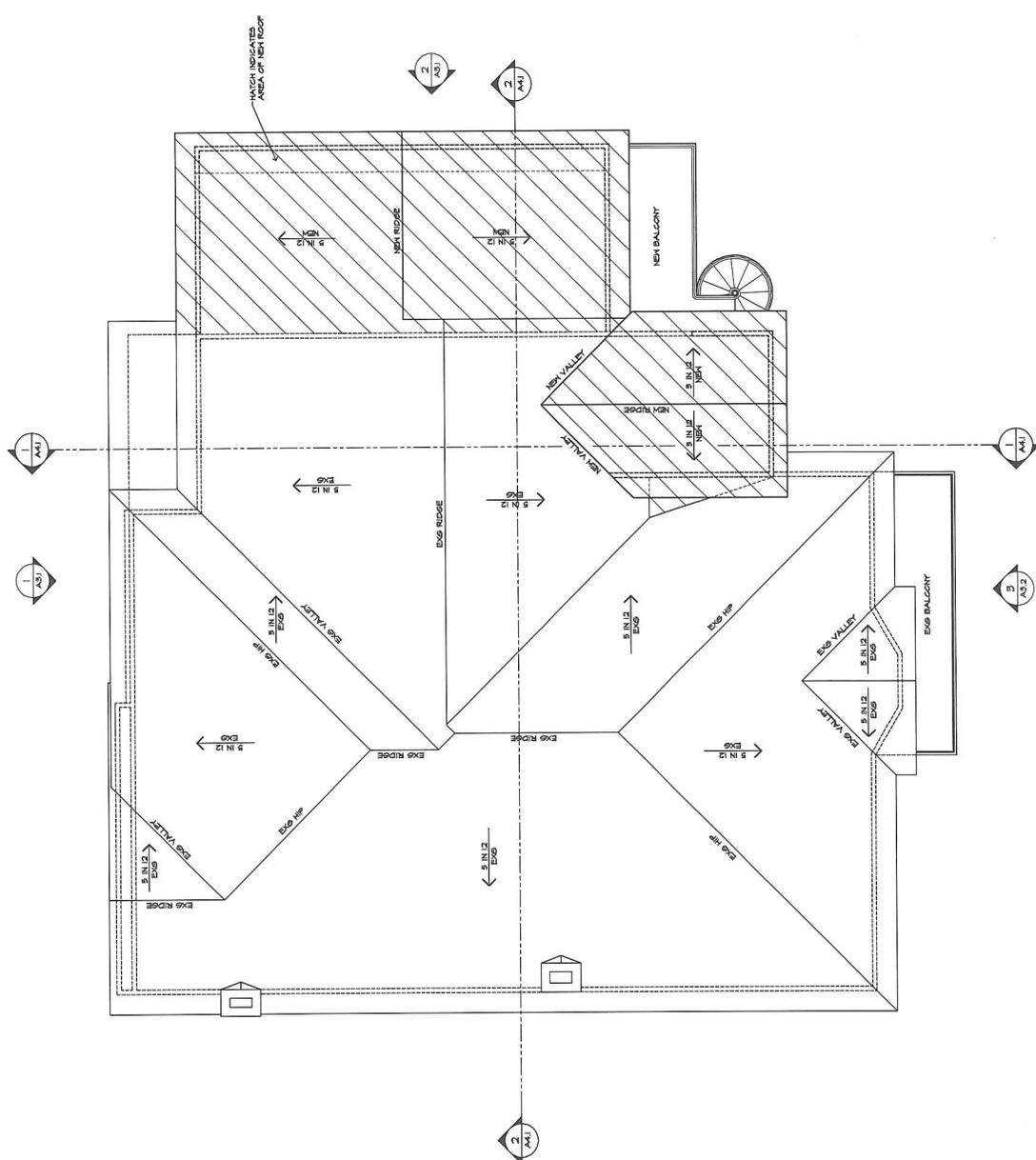
FIRST FLOOR PLAN
1/4" = 1'-0"



WALL LEGEND
 ——— EXISTING WALL
 ——— NEW WALL
 HATCH INDICATES ADDITION

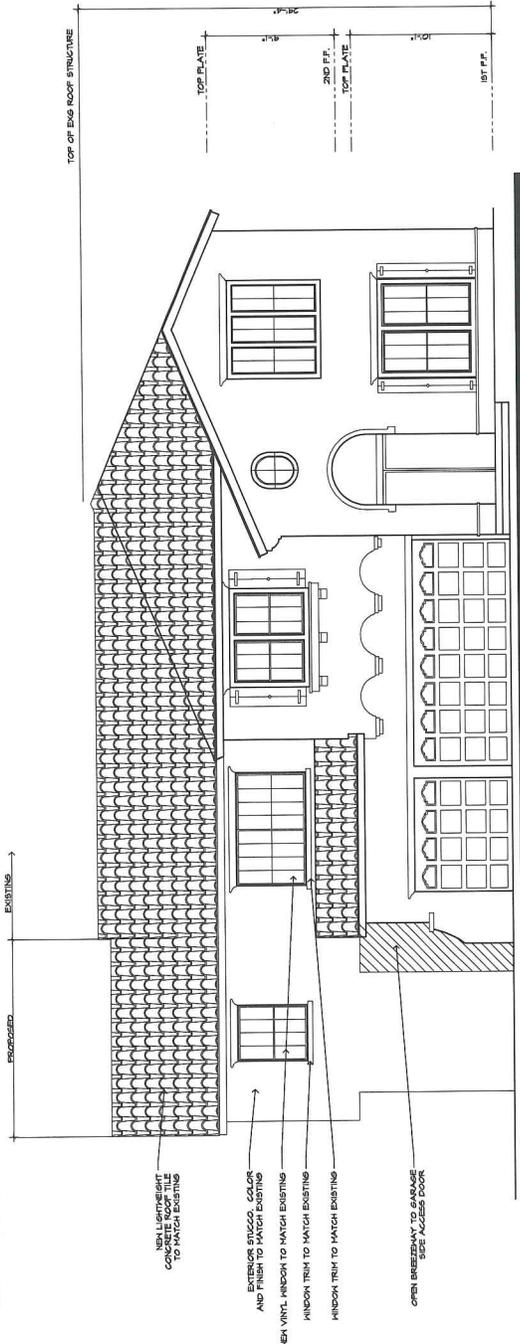
1

SECOND FLOOR PLAN
1/4" = 1'-0"



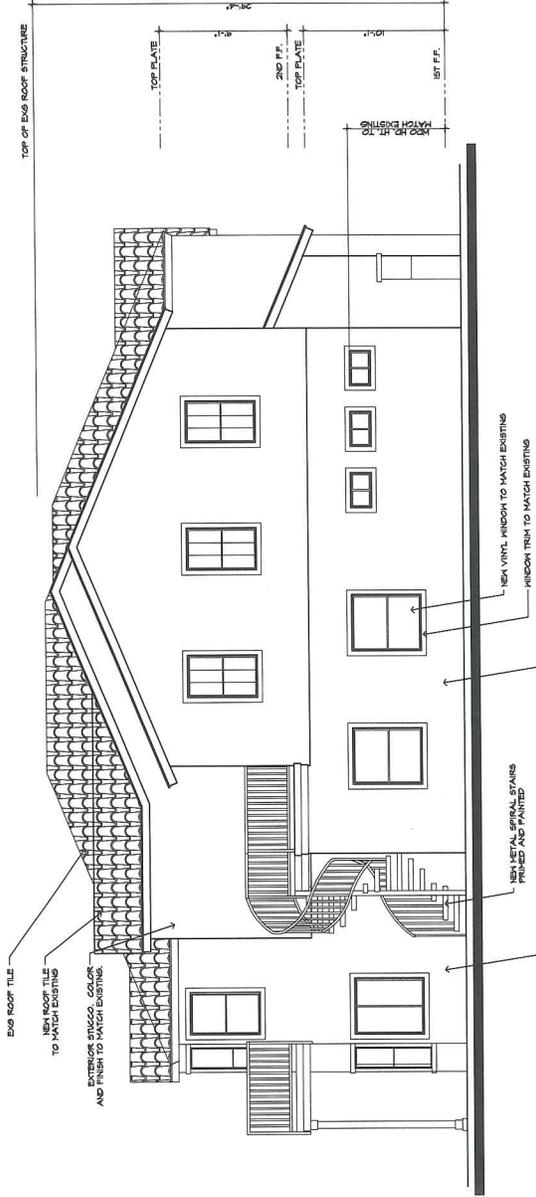
1

ROOF PLAN
1/4" = 1'-0"



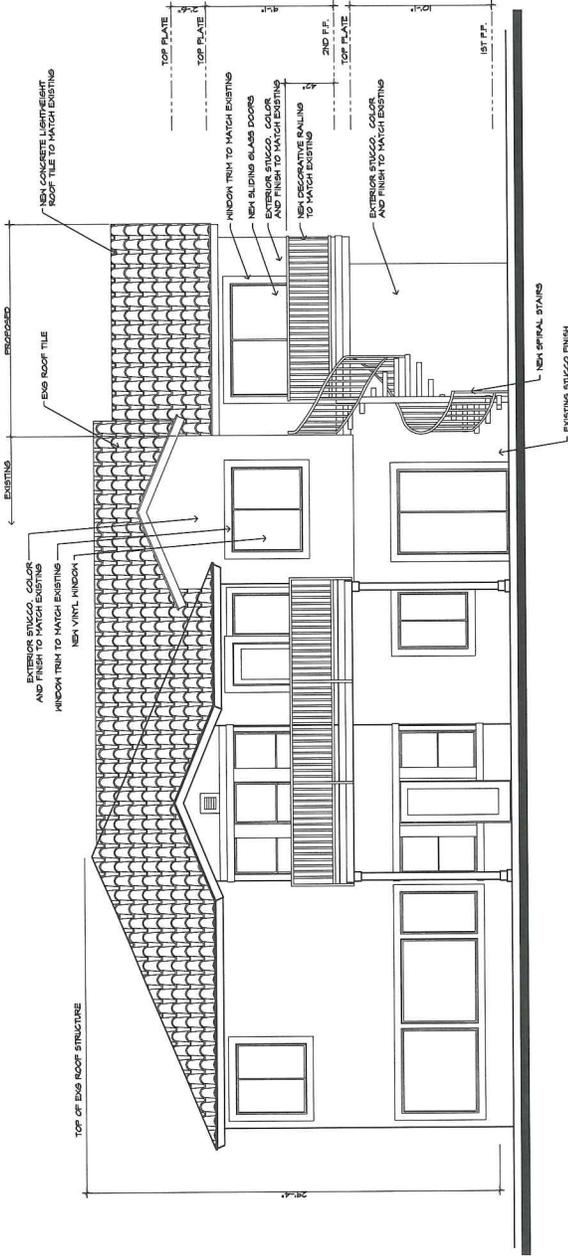
1

FRONT ELEVATION
1/4" = 1'-0"

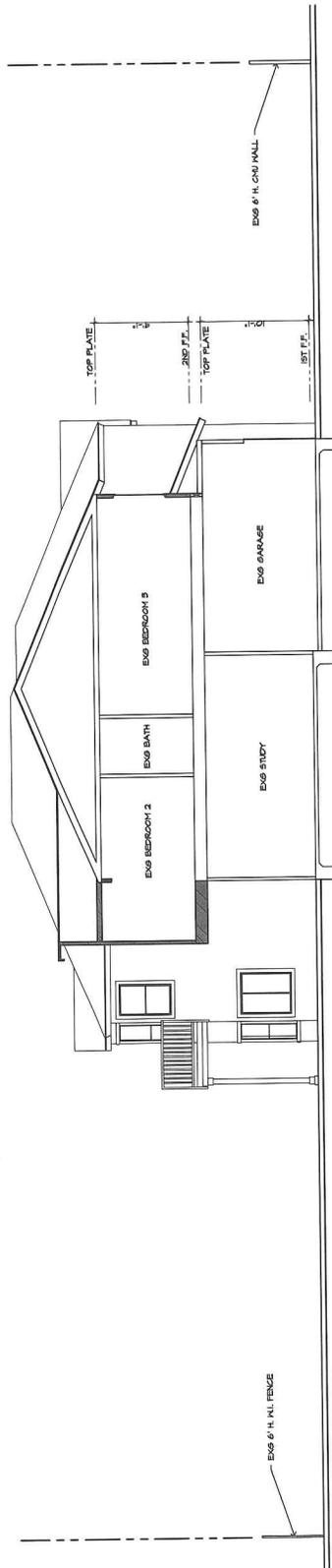


2

SIDE ELEVATION
1/4" = 1'-0"

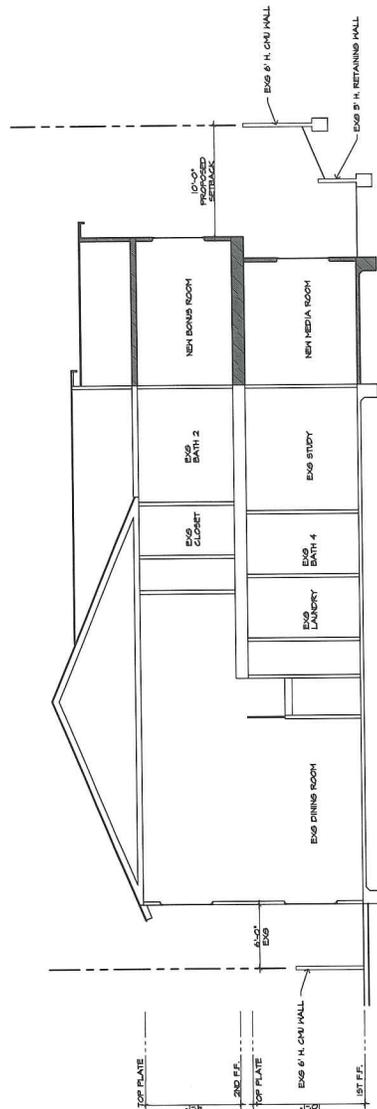


REAR ELEVATION
1/4" = 1'-0"



1

SITE SECTION
3/8" = 1'-0"



2

SITE SECTION
3/8" = 1'-0"



June 24, 2014

Planning Department
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

RECEIVED

JUN 24 2014

Dept. of Planning
& Building

RE Variance

Subject Property Gupta Residence
19636 Village Oaks Circle
Huntington Beach, CA 92648

Dear Planning Staff,

The property owners of the above referenced project are proposing to provide a single story addition to their existing two story single family dwelling. The addition location within the property will encroach into a required rear setback. The owner is requesting a Variance as per the City of Huntington Beach Zoning Code.

The scope of work shall consist of the following:

- 1. First Floor Addition 394 s.f.
 - a. New Media Room
 - b. New Prayer Room
- 2. Second Floor Addition 119 s.f.
 - a. Enlarge Existing Bedroom 3 by enclosing existing balcony area.

Building Areas

	<u>Existing</u>	<u>Addition</u>	<u>Total</u>
First Floor	1,979 s.f.	394 s.f.	2,373 s.f.
<u>Second Floor</u>	<u>2,389 s.f.</u>	<u>119 s.f.</u>	<u>2,508 s.f.</u>
Total Living Area	4,368 s.f.	513 s.f.	4,881 s.f.
Garage	569 s.f.	0 s.f.	569 s.f.
Rear Covered Patio	110 s.f.	0 s.f.	110 s.f.

3130 Airway Avenue
Costa Mesa, CA 92626
Tel 714.926.0043

*19636 Village Oaks Circle
Huntington Beach, CA
2*

The adjacent property uses are as follows:

North	Single Family Residence
East	Single Family Residence
South	Seacliff Country Club
West	Single Family Residential

The exterior finishes and design shall match existing Architectural style. Window and Door openings shall be vinyl dual pane glazed to match existing.
Feel free to contact me if you have any questions or clarification items.

Sincerely,

John A. Stützel

Nguyen, Tess

From: Gupsiusa Gupta [gupsiusa@hotmail.com]
Sent: Thursday, June 12, 2014 9:25 PM
To: Nguyen, Tess; John Stutzel
Subject: Narrative

RECEIVED

JUN 12 2014

Dept. of Planning
& Building

Re: Resubmission of Revised Home Improvement Request – 19636 Village Oaks Circle, Huntington Beach, CA 92648

Dear Tess,

This email is meant to reinforce why the addition/improvement is important to us as previously stated in the submission letter dated May 28, 2014.

We want to expand our residence to develop both, additional living space and more importantly, a prayer room. The prayer room plays an important role in our lives, as it is fundamental to our religious beliefs. The northeast corner of the home is also of particular importance, as it has geographical significance in our religion. At present, the northeast corner is a garage space, so there was no other meaningful alternative location for the proposed construction. The adjoining additional room will serve as multipurpose room. Our children will utilize this extra space as media room and on occasions it will be used for family gatherings for prayers and meditation, as the room will be next to the prayer room.

We ask that the Planning Commission give due consideration to the our reasonable request for religious accommodation, and take into account the generous accommodations that have already been provided to the neighbors and our thoughtfulness by seeking out input from our adjoining neighbors.

Please do not hesitate to contact us if you require additional information.

Thank you again.

Shalesh Gupta
Indu Gupta



January 14, 2014

Planning Department
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

RECEIVED

JAN 17 2014

Dept. of Planning
& Building

RE Variance

Subject Property Gupta Residence
19636 Village Oaks Circle
Huntington Beach, CA 92648

Dear Planning Staff,

The property owners of the above referenced project are proposing to provide a two story addition to their existing two story single family dwelling. The addition location within the property will encroach into a required rear setback. The owner is requesting a Variance as per the City of Huntington Beach Zoning Code.

The scope of work shall consist of the following:

- 1. First Floor Addition 396 s.f.
 - a. New Media Room
 - b. New Prayer Room
- 2. Second Floor Addition 616 s.f.
 - a. Enlarge Existing Bedroom 2
 - b. Enlarge Existing Bedroom 3
 - c. New Bonus Room
 - d. New Exterior Balcony
 - e. New Exterior Spiral Stairs to Balcony

Building Areas

	<u>Existing</u>	<u>Addition</u>	<u>Total</u>
First Floor	1,979 s.f.	396 s.f.	2,375 s.f.
Second Floor	2,389 s.f.	616 s.f.	3,005 s.f.
Total Living Area	4,368 s.f.	1,012 s.f.	5,380 s.f.
Garage	569 s.f.	0 s.f.	569 s.f.
Rear Covered Patio	110 s.f.	63 s.f.	173 s.f.
Rear Exterior Balcony	110 s.f.	94 s.f.	204 s.f.

3130 Airway Avenue
Costa Mesa, CA 92626
Tel 714.926.0043

19636 Village Oaks Circle
Huntington Beach, CA
2

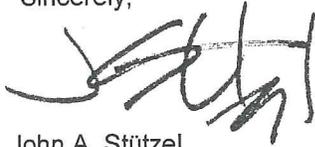
The adjacent property uses are as follows:

North	Single Family Residence
East	Single Family Residence
South	Seacliff Country Club
West	Single Family Residential

The exterior finishes and design shall match existing Architectural style. Window and Door openings shall be vinyl dual pane glazed to match existing. Painted wrought iron railing will be used at the new rear balcony to match existing.

Feel free to contact me if you have any questions or clarification items.

Sincerely,



John A. Stützel

RECEIVED
MAR 31 2014
Dept. of Planning
& Building

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**ON APPEALS, STATE OF CALIFORNIA
COUNTY OF ORANGE
CITY OF HUNTINGTON BEACH
PLANNING COMMITTEE**

The Branyan Family
Appellant

v.

City of Huntington Beach
Respondent

On Appeal from Branyan Residence
(19631 Dearborne Circle, Huntington Beach, California 92648)
Variance No. 2014-001 (Gupta Residence Addition)

**NOTICE OF APPEAL; DECLARATIONS AND EXHIBITS IN
SUPPORT OF NOTICE OF APPEAL**

BARRY G. COLEMAN, SBN: 75383
23931 Sofia St.
Mission Viejo, CA 92691
(949) 716-8046
Attorney for Appellant

1 This appeal stems from the approval of a variance to the 20 foot setback
2 requirements to permit a 1,012 sq. ft two story addition to an existing two-story
3 single family residence located in a master plan community. As set forth herein the
4 grant of this variance was not properly granted and should be overturned on this
5 appeal. As set forth in the supporting declarations the proposed construction will
6 result in material adverse consequences for the abutting property. The two story
7 addition will result in the loss of sun, privacy, reasonable use of tangible and
8 intangible rights to the adjacent property, the Branyan Residence. These adverse
9 consequences will result in tangible reduction in property value and this alone
10 mandates reversal of the preliminary approval of the variance.

11
12 Pursuant to Municipal Code Section 241.10 a variance that does not meet
13 each of the four criteria set forth in that section must be denied. As discussed herein
14 the proposed variance does not meet each of the four criteria and must be denied.
15 Code Section 241.10 governed by and in some respects almost identical to
16 Government Code Section 65906:

17
18 **Granting variances**

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

25 Any variance granted shall be subject to such conditions as will
26 assure that the adjustment thereby authorized shall not constitute a
27 grant of special privileges inconsistent with the limitations upon
28 other properties in the vicinity and zone in which such property is

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

situated.

A variance shall not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property.

The provisions of this section shall not apply to conditional use permits.

In applying the requirements for granting a variance Courts have placed the burden on the party seeking a variance to show that their property satisfies all the requirements for a variance. (*Orinda Association v. Board of Supervisors of Contra Costa County*, (1986) 182 Cal. App. 3d 1145, 1167). Furthermore, the reviewing board must provide sufficient factual findings to enable the parties to determine whether or not to seek review of the board's decision:

We hold that regardless of whether the local ordinance commands that the variance board set forth findings, that body must render findings sufficient both to enable the parties to determine whether and on what basis they should seek review and, in the event of review, to apprise a reviewing court of the basis for the board's action.

Orinda Association v. Board of Supervisors of Contra Costa County, (1986) 182 Cal. App. 3d 1145, 1167.

As discussed herein the party seeking the variance did not meet their burden to show entitlement to the variance and the board did not set forth sufficient facts to enable either party to determine if review was practical or necessary. Furthermore, Municipal Code Section requires that the board make findings supporting each of the four requirements in order to grant a variance and if the application is lacking in one

1 then the application must be denied. Courts have construed such a requirement
2 literally holding that unless all requirements are met then the variance must be
3 denied:

4
5 In a mandate proceeding to review the granting of a variance by
6 that board, the variance order may be sustained only if the board's
7 findings suffice to establish compliance with all of the statutory
8 criteria and are supported by substantial evidence in the record.

9 *Broadway, Laguna, Vallejo Association v. Board of Permit Appeals*, (1967) 66 Cal.
10 2nd 767, 773.

11
12 As discussed below, the board's grant of the variance did not set forth facts
13 showing compliance with each of the requirements to enable either party to
14 determine if review was practical or necessary.

15
16 *The First Critical Required Finding Is Not Supported By Substantial Evidence*

17 The first requirement is that the granting of the variance will not constitute a
18 grant of a special privilege inconsistent with limitations upon other properties in the
19 vicinity.

20 The City laid out the finding by incorporating the ordinance requirement with
21 the variance sought. 'The granting of the Variance No. 14-001 for a 10 ft yard
22 setback in lieu of a 20 ft. setback (10 ft reduction) for a 1,012 sq ft. first and second
23 story addition to an existing two-story single family residence will not constitute a
24 grant of special privilege inconsistent with limitations upon other properties in the
25 vicinity and under an identical zone classification.' The City justified that 'there was
26 one similarly shaped lot at the terminus of the same cul-de-sac as the project site,
27 which has a residence with a 5 ft set along one rear yard.' Without any analysis
28 whether the comparison property would or could have the attributes the subject

1 setback provides, Respondent jumped to the conclusion that 'the proposed setback of
2 10 ft. along one rear yard for an addition at the subject site is consistent with other
3 properties in the vicinity and under an identical zone classification.'

4 While no analysis exists how this property in the vicinity could have
5 established lack of special privileges, it is clear that the proposed variance granting a
6 material reduction in the set back requirements to only 10 feet constitutes a material
7 inconsistency with the 20 foot setback requirements applicable to then neighboring
8 properties. This is especially true as the proposed variance grants the right to
9 construct a two story addition 15 years later that will greatly impair the property
10 rights and privacy of the property adjacent of the proposed construction. Labeling a
11 special privilege of a two story addition as a non-privilege in a master plan
12 community does not alter the special privilege sought by the Respondent. As such,
13 Respondent has failed in establishing the first requirement of Huntington Beach
14 Municipal Code 240.10 for variances.

15
16 *The Second Critical Required Finding Is Not Supported By Substantial Evidence*

17 The second requirement is that due to special circumstances applicable to the
18 subject property, including size, shape, location and other circumstances, the strict
19 application of the zoning requirements will deprive the subject property of privileges
20 enjoyed by other properties in the nearby vicinity. Although the approval of the
21 variance plays lip-service to this requirement it does not provide any analysis as to
22 what special circumstances exist so that strict application of the zoning regulations
23 will deprive the subject property of privileges enjoyed by other properties. There is
24 no explanation as to the privilege that each other property has to build substantial
25 additions which violate the set back requirements or that will result in substantial
26 impairment of property rights of neighboring owners. The variance approval does
27 not refer to any denial of privileges held by other property owners which will result
28 from strict application of the zoning regulations in this instance. Therefore, on this

1 ground alone, the approval fails and should have been denied.

2
3 The City pointed out that 'the subject property is located at the terminus of a
4 cul-de-sac, which creates a narrow front property line resulted in a flag lot
5 configuration with two rear yards.' The City explained that 'the shape of the lot and
6 the two rear yards deprive the property owner of the ability to construct an addition
7 that meets the rear yard setback on the side the house.' The City stopped there, in
8 essence alleging the setback itself is/are the special circumstances.

9
10 Further, there is no analysis or comparison of the subject property with the
11 rights or disparities between it and other neighboring properties and therefore the
12 showing in support of the variance insufficient to warrant approval. The flag lot
13 configuration is a treatment of the subject property's characteristics in the abstract.

14
15 "These data, we conclude, do not constitute a sufficient showing to
16 satisfy the variance requirements. That section permits variances
17 "only when, because of *special* circumstances applicable to the
18 property, . . . the strict application of the zoning ordinance deprives
19 such property of privileges enjoyed by other property in the
20 vicinity and under identical zoning classification." (Italics
21 added.) (10) This language emphasizes *disparities* between
22 properties, not treatment of the subject property's characteristics in
23 the abstract. "

24 *Topanga Association for a Scenic Community v. County of Los Angeles*, (1974) 11
25 Cal. 3d 506, 520.

26 As such, Respondent has failed in establishing the second requirement of
27 Huntington Beach Municipal Code 240.10 for variances.

28

1 *The Third Critical Required Finding Is Not Supported By Substantial Evidence*

2 The third requirement is that granting the variance is necessary to preserve
3 one or more substantial property rights. In this instance granting the variance will not
4 preserve any substantial property rights. In fact, just the opposite is true. Granting
5 this variance will result in substantial impairment of the abutting property-owners
6 rights to privacy as well as view, sunlight and reasonable use of their property. The
7 proposed construction will result in two stories with an unobstructed view of the
8 backyard and pool of the property thereby eliminating any rights to the privacy as
9 well as view, sunlight and the reasonable enjoyment of the property. (See
10 declarations and exhibits attached hereto.) Therefore, the proposed variance does
11 not result in preserving any property rights but in the destruction of substantial
12 property rights for neighboring property in back of the proposed construction.

13
14 *The Fourth Critical Required Finding Is Not Supported By Substantial Evidence*

15 The fourth requirement is that granting the variance will not be injurious to
16 the public or neighboring properties. Although this variance may not on its face
17 affect the general public it will be injurious to the affected property adjacent of the
18 proposed construction as it may result in the reduction in the value of the affected
19 property due to reduced privacy, view, light and other concerns. (See declarations
20 and exhibits attached hereto.) The finding that ‘no detrimental impacts to
21 surrounding properties are anticipated’ is a mere verbiage from the ordinance with
22 zero consideration of the injurious neighboring appellant.

23
24 “The courts must meaningfully review grants of variances in order to
25 protect the interests of those who hold rights in property nearby the
26 parcel for which a variance is sought. A zoning scheme, after all, is
27 similar in some respects to a contract; each party forgoes rights to use
28 its land as it wishes in return for the assurance that the use of

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

neighboring property will be similarly restricted, the rationale being that such mutual restriction can enhance total community welfare. [Citations.] If the interest of these parties in preventing unjustified variance awards for neighboring land is not sufficiently protected, the consequence will be subversion of the critical reciprocity upon which zoning regulation rests.”

Stolman v. City of Los Angeles, (2003), 114 Cal. App. 4th 916

Contrary to what the City claims, this variance may also affect the general public such that the grant of this variance only confirms that the City of Huntington Beach was negligent in approving the current zoning regulations for this master planned community. Such negligence will undermine Huntington Beach’s planning and zoning authority and the confidence of property owners, purchasers, land developers or residents entrusted.

The conditional approval of the variance merely reiterates the language of each of the four requirements without providing any substantive reasoning supporting any of the requirements. Consequently, the approval is without any legitimate basis and should be rescinded or overturned.

Respectfully Submitted,



Barry G. Coleman

Attorney for Appellant

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**ON APPEALS, STATE OF CALIFORNIA
COUNTY OF ORANGE
CITY OF HUNTINGTON BEACH
PLANNING COMMITTEE**

The Branyan Family
Appellant

v.

City of Huntington Beach
Respondent

On Appeal from Branyan Residence
(19631 Dearborne Circle, Huntington Beach, California 92648)
Variance No. 2014-001 (Gupta Residence Addition)

**DECLARATIONS OF NORMAN BRANYAN
IN SUPPORT OF NOTICE OF APPEAL**

BARRY G. COLEMAN, SBN: 75383
23931 Sofia St.
Mission Viejo, CA 92691
(949) 716-8046
Attorney for Appellant

Declaration of Norman Branyan in Support of Notice of Appeal

In re: Variance No. 14-001

(The Gupta Residence Addition – 19636 Village Oaks Circle)

March 31, 2014

I, Norman Branyan, am the owner of the property located at 19631 Dearborne Circle, Huntington Beach, CA 92648. I declare as follows:

It was obvious from the hearing that the Zoning Administrator had already planned to grant this variance before the hearing. The granting of such a variance will grant special privilege to the Guptas that is unlawful, grant a variance on a rear yard setback that no other homeowner in the Peninsula Community has ever obtained, reduce the rear yard setback by 50% that is way beyond the City of Huntington Beach's (hereinafter "CITY") 10% waiver standard, reduce the minimum distance of the rear of any home to any other home in the Peninsula Community from at least 45 ft to 30 ft, and impose at least five injuries to the Branyans. Furthermore, the granting of this variance will set precedence and every homeowner in the Peninsula Community will have legal grounds to seek a variance and build inside their rear yard setbacks.

Per the CITY's code Title 24 Chapter 241.10, a variance can only be approved if all four findings in section B can be upheld. If any one of the four findings in section B below cannot be upheld, the CITY's code requires mandatory denial of this variance request. For the variance at hand, none of the findings in section B can be upheld and therefore, the CITY's code requires mandatory denial of this variance request. The CITY's code is as follows:

241.10 Required Findings

An application for a conditional use permit or variance may be approved or conditionally approved if, on the basis of the application, plans, materials, and testimony submitted, the Planning Commission or Zoning Administrator finds that:

A. For All Conditional Use Permits.

B. For Variances.

1. The granting of a variance will not constitute a grant of special privilege inconsistent with limitations upon other properties in the vicinity and under an identical zone classification.
2. Because of special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification.

3. The granting of a variance is necessary to preserve the enjoyment of one or more substantial property rights.

4. The granting of the variance will not be materially detrimental to the public welfare or injurious to property in the same zone classification and is consistent with the General Plan.

C. Mandatory Denial. Failure to make all the required findings under subsection A or B of this section shall require denial of the application.

I. Granting of the Variance will Constitute a Grant of Special Privilege

As documented later, the findings found in the CITY's Findings and Conditions for Approval of variance no 14-001 are totally flawed. The approval of Variance 14-001 will constitute a grant of special privilege and the city will be negligent if it grants such a variance. The home at 19636 Village Oaks (hereinafter "Subject Property") is located at the terminus of a cul-de-sac creating a flag lot configuration with two rear yard setbacks; one to protect the home at 19631 Dearborne Cir and one to protect the golf course. The variance as written does not specify any particular rear yard setback and therefore the variance not only permits the owner of the Subject Property to build a second story addition within 10 ft of the rear property line of 19631 Dearborne but also allows the owner of the Subject Property to build a second story addition within 10 feet of the golf course.

All the homes between Dearborne Circle and Village Oaks have 20 ft rear setbacks to protect each of the homeowners. There are four homes on the Dearborne side and 3 homes on the Village Oaks side that all have 20 ft rear setbacks. Four of these homes can be seen in Figure 1 and are designated as Home "A" through Home "D". The Subject Property in Figure 1 is designated as Home "A" and The Branyan's home is designated as Home "B". The Subject Property (Home "A") and Home "C" have 20 ft rear setbacks on their east side and The Branyan's Home (Home "B") and Home "D" have 20 ft rear yard setbacks on their west side. This allows a minimum of 40 ft separation between Home "A" and Home "B" and a minimum separation of 40 ft between Home "C" and Home "D". There are no two homes in the entire Peninsula Community that has less than this 40 ft separation between the rear of one home and any other home.



Figure 1 – Dearborne and Village Oaks Homes

Home “A” happens to have two rear yard setbacks. There is one rear yard setback facing east just like all the other homes on the east side of Village Oaks and there is another rear yard setback facing south towards the golf course. Just because Home “A” has two rear yard setbacks does not entitle the CITY to grant special privilege to Home “A” and change their 20 ft rear yard setbacks to 10 ft setbacks. The Subject Property (Home “A”) has a 20 ft rear yard setback on its east side to protect Home “B”. Likewise, Home “C” has a 20 ft rear yard setback to protect Home “D”. If the CITY grants this special privilege, the new separation between the rear of Home “B” and Home “A” will now be 30 ft. The rear of the Branyan’s home is 20 ft from the property line and the Subject Property will be 10 ft from the rear property line if this variance is granted. Nowhere in the Peninsula Community is the rear of one home allowed to come within 30 ft of another home. It appears that the minimum separation between the rear of one home and any other home in the community is currently greater than 45 ft. If this variance is granted and the separation is reduced by more than 33%, the Branyan’s home will become the black sheep of the community. The Branyan’s home will become unmarketable for future sales drastically depreciating its value. Furthermore, if this variance is granted, Home “C” will have every legal right to seek a variance and build within 10 ft of the rear property line of Home “D”. Does the CITY plan to allow every homeowner in the Peninsula Community the legal right to build inside of their rear yard setbacks?

A search of Huntington Beach zoning code for flag lots came up empty but the standard is well documented in other California communities. For instance, section 17.52.190 of the Napa

zoning code documents the standard that is applied to flag lots and can be found at http://qcode.us/codes/napa/view.php?topic=17-17_52-17_52_190&frames=on. The code states:

17.52.190 Flag lots.

- A. Purpose. To provide standards for the review and approval of flag lots as an alternative when conventional zoning standards prevent the effective utilization of property.
- B. Definition. Lots that have less than the minimum required frontage on a public or private street, have access to a public or private street by a narrow strip of land, and the largest portion of the lot is situated behind adjoining lots which front on a public or private street.
- C. Variations to District Standards. The density and development standards of the zoning district in which a property is located shall apply to a flag lot development except that:
 - 1. Lot frontage standards of the underlying district do not apply. The lot frontage shall be the width needed to meet access standards.
 - 2. Density and Lot Size. The panhandle portion of the lot shall be included when calculating residential densities, but excluded when determining compliance with minimum lot size standards. Unless the applicant can demonstrate that onsite turnaround, onsite guest parking and increased yards needed to address unusual lot configurations can be met, lot sizes may be required to be increased up to 20% over the district's minimum lot size.
 - 3. Setbacks and Yards. The Community Development Director shall determine the front, side and rear of a flag lot for purposes of identifying required district setbacks and yards, guided by the relationship of the lot to surrounding lot and structures. In general, the flag lot yards should match the yard on adjacent lots. The panhandle portion of the lot shall be excluded when determining setbacks and yards. All setbacks and yards shall be shown on any tentative map or parcel map creating a flag lot.

Pretty much the same standard is also found in St. Helena CA. St Helena's zoning standard for flag lots can be found at <http://www.codepublishing.com/CA/sthelenaframeless/index.pl?path=../html/StHelena17/StHelena17112.html#17.112.030> and states:

17.112.100 Flag lot standards.

Many residential properties with the potential for additional dwelling units are difficult to develop under conventional zoning standards. The purpose of this section is to provide standards for the review and approval of flag lots for residential use in the city as an alternative when conventional zoning standards prevent the effective utilization of the property. The following standards shall be observed in conjunction with the creation and development of flag lots:

- A. Flag lots shall only be allowed if specifically permitted within the zoning district in which a property is located. Review of flag lots will be subject to use permit approval as well as the provisions of the St. Helena subdivision ordinance.

B. The density and development standards of the zoning district in which a property is located shall apply to a flag lot development with the following exceptions:

...

4. The location of the required setbacks and yards shall be determined by the planning commission which shall be guided by the relationship of the lot to surrounding lots, buildings and structures. The panhandle portion of the lot shall be excluded when determining the required setbacks and yards. Location of setbacks and yards shall be recorded with the final map.

In another example, within Section 6 under "Flag Lot Criteria for Flat Land Areas" of the San Jose Flag Lot Policy, Policy 6-19 found at <http://www.sanjoseca.gov/DocumentCenter/Home/View/362>, the Flag Lot zoning policy states:

Setbacks from interior project boundaries should be:

- To a neighboring rear yard, 10 feet for first floor and 20 feet for second floor.
- To a neighboring side yard, 5 feet.

As per the standard zoning code for different communities within California, in determining setback requirements for flag lots, the panhandle portion of the lot should be ignored. Setback requirements should be guided by the relationship of the lot to its surrounding lots. In general, the flag lot setbacks should match the adjacent lots. Therefore, the zoning on the east side of the Subject Property should match that of the adjacent property or that of Home "B" in Figure 1. Since the rear yard of Home "B" is adjacent to the east side of the Subject Property, the Subject Property should have a rear yard setback of 20 ft on its east side. This is the current setback.

In the CITY's Findings and Conditions of Approval, it makes reference to another home on the same cul-de-sac for justification in granting the variance to the Subject Property. The lot the CITY makes reference to is designated as Home "E" in Figure 2. Home "E" is located 3 homes to the west of the Subject Property and has the same basic shape as Subject Property but reversed. The Subject Property and Home "E" are both designated as flag lot configurations.

There is one major difference, however, between Home "E" and the Subject Property. Home "E" has the side of another home (Home "F" in Figure 2) on its west side while the Subject Property has the rear of two other homes on its east side. Home "E" was designed by the developer and approved by the CITY back in 1997 to have one rear yard setback while the developer designed and the CITY approved the Subject Property to have two rear yard setbacks. The reason why Home "E" was built 5 ft from the property line was because the west side of Home "E" was zoned as a side yard.

The zoning of Home "E" that was approved by the CITY back in 1997 matches the zoning code standard for flag lots found in other California communities. Per the zoning code standard for flag lots found in other California communities, "The panhandle portion (driveway) of the lot shall be excluded when determining setbacks and yards. In general, the flag lot yards should match the adjacent lots". The setbacks for a flag lot should be guided by the relationship of the flag lot to surrounding lots. Therefore, the zoning on the west side of Home "E" should match that of the adjacent property or that of Home "F". Since the side yard of Home "F" is adjacent to

the west side of Home “E”, Home “E” was correctly zoned back in 1997 with a side yard setback of 5ft on its west side.



Figure 2 – Village Oaks Homes

Fifteen years later, the Guptas make a request to the CITY for a variance on their 20 ft rear yard setbacks. The variance was assigned to one of the CITY’s Associate Planners Tess Nguyen. Most likely, the assigned Associate Planner was not familiar with flag lots and never before came across a variance request for a flag lot. Making things even more difficult, Huntington Beach zoning code is silent on setbacks for flag lots. It’s unfortunate but the CITY’s Associate Planner most likely never performed any research on how to determine the setbacks for flag lots. The CITY’s Associate Planner decided to use Home “E” in Figure 2 to justify the granting of the variance on the Subject Property. This was the same home that the Subject Property’s design engineer Mr Stutzel used in justifying the variance to the CITY in a memo entitled Variance – Supporting Findings that was received by the CITY on January 17, 2014. Ignoring the surrounding lots, it was Mr. Stutzel’s argument to the CITY that since Home “E” (Lot 11) had only one rear yard setback on the golf course, he wanted the Subject Property to have just one rear yard setback.

The CITY’s Associate Planner had been working for months with Mt. Stutzel and wanted to get this variance approved. Not knowing the standard that should be applied for setbacks on flag lots, the CITY’s Associate Planner basically ignored any of the surrounding lots and turned to the zoning diagrams found in the CITY’s zoning code. Not knowing any better, the Associate Planner determined that the diagram found in Figure 3b met her objective in getting this variance passed. As explained to me by the CITY’s Associate Planner on the afternoon of March 19th, the Associate Planner claimed that the north side of the panhandle or driveway of Home “E” was the

side yard of Home "E". This would be the side yard designated on the right side of the diagram found in Figure 3b. The Associate Planner then concluded that since the north side of the driveway was the side yard of Home "E", then per the zoning diagram in Figure 3b, the west side of Home "E" (along the side of Home "F") was a rear yard. Per the zoning diagram in Figure 3b, this would be the rear yard designated on the top side of Figure 3b. The Associate Planner then incorrectly concluded that Home "E" must have been granted a variance of its 20 ft rear yard setback on its west side because Home "E" was built 5 ft from the property line on its west side. The Associate Planner stated that she wasn't able to locate this variance. Despite not being able to locate this variance, the Associate Planner still concluded that a variance must have been granted to the 20 ft rear yard setback on the west side of Home "E" that allowed this home to come within 5 ft of the property line. It was the Associate Planner's incorrect recommendation to the Zoning Administrator that since Home "E" received a variance on its 20 ft rear yard setback on its west side, the Subject Property should also be granted this same variance on its east side. With this recommendation in hand, the Zoning Administrator came to the hearing already planning to approve this variance and wasn't willing to listen to any counter arguments.

The Associate Planner's whole chain of logic however was flawed. The reason why the Associate Planner couldn't find the variance for the 20 ft rear yard setback on the west side of Home "E" is because this variance never existed. The west side of Home "E" was never zoned as a rear yard needing a variance. The west side of Home "E" has always been zoned as a side yard. If the west side of Home "E" was really a rear yard, then why wasn't this home built along the east property line. In looking at Figure 2, there is plenty of room on the east side of Home "E". The CITY approved the west side of Home "E" back in 1997 as a side yard before the homes were even built. This presents a problem to the CITY's Associate Planner. In order to get the variance approved, the Associate Planner needed to designate the west side of Home "E" not as a side yard but as a rear yard. Then she could argue no special privilege in granting the variance request for the Subject Property because Home "E" already received the same variance.

Per the flag lot standard documented in other California Communities, the Associated Planner should have ignored the panhandle or driveway of Home "E". As dictated in the zoning code of other California communities, the Associate Planner should have looked at the surrounding properties and used the same setbacks on adjacent properties. The Associate Planner should have recognized that the west side of Home "E" was the side yard of Home "F". The Associate Planner should have concluded that the west side of Home "E" was a side yard that allowed the builder to build this home within 5 ft of the property line. No variance was ever granted.

Since the west side of Home "E" always had a side yard setback, this home cannot be used by the CITY as justification for granting the variance of the rear yard setback on the Subject Property. A side yard setback on one home is not grounds to justify the variance of a rear yard setback on another home. If the CITY grants this variance, it will be the granting special privilege to the Subject Property which is unlawful.

Home "G" in Figure 2 is also a flag lot configuration just like the Subject Property and Home "E". The only difference is the panhandle portion is much smaller. Just like Home "E", Home "G" does not have a rear yard setback on its west side but has a side yard setback. There is not even enough room on this lot to provide a 20 ft "rear yard" setback on any of its sides. Is the CITY also going to claim that Home "G" received a variance on the rear yard setback on its west

side? It is obvious that Home "E" and Home "G" were both originally zoned by the CITY back in 1997 with one rear yard setback along the golf course. In using Home "E" or Home "G" as justification in granting the variance on the Subject Property is negligence by the CITY.

Although the shapes of the Subject Property, Home "E" and Home "G" are all the same, the zoning of the Subject Property with two "rear yard" setbacks and zoning Home "E" and Home "G" with one "rear yard" setback is still consistent with the CITY's guidelines in designating side and rear yard setbacks. In Figure 3, there are two diagrams of the CITY's Zoning code found in Title 20 Chapter 203.06. Figure 3a is actually consistent with the Subject Property having two rear yard setbacks (seen on the right side and top portion). Figure 3b is actually consistent with Home "E" and Home "G" having just one rear yard setback and multiple side yard setbacks.

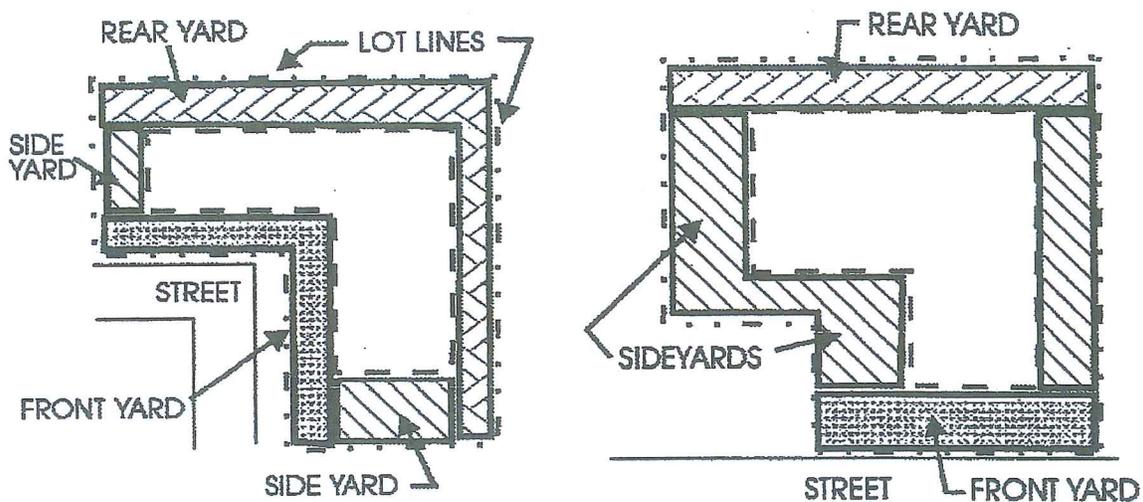


Figure 3a Huntington Beach City Zoning Diagrams Figure 3b

The CITY's Associate Planner incorrectly designated that the north side of the driveway on Home "E" was the side yard found on the right side of Figure 3b and the west side of Home "E" was the rear yard found on the top side of Figure 3b and that the golf course was just another rear yard not shown in Figure 3b. This was the CITY's Associate Planner explanation to Norman Branyan the afternoon of March 19th on how she came up with the setbacks for Home "E". The CITY's Associate Planner logic, however, was flawed. She could have just as easily designated that the north side of the driveway of Home "E" was the side yard found on the left side (not the right side) of Figure 3b and the west side of Home "G" was not a rear yard but another side yard also found on the left side of Figure 3b and that the golf course was the rear yard found at the top of Figure 3b. The reason why the CITY's Associate Planner didn't use this configuration is because it didn't allow the variance on the Subject Property to be granted.

There is another home in the community that has a similar lot configuration as to the Subject Property. This home was not part of the CITY's justification in granting the variance but

nonetheless should be addressed. This home is designated as Home “H” in Figure 4. This home was zoned back in 1997 as having one rear yard setback along the golf course and a side yard setback on its west side. Home “H” was actually built 7 ft from their west side property line.



Figure 4 - Larchmont Circle

Home “I” has some similarity to the Branyan’s home (Home “B”) in Figure 1 but there are major differences. Home “I” has two rear yard setbacks and the Branyan’s home has just one. Home “I” is located more than 40 ft from property line on its east side and approximately 150 ft from the property line on the golf course. The Branyan’s home is located 20 ft from the property line. The rear of Home “I” is more than 47 ft. from Home “H”. This distance is significantly greater than the 40 ft minimum distance that is currently found anywhere else in the Peninsula Community.

Home “H” could have been zoned and built back in 1997 with the west side having a rear yard setback because adjacent to the west side of Home “H” is the rear yard of Home “I”. Home “A” through Home “H” were all built by Shea Homes and are part of the Rivera Community. Home “I” on the other hand is part of the Turnberry Community. Two different builders built these homes. Home “I” shows up on a different CITY planning map than that of Home “H”. When Shea Homes built Home “H” they most likely thought that a side yard would be on the west side of Home “H”. All the golf course homes in Rivera were lined up together side by side. When the builder of the Turnberry homes built Home “I”, they knew that Home “H” was zoned as a side yard and built 7 ft from the property line. The CITY approved and the Turnberry builder built Home “I” exactly 40.43 ft from their east property line. This distance basically doubled the 20 ft rear yard setback requirement and maintains the 40 ft minimum separation between the rear of one home and any other home. With Home “I” being built 40.43 ft from the property line, Home “I” was not harmed. I’m sure Home “I” much preferred that they were given an extra 20 ft in their rear yard and Home “H” had a side yard setback than giving that 20 ft to Home “H”

along with a 20 ft rear yard setback. This is a common practice in circumstances when the configuration of surrounding lots require the rear yard of one home to be adjacent to the side yard of another home. I know the Branyans would have much preferred that they were giving an extra 20 ft in their rear yard making their rear yard 40 ft to the property line and that the Subject Property had 20 ft less on their east side along with a side yard setback instead of their current 20 ft rear yard setback. The problem is Guptas want the best of both worlds. They want the larger rear yard on their east side with a variance of their rear yard setback. It must be understood that no variance was ever requested or granted to Home "H". Home "H" was originally zoned with a side yard setback (not a rear yard setback) on its west side and Home "I" was compensated with a rear yard that doubled the 20 ft rear yard setback.

The original buyer of Home "I" purchased their home knowing its configuration with Home "H" being built just 7 ft from the property line. In essence, there was acceptance of zoning when the owners of Home "I" purchased their home. The reason why Home "I" was built exactly 40.43 ft from the rear property line on its east side was because it basically doubled the 20 ft rear yard setback requirement on adjacent lots. There is a distance of more than 47 ft between the homes that maintains the minimum 40 ft separation. In contrast, the Branyans, have a super small backyard and purchased their home knowing that the Subject Property had a 20 ft rear yard setback on its east side. The Branyan's home is located just 20 ft from their rear property line. With the 20 ft rear yard setback on the Subject Property, there is still a minimum of 40 ft separation between the homes. If the CITY grants the variance to the Subject Property, the distance between the back of Home "B" and the Subject Property, will be just 30 ft. This distance will be significantly smaller than the current 40 ft minimum standard found anywhere else in the Peninsula Community.

The Branyans have lived in Huntington Beach for more than 25 years and are the original purchaser of Home "B". The Guptas, on the other hand, are not the original owners of the Subject Property. The Gupta's purchased their home knowing that it had a 20 ft rear yard setback on its east side. The Branyan's will be significantly harmed by the CITY if this variance is granted to the Guptas.

II. Strict Application of the Zoning Ordinance does not Deprive the Subject Property of Privileges Enjoyed by Other Properties

No other homeowner within the Peninsula Community has ever had a variance granted that allowed the homeowner to build within a rear yard setback. The CITY has not been able to produce a single variance that was ever granted that allowed a homeowner within the Peninsula Community to build within a rear yard setback. Homeowners in the Peninsula Community are not allowed to build within rear yard setbacks. Yes, homes have been built and homeowners have been allowed to build up to within their setbacks but this does not deprive the Subject Property a privilege enjoyed by other properties. The Subject Property can build up to within their setbacks. The Subject Property is asking for a variance to build inside of a rear yard setback and this privilege has not been granted to any other property within the Peninsula Community. The CITY's Associate Planner has incorrectly claimed that other flag lots received variances and were able to build within their rear yard setbacks. This is not true. Other flag lot properties were built up to their 5 ft side yard setbacks. The truth is this variance will not deprive the Subject Property of any privilege enjoyed by other properties, but if passed, will

allow any other homeowner inside the Peninsula Community to request a variance of their rear yard setback and argue that the Subject Property has received this same privilege.

III. Granting of the Variance is not Necessary to Preserve the Enjoyment of One or More Property Rights

Homeowners within the Peninsula Community do not have a right to build inside their 20 ft rear yard setbacks. This is not a right that other homeowners in the Peninsula Community have gotten to enjoy. The rights property owners do get to enjoy is that they can build up to their setback limits. The claim by the CITY's Associate Planner that other homeowners were allowed to build within their rear yard setbacks is not true. The CITY cannot produce a single variance that was ever granted to a homeowner that allowed that homeowner to build inside a rear yard setback. The CITY's Associate Planner is incorrect when she claims that the side yards of other flag lots within the community are actually rear yards and that those homeowners were previously granted the same variance. Other flag lot property owners have not had the right to build inside of their rear yard setbacks so this is not a right that the Subject Property is lacking. Other flag lot property owners have the right to build up to within their side yard setback and this is not a right that the Subject Property is requesting or lacking.

IV. The Granting of this Variance will be Injurious to Property in the Same Zone Classification

In paragraph 4 of the CITY's Findings and Conditions of Approval, the CITY states "The granting of the variance will not be materially detrimental to the public welfare or injurious to property in the same zone classification". This statement is completely false because the CITY knows that this variance will be injurious to the Branyans and therefore cannot be granted per CITY's Zoning Code Title 24 Chapter 241.10 (B)(4). The CITY further states "... adequate separation will be provided between the proposed addition and the single-family dwelling abutting the rear of the lot. No detrimental impacts to surrounding properties are anticipated". Nothing further can be from the truth. There will not be adequate separation. Nowhere else in the Peninsula Community will there be just 30 ft separation between the rear of one home and any other home. The current minimum distance found anywhere else in the Peninsula Community is more than 40 ft. The CITY cannot claim that they can reduce the minimum separation between the rear of any home in the Peninsula Community from approximately 45 ft to 30 ft and claim there is adequate separation. That is a reduction of approximately 33%.

Furthermore, CITY's code Title 24 Chapter 241.10 (B)(4) states that the variance cannot be injurious to any other property or materially detrimental to the public welfare. In the CITY's Findings and Conditions of Approval, it states "No detrimental impacts to surrounding properties are anticipated" but this is not the standard. The zoning code does not state the variance must have no detrimental impact to other property in the same zone. The CITY's code says the variance cannot be injurious to any other property. If the impact of this variance is injurious to other properties, then this variance must be defeated.

This variance inflicts five major injuries on the Branyan's home. The injuries that this variance will impose on the Branyans is the loss of our golf course and ocean view, the loss of privacy in

our backyard and pool, the loss of sunlight on our pool, the sight of a massive building just 10 ft from their rear property line that was not there before, and the substantial decrease in value of the Branyan's home. The CITY cannot toss these injuries aside and claim no impact. Per the CITY's zoning code, the variance is injurious to the Branyans and must be defeated. Together these injuries do have detrimental impact to the Branyans but that is not the standard that need be applied.

The first major injury that this variance will impose on the Branyans is that the Branyans will lose a good portion of their golf course and ocean view. Our home has a very small view of the golf course, the ocean and Catalina Island. Although our neighbor tried to minimize the loss of view of Catalina Island, and the Branyans appreciate that, the Branyan will still lose a good portion of their golf course, ocean and Catalina views. Pretty much the entire golf course view seen by the Branyans in Figure 5 will be lost if the City grants this variance and the Guptas build a two story addition to the side of their home. Figure 5 was taken from the balcony off the master bedroom. On a clear day, one can also see the ocean from this view. The Branyans purchased this lot from the builder and had a balcony installed for this view. The Branyans will sustain serious injury if this variance is granted and the Branyans lose a good portion of the golf course and ocean view.



Figure 5 – Branyan's Golf Course View from Balcony

The second major injury of granting this variance to the Branyans is that they will lose whatever privacy they have in their backyard and pool. We have a very small backyard. Our home is located just 20 ft from our backyard fence. Our neighbor's lot is huge compared to ours. Our neighbor's side yard backs up to our backyard and from our home, we look directly into the side of his home. If our neighbor builds to within 10 ft of our fence, instead of his home being 50 feet from the back of our home, his home will be located just 30 ft from the actual back of our home. Our pool is located about 5 ft from the property line so his home would be located 15 ft from our pool. Our neighbor will be looking right down on our pool and backyard from their second story windows. The Guptas argued in the hearing that their home is located 5 or 6 feet below our home. With their home being located 5 or 6 feet below our home will put their second story windows just a few feet above the wall separating our two homes. The Gupta's home being located 5 or 6 feet below ours has no impact on the loss of the Branyan's golf course or ocean view but has a significant impact on the Branyan's privacy. Having the Gupta's windows just a few feet above the wall separating our homes will bring those windows that much closer to the Branyans backyard and pool and will that much more invade the privacy of the Branyans. In essence, the Branyans will have no privacy in their backyard and pool.

The third major injury of granting this variance to the Branyans is that the Gupta's home will further block the sun on our pool. Figures 6 – 8 show that the Gupta's current home blocks the sunlight on our backyard and pool. If this home was moved to within 10 ft of the property line, it would further decrease the amount of sunlight we receive on our pool causing injury to the Branyans.



Figure 6 - Subject Property Home Blocking Sunlight on Branyan's Pool & Backyard

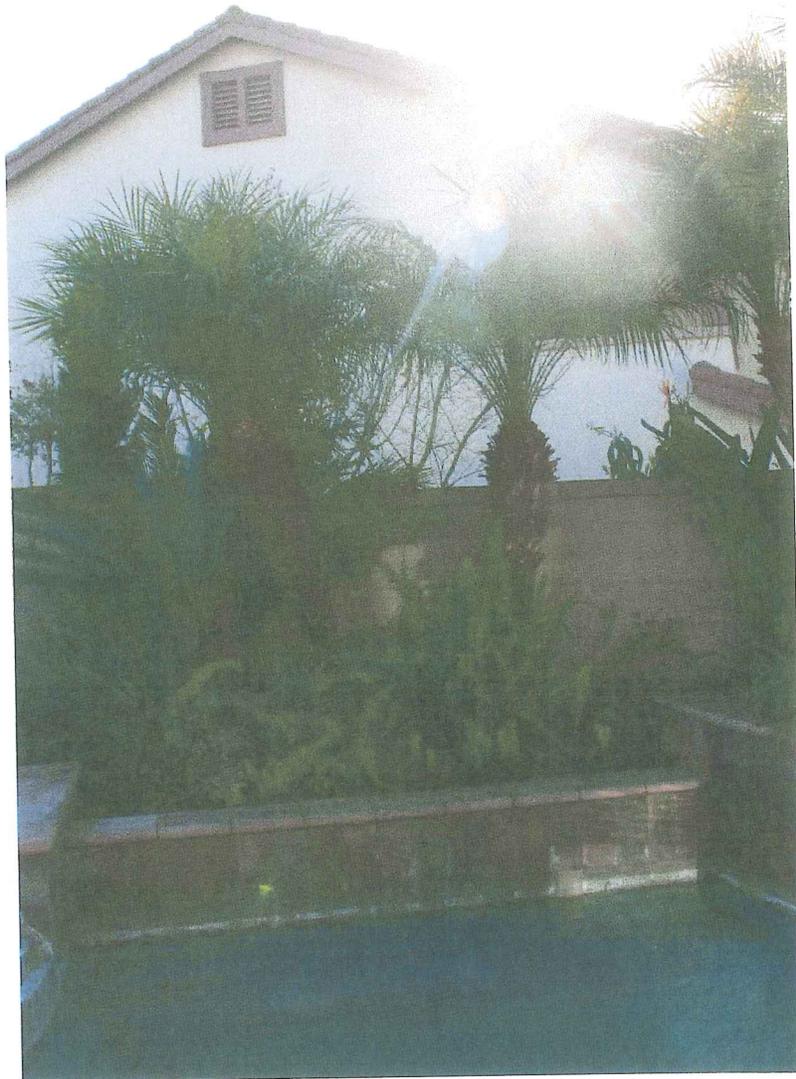


Figure 7 – Sun Receding Behind the Subject Property



Figure 8. Subject Property Home Blocking Sunlight on Branyan's Pool and Backyard

The fourth major injury of granting this variance to the Branyans is that is that the Branyans will be looking out from their home and backyard and seeing this massive building structure. Nobody wants to look out from their backyard and see a huge home built just 10 feet from their property line. Furthermore, if the variance is approved, the occupants of the Subject Property will be allowed to operate and park cars 10 ft from the Branyan's rear property line. The 20 ft rear yard setback is protection to adjacent properties and that is why the city has setback requirements.

The fifth major injury of granting this variance to the Branyans is that it will make the home unmarketable substantially decreasing its value. Anybody looking to buy this home in the future would be immediately turned away from what they see in the backyard.

Together, the five major injuries that the Branyans will suffer defeat the proposed variance per the CITY's Zoning Code Title 24 Chapter 241.10 (B)(4). Although not required per code, these five major injuries have detrimental impact to the Branyan's property.

V. Conclusion

Per the Waiver of Development Standards, the Director may waive development standards for setbacks, open space, separation between buildings, height of buildings or fences, site coverage and landscaping without a conditional use permit or a variance, only if he finds that such a waiver improves project design and does not exceed 10 percent deviation. The applicant is asking for a 50% variance which is beyond the city waiver standards and should not be granted by the CITY.

Per the CITY's code Title 24 Chapter 241.10, a variance can only be granted if all four findings in section B can be upheld. If any one of the four findings in section B below cannot be upheld, the CITY's code requires mandatory denial of this variance request. For the variance at hand, none of the findings in section B can be upheld and therefore, the CITY's code requires mandatory denial of this variance request. The Subject Property variance is a request of special privilege, will not deprive the Subject Property of a privilege enjoyed by other homeowners, the granting of the variance is not necessary to preserve the enjoyment of the Subject Property's rights, and granting of this variance will be injurious to the Branyan's. The Branyan's injuries cannot be tossed aside by the CITY. The Branyan's have documented five injuries that include the loss of our golf course and ocean view, the loss of privacy in their backyard and pool, the loss of sunlight on their pool, the sight of a massive building just 10 ft from their rear property line that was not there before, and the substantial decrease in value of the Branyan's home. Although not required to show, these injuries have detrimental impact to the Branyan's.

In the CITY's Findings and Conditions of Approval for Variance No. 14-001, the CITY states that "Granting a reduced setback for the proposed addition would allow the subject property the opportunity to be designed in the same manner as the nearby property with the similar lot configuration under the identical zone classification". This statement is made to claim no special privilege but this statement is incorrect. None of the nearby properties ever requested or was granted a variance to a rear yard setback. The nearby properties were all built to within their side yard setbacks, not inside their rear yard setbacks. Granting this variance on the Subject Property will give the Gupta's special privilege to build an addition to within 10 ft of their rear property line that has never been granted or enjoyed by any other property owners.

It was obvious from the hearing that the Zoning Administrator had already planned to grant this variance before the hearing. The CITY's Associate Planner had been working with the Guptas for months and supported their efforts in getting this variance granted. The CITY's Associate Planner ignored the surrounding lots, failed to research setback standards as applied to flag lots, and miss-applied the CITY's zoning diagrams to incorrectly claim that similar homes in the neighborhood were granted this same variance on their rear yard setbacks. The truth is that no other home in the Peninsula Community was ever granted a variance on their rear yard setback. The granting of this variance will grant special privilege to the Guptas that requires mandatory denial. In summary, the granting of this variance on a rear yard setback will grant special privilege that no other homeowner in Peninsula Community has ever obtained, reduce the rear yard setback by 50% that is way beyond the CITY's 10% waiver standard, reduce the minimum distance of the rear of any home to any other home in the Peninsula Community from at least 45 ft to 30 ft, and impose at least five injuries to the Branyan's. Furthermore, every homeowner in the Peninsula will have legal grounds to seek a variance and build inside their rear yard setbacks.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**ON APPEALS, STATE OF CALIFORNIA
COUNTY OF ORANGE
CITY OF HUNTINGTON BEACH
PLANNING COMMITTEE**

The Branyan Family
Appellant

v.

City of Huntington Beach
Respondent

On Appeal from Branyan Residence
(19631 Dearborne Circle, Huntington Beach, California 92648)
Variance No. 2014-001 (Gupta Residence Addition)

**DECLARATIONS OF TSARINA BRANYAN
IN SUPPORT OF NOTICE OF APPEAL**

BARRY G. COLEMAN, SBN: 75383
23931 Sofia St.
Mission Viejo, CA 92691
(949) 716-8046
Attorney for Appellant

DECLARATION OF TSARINA BRANYAN

My name is Tsarina Branyan. I am the owner of and reside at the real property located at 19631 Dearborne Circle, Huntington Beach, CA 92648 (Dearborne). Dearborne backs up to the Gupta property currently with a 20 feet setback from the Dearborne property line (Gupta property). Gupta is seeking a variance from the setback requirements to build a two-story 1,012 s.f. addition extending a minimum of 14 feet toward the Dearborne property.

I'm submitting this declaration in support of the appeal of the setback variance applied by Gupta and conditionally approved by the planning staff and administrator. The conditional approval must be overruled as it constituted a special privilege and will cost substantial harm to the appellant.

Dearborne is subject to certain zoning regulations for the current setback requirement for which Gupta is seeking a variance¹. Pursuant to the zoning regulations a variance should only be granted only upon a showing of extreme hardship which is lacking in the present case. Gupta was aware of the setback when they purchased their property. The setback is consistent with the design and land use in the master planned community. City's claim that a larger lot with an extended front yard or driveway is a hardship to the Gupta is arbitrary and unsupported. It reflects the overall bias and pro-development sentiments and contributes an abuse of administrative authority.

A. Background

¹ Setback

A distance from a curb, property line, or structure within which building is prohibited.

Setbacks are building restrictions imposed on property owners. Local governments create setbacks through ordinances and Building Codes, usually for reasons of public policy such as safety, privacy, and environmental protection. Setbacks prevent landowners from crowding the property of others, allow for the safe placement of pipelines, and help to preserve wetlands. Setbacks form boundaries by establishing an exact distance from a fixed point, such as a property line or an adjacent structure, within which building is prohibited. Generally, prospective buyers learn that land is subject to setback provisions when they are considering purchasing it. This information is important to future development plans, because setbacks remain in effect until changed by law or special action of a local government.

Setbacks can significantly affect a property owner's right to develop land or to modify existing structures on the land. For this reason they can influence property values; severe restrictions on land can decrease its value. Violating setback provisions can lead to legal action against a property owner, and penalties can include fines as well as an order to remove noncompliant structures. Property owners whose desire to build is stymied by setbacks have few remedies. They can petition their local government by applying for a variance—a special permission to depart from the requirements of Zoning ordinances—but variances are generally granted only in cases of extreme hardship. Litigation over setbacks is common. (legal-dictionary.com)

I purchased the Dearborn property 1998 and have resided there since the purchase. I have resided in Huntington Beach for over 25 years. Dearborne is home for my husband and my two children, Liana and Kyle, who were born in this property. Dearborne is located in a beautiful master-planned community Peninsula. At the time when we purchased our home, all home designs were made in a specific manner on particular lots with specific setback requirements. Our sub-development Rivera was built by Shea Homes.

When we made the decision to purchase our new home in the then brand new master-planned community Peninsula-Shea Rivera, the setback was one of the important considerations. We were informed and believed there was a minimum 20-25 foot minimum setback from the property adjacent to our backyard. We also expected certain amounts of open space, view and sunlight in choosing the building site. We reasonably expected that all designs and setbacks in the community had been properly considered and approved.

B. The Dearborne Property

The Dearborne property has a relatively small backyard facing southwest. The backyard has a 20 feet distance between the west corner of the structure to property line. We built a small pool with planters along the property line for enjoyment for our family. We are proud of how we best managed the space we had for our backyard. Dearborne allows our family the joy and privilege of having this home as the birth place of my two children.

The property has its drawbacks. The backyard is facing southwest. The sun is limited because of the direction the house is facing. Depending on the time of the year, the pool receives no sun as early mid afternoon due to shadows cast by adjacent property walls.

The Gupta property behind our backyard or appears to be more massive and intrusive as we are looking at the blank walls of a property instead of a typical backyard. When we look out our backyard, we see this massive white wall. (Exhibit A) Our master bedroom upstairs also faces directly to the side of the house. When we look out of the windows, we see the same white wall. (Exhibit B) I closed the windows and blinds most of the time. One the 5 windows, the one to the left has a small golf course view. (Exhibit C) That's the only window I use.

Due to limited sunlight, this property also poses a challenge to amateur gardeners. I had tried on a few occasions to grow a vegetable garden on the west side of the backyard, the lot dirt available in the backyard. The ventures had not been successful due to insufficient sunlight. We receive minimum sunlight in the morning. In the afternoon, the wall, plants and Gupta's structure would overshadow our property.

Last year (2013), I encouraged my daughter Liana to make a positive New Year resolution. Liana made the resolution that she would grow a fruit tree and it would last for the whole year. Liana decided to grow a persimmon tree. She loves the apple persimmons which, for Liana, are unique, beautiful and tasty. We planted the persimmon tree on the right side of the backyard, the only dirt that was available for a fruit tree. Because of lack of sunlight, it did not survive 2013. In fall, I took out the persimmon tree. It was sad as persimmon was Liana's first resolution and first fruit tree. However, we didn't give up. In 2014 she renewed her resolution. We got a new persimmon tree and a few other fruit trees. (To make sure that at least one survives.) We leave all the plants in pots and move them around in the sunniest spot in the backyard along the house to assure the plants would receive maximum sunlight. So far they are doing well.

The Guptas moved into the neighborhood 5 - 10 years ago. We have had no conflicts or animosity. Both ours and the Gupta's property have been enjoying all rights and privileges as other homeowners in Peninsula - Shea Riviera, a master plan community. We have same zone classification and are part of the community plan. The floor plans, designs and set backs were all known before they purchased the properties. Our son Kyle and Gupta's son belong to the same Boy Scout troop in Huntington Beach. I held the Guptas in high respect.

The Gutpa's desire to build an addition of two-story on the side adjacent to our backyard is a complete surprise. I had expressed my concerns with Mr. Gutpa and urged him to discuss with his architect. Mr. Gutpa assured that the addition would not block our sunlight. I believed that Mr. Gutpa could find a solution meeting his objective of expanding his living quarter without invading our property rights, given the privilege of its oversized lot. Ultimately, that didn't happen.

C. Violation of Substantial Rights

My fundamental rights have been substantially violated. I declare that I would not have purchased this property if the house behind us had a structure a mere 10 feet from the backyard property line. As is, I probably would not have purchased the subject property if the property to our backyard had already been built at the time of purchase. Because we are looking at the side of the house, it looks much closer, massive and invasive even with the 25 feet from property line. I would have chosen a different lot or avoid the purchase all together.

Had I known or made known that I could not rely on the setback which could be changed and was not permanent, I would not have purchased the property. I would have chosen a different lot or avoid the purchase all together.

Had I known or been made aware that a structure could be built right with poison chi, (Fung Shui) pointing at the master suit potentially harming the welfare of my family, I would not have purchased the property. I would have chosen a different lot or avoided making the purchase all together.

Had I known or been made aware that the structure had a mere 10 feet from the property line, I would not have built a pool in the backyard. The pool structure cost my family over \$80,000 of which we are still paying.

Had I known or been made aware that the City would allow future structure to completely block out sunlight in the afternoon, I would not have purchased the property. I would have chosen a different lot or avoided the purchase all together.

Had I known or been made aware that the City had negligently or incorrectly designated the setback requirement, resulting in any form of justification for the City to alter that set back, I would have avoid the purchase all together. I was under the belief that the master planned community set-backs requirements were properly approved under careful consideration in balancing different property interests. I have made a substantial investment to make Dearborne my home based on the master plan with existing setbacks and conformity.

Had I known or been made aware that the City would/could ignore vested property rights in favor of development and revenue, I would have chosen a different property and avoided a building a home in Huntington Beach all together.

D. Harms to the Branyans:

Sunlight and the open space in the backyard are important to me and my family. Restated, the proposed 2 story-addition of the minimum of 14' extension will completely block the sunlight in our backyard in early afternoon -- whatsoever limited sunlight that we currently have. My children will be deprived of the right enjoy the pool in the afternoon. Liana's persimmon plant along with all other fruit trees would not have adequate sunlight to thrive. I will not be able to have a vegetable garden. The existing view will be compromised if not eliminated entirely.

My right of privacy and those of my family will be violated. new massive structure looking right into our backyard will have a direct view of my backyard. My families' safety and my sense of safety will be substantially harmed.

The addition will certainly add value and tax revenue to the city. On the other hand, the proposed addition will completely destroy the market value of our home Dearborne. As it, due to the massive structure right in the backyard, it is less desirable than other properties in this master planned community.

Further, with the proposed structure extending a minimum of 14 feet toward our backyard direction, the N corner of the new addition will be pointing directly at the balcony of our master bedroom. In the Chinese culture, it would create a very conspicuous poison arrow harming the residents it is directing at. Such poison arrow is extremely offensive and harmful according to my culture and those who practice Feng Shui living. With those poison arrows and other negative chi/energy created by this variance, I will have to take protective measures to protect my family. The placement of poison arrows or other protective objects at the offensive structure will cause harm to the chi and energy of the residents of the offensive structure which is our backyard neighbors. Litigation is inevitable. This is very unfortunate as from then on there will be ill feelings and negative energy surrounding both of properties. That is not the environment I would want to raise my children.

In addition to harming the welfare of my family, the variance will substantially diminish the property value of our home. It closes of the market to most traditional Asians and those who practice Feng Shui living. My family will have to relocate, facing substantial losses by just living their vested rights. In essence, my family will be constructively evicted/ousted out of our own home.

In closing, I respectfully invite the committee to visit our property. You see it, you will understand. The proposed 'addition' is indeed an addition to existing rights - a special privilege not warrant under existing law and in equity. The variance will be at the expense of the welfare my family. The variance will open another flood gate for potential abuse or justification to tremble on vested and existing rights. These are the basic rights that a resident of Huntington Beach and a member of this master planned community has and has had or expected.

Respectfully submitted,

Tsarina Branyan

(714) 907-6928

Exhibit "A"



View from Back Door off of Kitchen and Family Room

Exhibit "B"



View from Branyan's Master Bedroom

Exhibit "C"



Only window from Brayan's Master Bedroom without view of Subject Property

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**ON APPEALS, STATE OF CALIFORNIA
COUNTY OF ORANGE
CITY OF HUNTINGTON BEACH
PLANNING COMMITTEE**

The Branyan Family
Appellant

v.

City of Huntington Beach
Respondent

On Appeal from Branyan Residence
(19631 Dearborne Circle, Huntington Beach, California 92648)
Variance No. 2014-001 (Gupta Residence Addition)

**DECLARATIONS OF LIANA BRANYAN
IN SUPPORT OF NOTICE OF APPEAL**

BARRY G. COLEMAN, SBN: 75383
23931 Sofia St.
Mission Viejo, CA 92691
(949) 716-8046
Attorney for Appellant

I don't want them to build off, because I have an organic garden that needs sun light to help them grow and be strong. I also think it will block the view that we paid for. I don't want them to also do that because it interrupts mom's chi, and in that case makes her stressed and unhappy, and last but not least are backyard will be very dark and sad, and they can look at us when swimming.

BY:LIANA BRANYAN
age 12 =)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**ON APPEALS, STATE OF CALIFORNIA
COUNTY OF ORANGE
CITY OF HUNTINGTON BEACH
PLANNING COMMITTEE**

The Branyan Family
Appellant

v.

City of Huntington Beach
Respondent

On Appeal from Branyan Residence
(19631 Dearborne Circle, Huntington Beach, California 92648)
Variance No. 2014-001 (Gupta Residence Addition)

**DECLARATIONS OF KYLE BRANYAN
IN SUPPORT OF NOTICE OF APPEAL**

BARRY G. COLEMAN, SBN: 75383
23931 Sofia St.
Mission Viejo, CA 92691
(949) 716-8046
Attorney for Appellant

My name is Kyle Branyan. I am 10 years old and attend Seacliff Elementary School. I do not want them to build because we would not get that much sun light. It would also make us feel enclosed even more. We would not get any more golf course view and we don't even have much of it. It would also make us colder when we go swimming to. We would also have people looking at us when we go swimming.

**APPELLEE'S RESPONSE TO APPELLANT'S NOTICE OF APPEAL
CITY OF HUNTINGTON BEACH
ZONING COMMISSION VARIANCE NO. 14-001**

May 28, 2014

RECEIVED

MAY 28 2014

Dept. of Planning
& Building

The City of Huntington Beach – Planning and Building Department
c/o Planning Committee
2000 Main Street
Huntington Beach, CA 92648

Re: **Appellee's Response to Notice of Appeal Filed Against Zoning Administrator Findings for Variance No. 14-001 (Gupta Residence Addition)**

Appellee: Dr. Shalesh Gupta and Dr. Indu Gupta ("Homeowners"), owners of subject property seeking variance for 19636 Village Oaks Circle, Huntington Beach, CA 92648 ("Gupta Residence")

Appellant: Norman, Branyan, Tsarina Branyan, Liana Branyan, Kyle Branyan ("Appellant"), owners of property adjacent to the Gupta Residence, located at 19631 Dearborne Circle, Huntington Beach, CA 92648 ("Branyan Residence")

Dear Planning Commissioners:

This letter is being submitted as a formal response by Appellee, Dr. Shalesh and Dr. Indu Gupta, to the Notice of Appeal ("Notice of Appeal") filed on behalf of Appellant by Attorney Barry G. Coleman, State Bar No. 75383 on March 31, 2014. Appellant's Notice of Appeal is attached hereto as Exhibit B (Notice of Appeal).

Facts

On or about January 17, 2014, the Homeowners submitted an application for a setback variance with the Huntington Beach Zoning Commission pursuant to planned construction of a 1,012 foot two-story addition to the Gupta Residence. The Homeowners wanted to expand their residence to develop both, additional living space and more importantly, a prayer room. The prayer room plays an important role in the lives of the Homeowners, as it is fundamental to their religious beliefs. The northeast corner of the home is also of particular importance, as it has geographical significance in their religion. At present, the northeast corner is a garage space, so there was no other meaningful alternative location for the proposed construction.

From the very beginning, the Homeowners thoughtfully and generously sought out input from their adjoining neighbors, Norman and Tsarina Branyan. They conferred with them regularly throughout the design phase, even going so far as to accommodate many of their concerns regarding sunlight, appearance, view of golf course, and other intangible items. These considerations were communicated to Homeowner's architect, John Stuzel ("Homeowner's

Architect”) who created the architectural drawings and plans for the proposed two-story addition. Nevertheless, the Appellants could never be completely satisfied.

During the original design phase, Homeowner’s Architect was apprised by the City Planning Department of a need for a variance to permit building within the 20 foot “rear yard” setback area on the Gupta Residence. A public hearing was held on March 19, 2014 at which the Homeowner’s Architect submitted the design plans for the Gupta Residence Addition. Despite having been given substantial input on the design, the Appellants continued to raise objection and spoke beyond the time limitations afforded all parties at the hearing.

The Zoning Administrator rendered a decision to recommend granting a variance based on special circumstances, so as to avoid disparate treatment against the Homeowners since neighboring properties with virtually identical shape and lot configuration had that same area designated as a “side yard.” In his decision, the Zoning Administrator articulated that “*the variance would not be materially detrimental to the public welfare or injurious to property in the same zone classification. The proposed addition is designed to match the architectural style and exterior finishes of the existing residence. In addition, adequate building separation will be provided between the proposed addition and the single-family dwelling abutting the rear of the lot. No detrimental impacts to surrounding properties are anticipated.*” (emphasis added) The Huntington Beach Zoning Administrator’s Findings are attached hereto as Exhibit A (Variance No. 14-001, Gupta Residence Addition)

Appellant filed its Notice of Appeal on March 31, 2014 asserting that the Zoning Administrator’s decision was erroneous and further accused the Associate Planner for the City of Huntington Beach of bias, bad faith, and other acts of impropriety to the Appellant’s detriment.

Following issuance of the Decision Letter, the Homeowners remained in contact with the Appellants, continually working to assuage their concerns. As recently as May 19, 2014, the Homeowners gave the Appellants direct access to their architect, John Stutzel, who incorporated modifications to eliminate the second floor of the proposed structure, and downsized the project to a single story addition with a lowered roofline. Over the time, the size and scope of the project have changed dramatically, much to the chagrin of the Homeowners, who are now fighting to regain control over their project, which has been seemingly hijacked by the Appellants. They do not want the Appellants to defeat the original purpose of the proposed construction – to build a prayer room honoring their deeply held religious beliefs. The revised architectural drawings are attached as Exhibit C (“Modified Plans”) and submitted in support of the Homeowner’s response to the Notice of Appeal.

Despite caving into their demands, the Appellants continue to complain in general about the Homeowners’ right to improve their property. The Appellants have shown a complete lack of sensitivity to the Homeowner’s religious needs, and have given no reciprocal consideration whatsoever. Today, the Appellants continue to demand accommodation for feng shui, and their Chi, both of which work to frustrate Homeowner’s ability to capitalize on their own property rights. Since the beginning of this endeavor, it has always been a proverbial *one-way street* for the Appellants, with no regard to the legitimate interests of the Homeowners. The Appellants’ demands are based on personal predilections that go far beyond the scope of any City or Homeowners Association requirements.

As the Planning Commission conducts its review of the evidence, the Homeowners ask that the Planning Commission give due consideration to the Homeowners' reasonable request for religious accommodation, and take into account the generous concessions that have already been afforded to the Appellants. It is our hope that the Homeowners' legitimate religious interests not be outweighed by the Appellants' unquantifiable and unverifiable superstitious beliefs.

Filing of Response for Consideration at the June 24, 2014 Public Hearing:

This response is being submitted to the Planning Committee by May 28, 2014 to permit review and consideration at Planning Committee's June 24, 2014 public hearing.

The explanations and information set forth in this Response provide substantial and conclusive support for acceptance of the Zoning Administrator's findings, and for the Planning Commission's approval of Variance 14-001 Gupta Residence Addition, as modified by the Modified Plans.

The Zoning Commissioner's Recommendations for Variance Should Be Upheld.

In its review of the evidence provided, the Homeowners respectfully request that the Planning Commission focus upon three important issues:

1. In reviewing applications for variances, the proper factors to be considered are limited to those items identified in Title 22, Chapter 222.16(B) on the issue of compatibility;
2. The Homeowners have met all four requirements under Title 24, Chapter 241.10(B) for variance approval, which include the following:
 - a. No special privilege would be conferred upon the Homeowners if a variance were granted;
 - b. Strict application of the zoning ordinance would deprive the Gupta Residence of privileges enjoyed by other properties under identical zoning classification;
 - c. Granting a variance is necessary to preserve the enjoyment of one or more substantial property rights; and
 - d. Granting a variance would not be materially detrimental to the public welfare or injurious to property in the same zone classification.
3. The Appellants' reliance on Chapter 241.22 is misguided and inapplicable;
4. The Branyan Residence itself is in violation of setback requirements; and
5. The Appellants have now given verbal consent to the Modified Plans.

Each of these elements shall be analyzed separately below.

Relevant Zoning Codes for Reinstatement of Variance 14-001

Municipal Zoning Codes Title 22 and 24 outline the factors to be considered, and the required findings for variances.

Title 22, Chapter 222.16(B) Factors to Be Considered. In reviewing applications, the Planning Commission shall consider all relevant factors, including technical evaluations, this section, and other standards specified in this chapter. In reaching a decision on an appeal or *variance*, the Planning Commission shall consider the:

1. Danger that materials may be swept onto other lands to the injury of others;
2. Danger of life and property due to flooding or erosion damage;
3. Importance of the services provided to the community by the proposed facility;
4. Necessity of waterfront location for the facility, if applicable;
5. Availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
6. ***Compatibility of the proposed use with existing and anticipated developments;***
7. Relationship of the proposed use to the General Plan, Local Coastal Program, and the floodplain management program for that area;
8. Safety of access to the property in time of flood for ordinary and emergency vehicles;
9. Expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site; and
10. Cost of providing government services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electric and water services, and streets and bridges.

Title 24, Chapter 241.10(B) For Variances.

1. The granting of a *variance* will not constitute a grant of special privilege inconsistent with limitations upon other properties in the vicinity and under an identical zone classification.
2. Because of special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification.
3. The granting of a *variance* is necessary to preserve the enjoyment of one or more substantial property rights.
4. The granting of the *variance* will not be materially detrimental to the public welfare or injurious to property in the same zone classification and is consistent with the General Plan.

I. Proper Factors to be Considered under Chapter 222.16(B)

Of particular note, Title 22, Chapter 222.16(B)(6) limits the scope of any evaluation to compatibility of the proposed use with existing and anticipated developments only. The Appellant speculates in their Notice of Appeal, that the variance will purportedly cause a loss of sunlight and privacy, and negatively affect their property rights, and damage their *Chi*. All of which, of course, is wholly unquantifiable. While these issues are personally important to the Appellants, they are not factors necessarily covered under the scope of *compatibility*. To the extent that the

Appellants wish to reverse the Zoning Commissioner's findings on appeal, the Zoning Commissioner must be given great deference as a rebuttable presumption, and the Appellant should bear the burden of establishing *incompatibility* of the proposed use. Mere speculation of a proposal's impact, alone, is wholly insufficient to establish incompatibility.

The fact remains that the Homeowners have gone through great lengths to appease Appellant's concerns, despite having no obligation to do so. The roof design was lowered to minimize loss of sunlight, the depth was reduced to maximize view, and now the roofline has been lowered to promote privacy. Nevertheless, Appellants remain dissatisfied, holding the community to a standard that can only be in keeping with their personal subjective requirements. Personal superstitions such as *Chi* and *feng shui* fall outside the competency of any government body to assess their impact and/or validity.

Following the public hearing, it is clear that all design attributes were duly considered by the Zoning Commissioner, and properly lead to a conclusion that the variance should be granted.

II. All 4 Elements Under Chapter 241.10 Have Been Fulfilled

A. Element #1: No grant of special privilege inconsistent with limitations upon other properties in the vicinity and under an identical zone classification.

Appellants assert that the Homeowners would be granted a special privilege if a variance were granted. Instead of relying upon mandatory legal authority under the Huntington Beach Municipal Code, Appellants rely upon *analogies* using flag lot regulations from other California communities and applying them to the Peninsula community. This line of reasoning fails for several reasons.

1. The Planning Commission is only required to follow its own local zoning codes, not those from other cities.
2. The Huntington Beach Municipal Code does not provide specialized treatment for flag lots. If regulations were desired, the City would have passed flag lot ordinances to cover such issues.
3. The Planning Commission is expected to undertake quasi-legislative functions. Its purpose is to review and enforce regulations consistent with the local laws, regulations, and the General Plan.
4. The granting of a variance would not confer a special privilege for the Homeowners. Appellants incorrectly conclude that if a variance were granted, the Gupta Residence would be the only parcel having a rear yard configuration with less than 40 feet between homes. This is simply untrue, as evidenced by the following examples of other flag lots which were assigned with only one rear yard setback.

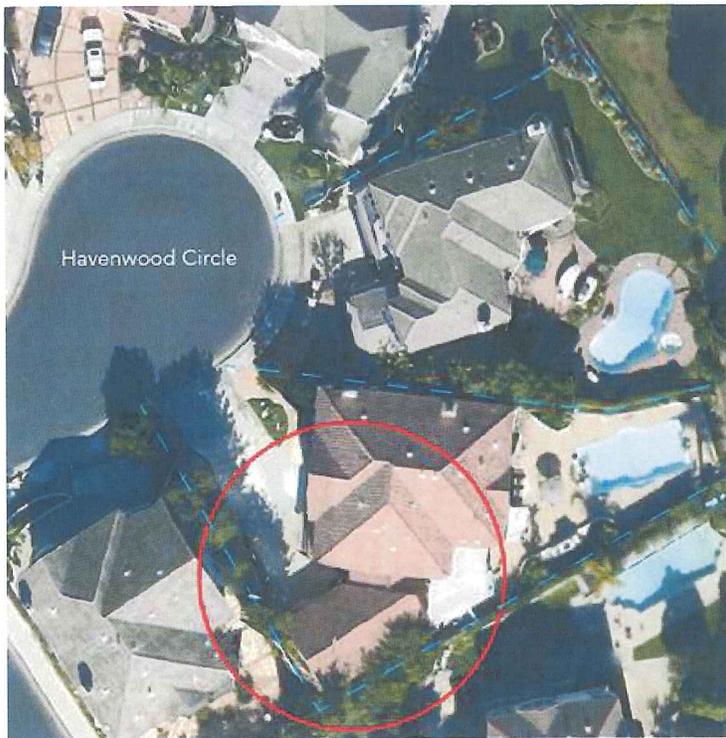
Example 1: 19606 Mayfield Drive, 19616 Cloverwood Circle



The homes located at 19606 Mayfield Circle and 19616 Cloverwood Circle are both flag lots with similar configurations. Clearly, both homes are built within a few feet of the shared property line without a 20 foot rear yard setback. 19606 Mayfield Circle was constructed in 2012.



The home located at 19635 Village Oaks Circle does not have a 20 foot rear yard setback from the property line. This lot configuration is a mirror image of the Homeowners' lot on the same cul-de-sac.



The home located at 6552 Havenwood Circle is a flag lot that is built right up to the property line, without a 20 foot rear yard setback.

From these examples, it is plain to see that the Gupta Residence is the only property subject to two rear yard setbacks. Contrary to the Appellant's assertions, the granting of a variance would not result in a special privilege for the Homeowners -- other property owners are enjoying special privileges denied to the Homeowners under a double standard.

B. Element #2: Because of special circumstances, the strict application of the zoning ordinance will deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification.

The Zoning Administrator Decision artfully summarizes the adverse impact upon the Homeowners if a setback variance is denied.

1. The granting of Variance No. 14-001 for a 10 ft. rear yard setback in lieu of a 20 ft. setback (10 ft. reduction) for a 1,012 sq. ft. first and second story addition to an existing two-story single family residence will not constitute a grant of special privilege inconsistent with limitations upon other properties in the vicinity and under an identical zone classification. The subject property is located at the terminus of a cul-de-sac creating a flag lot configuration with two rear yards. There is one similarly shaped lot at the terminus of the same cul-de-sac as the project site, which has a residence with a 5 ft. setback along one rear yard. The proposed setback of 10 ft. along one rear yard for an addition at the subject site is consistent with other properties in the vicinity and under an identical zone classification.
2. Because of special circumstances applicable to the subject property, including shape and location, the strict application of the zoning ordinance is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification. The subject site is located at the terminus of a cul-de-sac, which creates a narrow front property line resulting in a flag lot configuration with two rear yards. The shape of the lot is found to deprive the property of constructing an addition that meets the rear yard setback on the side of the house.
3. The granting of a variance is necessary to preserve the enjoyment of one or more substantial property rights. Due to the odd shape of the lot created by the property's location at the terminus of a cul-de-sac, the resulting flag lot has two rear yards, which is similar to a nearby property. The proposed addition will allow the subject property to be designed in the same manner as the property with the similar flag lot configuration.

It is clear that the strict application of the zoning ordinance would be fundamentally unfair to the Homeowners at this point. Either existing property owners would have to modify their structures to comply with proper rear yard setback requirements, or, the Homeowners should be granted equal and fair treatment under the same standard. In the interest of justice, the Planning Commission should grant the requested variance so as to avoid deprivation of property rights and disparate treatment against the Homeowners.

C. Element #3: The granting of a variance is necessary to preserve the enjoyment of one or more substantial property rights.

The Appellants argue that the granting of a variance will adversely affect the enjoyment of their substantial property rights. This is argument is both fallacious and misguided. The more appropriate assessment is whether the granting of a variance is necessary to preserve the *Homeowners'* substantial property rights, not the rights of the adjacent property owners. In the instant case, the Homeowners are simply seeking fair and equal treatment compared to other property owners who were not required to follow the same rear setback requirements. In light of the photographic evidence provided, it is clear that any failure to grant a variance would necessarily result in disparate treatment and invidious discrimination against the Homeowners. At present, they stand as the only property owners in the community who are being held to a double standard.

D. Element #4: The granting of the variance will not be materially detrimental to the public welfare or injurious to property in the same zone classification and is consistent with the General Plan.

As established in the discussion for Element #2 above, the Zoning Administrator summarized in his findings that the granting of a variance would not be materially detrimental to the public welfare or injurious to property in the same zone classification. It is our contention that the Zoning Administrator's findings were correct, properly evaluated, and should be upheld on the depth and accuracy of the Zoning Administrator's analysis.

4. The granting of the variance will not be materially detrimental to the public welfare or injurious to property in the same zone classification. The proposed addition is designed to match the architectural style and exterior finishes of the existing residence. In addition, adequate building separation will be provided between the proposed addition and the single-family dwelling abutting the rear of the lot. No detrimental impacts to surrounding properties are anticipated.
5. The granting of the variance will not adversely affect the General Plan. It is consistent with the Land Use Element designation of RL-7-sp (Residential Low Density–7 units/acre–Specific Plan) on the subject property, including the following policy.

LU 7.1.2: Require that development be designed to account for the unique characteristics of project sites and objectives for community character as appropriate.

The requested variance accounts for the unique configuration of the subject property resulting from the property's location at the terminus of a cul-de-sac, creating a flag lot with two rear yards. Granting a reduced setback for the proposed addition would allow the subject property the opportunity to be designed in the same manner as the nearby property with similar lot configuration under the identical zone classification.

In the Notice of Appeal, the Appellants assume an unreasonable interpretation of the zoning code, implying that a variance cannot be injurious to property in any manner whatsoever. The operative word in the Code is “material,” meaning that that imposition must be of such significance that it overrides other permissible factors, including the denial of the Homeowners’ right to equal treatment within the community. The Zoning Administrator provided the Appellants with ample opportunity to voice their viewpoints at the March 19th public hearing, taking nearly half of the entire time allotted for the entire agenda. Following the hearing, the Zoning Administrator articulated a clear and well-reasoned basis for his findings, providing the Planning Commission with sufficient evidence to uphold the Zoning Administrator’s recommendations for granting a variance.

III. Waiver of Development Standards Statute is Misapplied.

Appellants asserted that the Zoning Administrator’s ability to grant a waiver of development standards is restricted to a maximum deviation of 10%. Consequently, the Zoning Administrator would be prohibited from reducing any rear yard setback more than 2 feet under the zoning code.

Clearly, this is a misreading of the Code’s requirements. Chapter 241.22 reads as follows:

241.22 Waiver of Development Standards

A. **Standards Which Can Be Waived.** The director may waive development standards for setbacks, open space, separation between buildings, height of buildings or fences, site coverage and landscaping without a conditional use permit or a *variance*, only if he or she finds that such a waiver improves project design and does not exceed 10% deviation. No other standards shall be subject to this waiver provision.

The Code provides a *permissive* waiver of setbacks where they do not exceed 10%. However, the Homeowners did not file for or request a waiver, and the Zoning Administrator did not attempt to implement a unilateral waiver of the standard. The Homeowners petitioned for a *variance*, which is not limited by this particular Chapter. Application for a variance embodies procedural processes, including a public hearing.

Although the Appellants are technically correct in their description of a waiver, their argument is completely irrelevant for purposes of challenging the Zoning Administrator's actions. No waiver of the standard was requested or sought.

IV. The Branyan Residence Violates the Setback Requirement

As shown in the photograph below, the Branyan Residence is built approximately 18 feet from the property line, violating their own rear setback requirement.



In this regard, Appellants have unclean hands when making the argument against the Homeowners for strict application of the Zoning Code. To the Homeowners' knowledge, no variance has been granted to permit Appellants to build within the 20 foot rear setback. If the variance is denied, Appellants should be required to bring their building structure to Code requirements.

V. Appellants Have Acknowledged and Agreed to the Modified Plans

At this juncture, the Appellant have had full input on the design of the Modified Plans and have given verbal assent thereto. The parties are working on a stipulation agreement to formally withdraw Appellants' objections and Notice of Appeal, and shall submit the same to the Planning Commission once an agreement has been signed.

In light of these circumstances, the Planning Commission should, in its final assessment, take due notice of the absence of objections, and conduct an uncontested de novo review of the proposed Modified Plans. In the absence of objections, we believe the justification for a variance is even more compelling and should be granted.

VI. Conclusion

Based on the facts and evidence submitted, and in the interest of fair treatment, the Homeowners respectfully request the Planning Commission to reinstate the Zoning Administrator's findings, and grant approval of Variance 14-001 for the Gupta Residence Addition.

Respectfully submitted,



Finlay Gow, Esq.
California State Bar No. 167468
Attorney for Homeowners, Dr. Shalesh Gupta & Dr. Indu Gupta

/fg
Attachments

EXHIBIT A

VARIANCE NO. 14-001, GUPTA RESIDENCE ADDITION

**HUNTINGTON BEACH
OFFICE OF THE ZONING ADMINISTRATOR
EXECUTIVE SUMMARY**

TO: Zoning Administrator
FROM: Tess Nguyen, Associate Planner
DATE: March 19, 2014

SUBJECT: VARIANCE NO. 14-001 (GUPTA RESIDENCE ADDITION)

LOCATION: 19636 Village Oaks Circle, 92648 (east side of Village Oaks Circle, south of Dewberry Drive)

Applicant: John Stutzel, 3130 Airway Avenue, Costa Mesa CA 92626

Property Owner: Shalesh and Indu Gupta, 19636 Village Oaks Circle, Huntington Beach, CA 92648

Request: To permit a 10 ft. rear yard setback in lieu of a 20 ft. setback for a 1,012 sq. ft. first and second story addition to an existing two-story single family residence.

Environmental Status: This request is covered by Categorical Exemption, Section 15301, Class 1, California Environmental Quality Act.

Zone: SP9 (Holly Seacliff Specific Plan)

General Plan: RL-7-sp (Residential Low Density—7 du/ac max.—Specific Plan)

Existing Use: single family residence

RECOMMENDATION: Staff recommends approval of the proposed project based upon the following findings:

SUGGESTED FINDINGS FOR PROJECTS EXEMPT FROM CEQA:

The Zoning Administrator finds that the project will not have any significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15301 of the CEQA Guidelines, because the project consists of an addition to an existing structure that will not result in an increase of more than 50 percent of the floor area.

SUGGESTED FINDINGS FOR APPROVAL - VARIANCE NO. 14-001:

1. The granting of Variance No. 14-001 for a 10 ft. rear yard setback in lieu of a 20 ft. setback (10 ft. reduction) for a 1,012 sq. ft. first and second story addition to an existing two-story single family residence will not constitute a grant of special privilege inconsistent with limitations upon other properties in the vicinity and under an identical zone classification. The subject property is located at the terminus of a cul-de-sac creating a flag lot configuration with two rear yards. There is one similarly shaped lot at the terminus of the same cul-de-sac as the project site, which has a residence with a 5 ft. setback along one rear yard. The proposed setback of 10 ft. along one rear yard for an addition at the subject site is consistent with other properties in the vicinity and under an identical zone classification.
2. Because of special circumstances applicable to the subject property, including shape and location, the strict application of the zoning ordinance is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification. The subject site is located at the terminus of a cul-de-sac, which creates a narrow front property line resulting in a flag lot configuration with two rear yards. The shape of the lot is found to deprive the property of constructing an addition that meets the rear yard setback on the side of the house.
3. The granting of a variance is necessary to preserve the enjoyment of one or more substantial property rights. Due to the odd shape of the lot created by the property's location at the terminus of a cul-de-sac, the resulting flag lot has two rear yards, which is similar to a nearby property. The proposed addition will allow the subject property to be designed in the same manner as the property with the similar flag lot configuration.
4. The granting of the variance will not be materially detrimental to the public welfare or injurious to property in the same zone classification. The proposed addition is designed to match the architectural style and exterior finishes of the existing residence. In addition, adequate building separation will be provided between the proposed addition and the single-family dwelling abutting the rear of the lot. No detrimental impacts to surrounding properties are anticipated.
5. The granting of the variance will not adversely affect the General Plan. It is consistent with the Land Use Element designation of RL-7-sp (Residential Low Density-7 units/acre-Specific Plan) on the subject property, including the following policy.

LU 7.1.2: Require that development be designed to account for the unique characteristics of project sites and objectives for community character as appropriate.

The requested variance accounts for the unique configuration of the subject property resulting from the property's location at the terminus of a cul-de-sac, creating a flag lot with two rear yards. Granting a reduced setback for the proposed addition would allow the subject property the opportunity to be designed in the same manner as the nearby property with similar lot configuration under the identical zone classification.

SUGGESTED CONDITIONS OF APPROVAL VARIANCE NO. 14-001:

1. The site plan, floor plans, and elevations received and dated January 17, 2014 shall be the conceptually approved design.

2. Prior to submittal for building permits, the following shall be completed:
 - a. A letter from the Property Owners Association shall be submitted indicating that the proposed project has been approved, denied, or that the CC&R's do not require Association or Committee review.
 - b. Zoning entitlement conditions of approval shall be printed verbatim on one of the first three pages of all the working drawing sets used for issuance of building permits (architectural, structural, electrical, mechanical and plumbing) and shall be referenced in the sheet index. The minimum font size utilized for printed text shall be 12 point
3. VAR No. 14-001 shall become null and void unless exercised within two years of the date of final approval or such extension of time as may be granted by the Director pursuant to a written request submitted to the Planning Department a minimum 30 days prior to the expiration date.
4. The applicant and/or applicant's representative shall be responsible for ensuring the accuracy of all plans and information submitted to the City for review and approval.
5. The Development Services Departments and divisions (Building & Safety, Fire, Planning and Public Works) shall be responsible for ensuring compliance with all applicable code requirements and conditions of approval. The Director of Planning and Building may approve minor amendments to plans and/or conditions of approval as appropriate based on changed circumstances, new information or other relevant factors. Any proposed plan/project revisions shall be called out on the plan sets submitted for building permits. Permits shall not be issued until the Development Services Departments have reviewed and approved the proposed changes for conformance with the intent of the Zoning Administrator's action. If the proposed changes are of a substantial nature, an amendment to the original entitlement reviewed by the Zoning Administrator may be required pursuant to the provisions of HBZSO Section 241.18.
6. Incorporating sustainable or "green" building practices into the design of the proposed structures and associated site improvements is highly encouraged. Sustainable building practices may include (but are not limited to) those recommended by the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Program certification (<http://www.usgbc.org/DisplayPage.aspx?CategoryID=19>) or Build It Green's Green Building Guidelines and Rating Systems (<http://www.builditgreen.org/green-building-guidelines-rating>).

INDEMNIFICATION AND HOLD HARMLESS CONDITION:

The owner of the property which is the subject of this project and the project applicant if different from the property owner, and each of their heirs, successors and assigns, shall defend, indemnify and hold harmless the City of Huntington Beach and its agents, officers, and employees from any claim, action or proceedings, liability cost, including attorney's fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, including but not limited to any approval granted by the City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the applicant of any claim, action or proceeding and should cooperate fully in the defense thereof.

EXHIBIT B
NOTICE OF APPEAL

RECEIVED
MAR 31 2014
Dept. of Planning
& Building

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**ON APPEALS, STATE OF CALIFORNIA
COUNTY OF ORANGE
CITY OF HUNTINGTON BEACH
PLANNING COMMITTEE**

The Branyan Family
Appellant

v.

City of Huntington Beach
Respondent

On Appeal from Branyan Residence
(19631 Dearborne Circle, Huntington Beach, California 92648)
Variance No. 2014-001 (Gupta Residence Addition)

**NOTICE OF APPEAL; DECLARATIONS AND EXHIBITS IN
SUPPORT OF NOTICE OF APPEAL**

BARRY G. COLEMAN, SBN: 75383
23931 Sofia St.
Mission Viejo, CA 92691
(949) 716-8046
Attorney for Appellant

1 **This appeal stems from the approval of a variance to the 20 foot setback**
2 **requirements to permit a 1,012 sq. ft two story addition to an existing two-story**
3 **single family residence located in a master plan community. As set forth herein the**
4 **grant of this variance was not properly granted and should be overturned on this**
5 **appeal. As set forth in the supporting declarations the proposed construction will**
6 **result in material adverse consequences for the abutting property. The two story**
7 **addition will result in the loss of sun, privacy, reasonable use of tangible and**
8 **intangible rights to the adjacent property, the Branyan Residence. These adverse**
9 **consequences will result in tangible reduction in property value and this alone**
10 **mandates reversal of the preliminary approval of the variance.**

11
12 **Pursuant to Municipal Code Section 241.10 a variance that does not meet**
13 **each of the four criteria set forth in that section must be denied. As discussed herein**
14 **the proposed variance does not meet each of the four criteria and must be denied.**
15 **Code Section 241.10 governed by and in some respects almost identical to**
16 **Government Code Section 65906:**

17
18 **Granting variances**

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

25 **Any variance granted shall be subject to such conditions as will**
26 **assure that the adjustment thereby authorized shall not constitute a**
27 **grant of special privileges inconsistent with the limitations upon**
28 **other properties in the vicinity and zone in which such property is**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

situated.

A variance shall not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property.

The provisions of this section shall not apply to conditional use permits.

In applying the requirements for granting a variance Courts have placed the burden on the party seeking a variance to show that their property satisfies all the requirements for a variance. (*Orinda Association v. Board of Supervisors of Contra Costa County*, (1986) 182 Cal. App. 3d 1145, 1167). Furthermore, the reviewing board must provide sufficient factual findings to enable the parties to determine whether or not to seek review of the board's decision:

We hold that regardless of whether the local ordinance commands that the variance board set forth findings, that body must render findings sufficient both to enable the parties to determine whether and on what basis they should seek review and, in the event of review, to apprise a reviewing court of the basis for the board's action.

Orinda Association v. Board of Supervisors of Contra Costa County, (1986) 182 Cal. App. 3d 1145, 1167.

As discussed herein the party seeking the variance did not meet their burden to show entitlement to the variance and the board did not set forth sufficient facts to enable either party to determine if review was practical or necessary. Furthermore, Municipal Code Section requires that the board make findings supporting each of the four requirements in order to grant a variance and if the application is lacking in one

1 then the application must be denied. Courts have construed such a requirement
2 literally holding that unless all requirements are met then the variance must be
3 denied:
4

5 In a mandate proceeding to review the granting of a variance by
6 that board, the variance order may be sustained only if the board's
7 findings suffice to establish compliance with all of the statutory
8 criteria and are supported by substantial evidence in the record.

9 *Broadway, Laguna, Vallejo Association v. Board of Permit Appeals*, (1967) 66 Cal.
10 2nd 767, 773.
11

12 As discussed below, the board's grant of the variance did not set forth facts
13 showing compliance with each of the requirements to enable either party to
14 determine if review was practical or necessary.
15

16 *The First Critical Required Finding Is Not Supported By Substantial Evidence*

17 The first requirement is that the granting of the variance will not constitute a
18 grant of a special privilege inconsistent with limitations upon other properties in the
19 vicinity.

20 The City laid out the finding by incorporating the ordinance requirement with
21 the variance sought. 'The granting of the Variance No. 14-001 for a 10 ft yard
22 setback in lieu of a 20 ft. setback (10 ft reduction) for a 1,012 sq ft. first and second
23 story addition to an existing two-story single family residence will not constitute a
24 grant of special privilege inconsistent with limitations upon other properties in the
25 vicinity and under an identical zone classification.' The City justified that 'there was
26 one similarly shaped lot at the terminus of the same cul-de-sac as the project site,
27 which has a residence with a 5 ft set along one rear yard.' Without any analysis
28 whether the comparison property would or could have the attributes the subject

1 setback provides, Respondent jumped to the conclusion that 'the proposed setback of
2 10 ft. along one rear yard for an addition at the subject site is consistent with other
3 properties in the vicinity and under an identical zone classification.'

4 While no analysis exists how this property in the vicinity could have
5 established lack of special privileges, it is clear that the proposed variance granting a
6 material reduction in the set back requirements to only 10 feet constitutes a material
7 inconsistency with the 20 foot setback requirements applicable to then neighboring
8 properties. This is especially true as the proposed variance grants the right to
9 construct a two story addition 15 years later that will greatly impair the property
10 rights and privacy of the property adjacent of the proposed construction. Labeling a
11 special privilege of a two story addition as a non-privilege in a master plan
12 community does not alter the special privilege sought by the Respondent. As such,
13 Respondent has failed in establishing the first requirement of Huntington Beach
14 Municipal Code 240.10 for variances.

15
16 *The Second Critical Required Finding Is Not Supported By Substantial Evidence*

17 The second requirement is that due to special circumstances applicable to the
18 subject property, including size, shape, location and other circumstances, the strict
19 application of the zoning requirements will deprive the subject property of privileges
20 enjoyed by other properties in the nearby vicinity. Although the approval of the
21 variance plays lip-service to this requirement it does not provide any analysis as to
22 what special circumstances exist so that strict application of the zoning regulations
23 will deprive the subject property of privileges enjoyed by other properties. There is
24 no explanation as to the privilege that each other property has to build substantial
25 additions which violate the set back requirements or that will result in substantial
26 impairment of property rights of neighboring owners. The variance approval does
27 not refer to any denial of privileges held by other property owners which will result
28 from strict application of the zoning regulations in this instance. Therefore, on this

1 ground alone, the approval fails and should have been denied.

2
3 The City pointed out that 'the subject property is located at the terminus of a
4 cul-de-sac, which creates a narrow front property line resulted in a flag lot
5 configuration with two rear yards.' The City explained that 'the shape of the lot and
6 the two rear yards deprive the property owner of the ability to construct an addition
7 that meets the rear yard setback on the side the house.' The City stopped there, in
8 essence alleging the setback itself is/are the special circumstances.

9
10 Further, there is no analysis or comparison of the subject property with the
11 rights or disparities between it and other neighboring properties and therefore the
12 showing in support of the variance insufficient to warrant approval. The flag lot
13 configuration is a treatment of the subject property's characteristics in the abstract.

14
15 "These data, we conclude, do not constitute a sufficient showing to
16 satisfy the variance requirements. That section permits variances
17 "only when, because of *special* circumstances applicable to the
18 property, . . . the strict application of the zoning ordinance deprives
19 such property of privileges enjoyed by other property in the
20 vicinity and under identical zoning classification." (Italics
21 added.) (10) This language emphasizes *disparities* between
22 properties, not treatment of the subject property's characteristics in
23 the abstract. "

24 *Topanga Association for a Scenic Community v. County of Los Angeles*, (1974) 11
25 Cal. 3d 506, 520.

26 As such, Respondent has failed in establishing the second requirement of
27 Huntington Beach Municipal Code 240.10 for variances.

28

1 ***The Third Critical Required Finding Is Not Supported By Substantial Evidence***

2 The third requirement is that granting the variance is necessary to preserve
3 one or more substantial property rights. In this instance granting the variance will not
4 preserve any substantial property rights. In fact, just the opposite is true. Granting
5 this variance will result in substantial impairment of the abutting property-owners
6 rights to privacy as well as view, sunlight and reasonable use of their property. The
7 proposed construction will result in two stories with an unobstructed view of the
8 backyard and pool of the property thereby eliminating any rights to the privacy as
9 well as view, sunlight and the reasonable enjoyment of the property. (See
10 declarations and exhibits attached hereto.) Therefore, the proposed variance does
11 not result in preserving any property rights but in the destruction of substantial
12 property rights for neighboring property in back of the proposed construction.
13

14 ***The Fourth Critical Required Finding Is Not Supported By Substantial Evidence***

15 The fourth requirement is that granting the variance will not be injurious to
16 the public or neighboring properties. Although this variance may not on its face
17 affect the general public it will be injurious to the affected property adjacent of the
18 proposed construction as it may result in the reduction in the value of the affected
19 property due to reduced privacy, view, light and other concerns. (See declarations
20 and exhibits attached hereto.) The finding that 'no detrimental impacts to
21 surrounding properties are anticipated' is a mere verbiage from the ordinance with
22 zero consideration of the injurious neighboring appellant.
23

24 "The courts must meaningfully review grants of variances in order to
25 protect the interests of those who hold rights in property nearby the
26 parcel for which a variance is sought. A zoning scheme, after all, is
27 similar in some respects to a contract; each party forgoes rights to use
28 its land as it wishes in return for the assurance that the use of

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

neighboring property will be similarly restricted, the rationale being that such mutual restriction can enhance total community welfare. [Citations.] If the interest of these parties in preventing unjustified variance awards for neighboring land is not sufficiently protected, the consequence will be subversion of the critical reciprocity upon which zoning regulation rests.”

Stolman v. City of Los Angeles, (2003), 114 Cal. App. 4th 916

Contrary to what the City claims, this variance may also affect the general public such that the grant of this variance only confirms that the City of Huntington Beach was negligent in approving the current zoning regulations for this master planned community. Such negligence will undermine Huntington Beach’s planning and zoning authority and the confidence of property owners, purchasers, land developers or residents entrusted.

The conditional approval of the variance merely reiterates the language of each of the four requirements without providing any substantive reasoning supporting any of the requirements. Consequently, the approval is without any legitimate basis and should be rescinded or overturned.

Respectfully Submitted,



Barry G. Coleman

Attorney for Appellant

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**ON APPEALS, STATE OF CALIFORNIA
COUNTY OF ORANGE
CITY OF HUNTINGTON BEACH
PLANNING COMMITTEE**

**The Branyan Family
Appellant**

v.

**City of Huntington Beach
Respondent**

**On Appeal from Branyan Residence
(19631 Dearborne Circle, Huntington Beach, California 92648)
Variance No. 2014-001 (Gupta Residence Addition)**

**DECLARATIONS OF NORMAN BRANYAN
IN SUPPORT OF NOTICE OF APPEAL**

**BARRY G. COLEMAN, SBN: 75383
23931 Sofia St.
Mission Viejo, CA 92691
(949) 716-8046
Attorney for Appellant**

**Declaration of Norman Branyan
in Support of Notice of Appeal**

In re: Variance No. 14-001

(The Gupta Residence Addition – 19636 Village Oaks Circle)

March 31, 2014

I, Norman Branyan, am the owner of the property located at 19631 Dearborne Circle, Huntington Beach, CA 92648. I declare as follows:

It was obvious from the hearing that the Zoning Administrator had already planned to grant this variance before the hearing. The granting of such a variance will grant special privilege to the Guptas that is unlawful, grant a variance on a rear yard setback that no other homeowner in the Peninsula Community has ever obtained, reduce the rear yard setback by 50% that is way beyond the City of Huntington Beach's (hereinafter "CITY") 10% waiver standard, reduce the minimum distance of the rear of any home to any other home in the Peninsula Community from at least 45 ft to 30 ft, and impose at least five injuries to the Branyans. Furthermore, the granting of this variance will set precedence and every homeowner in the Peninsula Community will have legal grounds to seek a variance and build inside their rear yard setbacks.

Per the CITY's code Title 24 Chapter 241.10, a variance can only be approved if all four findings in section B can be upheld. If any one of the four findings in section B below cannot be upheld, the CITY's code requires mandatory denial of this variance request. For the variance at hand, none of the findings in section B can be upheld and therefore, the CITY's code requires mandatory denial of this variance request. The CITY's code is as follows:

241.10 Required Findings

An application for a conditional use permit or variance may be approved or conditionally approved if, on the basis of the application, plans, materials, and testimony submitted, the Planning Commission or Zoning Administrator finds that:

A. For All Conditional Use Permits.

B. For Variances.

1. The granting of a variance will not constitute a grant of special privilege inconsistent with limitations upon other properties in the vicinity and under an identical zone classification.
2. Because of special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification.

3. The granting of a variance is necessary to preserve the enjoyment of one or more substantial property rights.

4. The granting of the variance will not be materially detrimental to the public welfare or injurious to property in the same zone classification and is consistent with the General Plan.

C. Mandatory Denial. Failure to make all the required findings under subsection A or B of this section shall require denial of the application.

I. Granting of the Variance will Constitute a Grant of Special Privilege

As documented later, the findings found in the CITY's Findings and Conditions for Approval of variance no 14-001 are totally flawed. The approval of Variance 14-001 will constitute a grant of special privilege and the city will be negligent if it grants such a variance. The home at 19636 Village Oaks (hereinafter "Subject Property") is located at the terminus of a cul-de-sac creating a flag lot configuration with two rear yard setbacks; one to protect the home at 19631 Dearborne Cir and one to protect the golf course. The variance as written does not specify any particular rear yard setback and therefore the variance not only permits the owner of the Subject Property to build a second story addition within 10 ft of the rear property line of 19631 Dearborne but also allows the owner of the Subject Property to build a second story addition within 10 feet of the golf course.

All the homes between Dearborne Circle and Village Oaks have 20 ft rear setbacks to protect each of the homeowners. There are four homes on the Dearborne side and 3 homes on the Village Oaks side that all have 20 ft rear setbacks. Four of these homes can be seen in Figure 1 and are designated as Home "A" through Home "D". The Subject Property in Figure 1 is designated as Home "A" and The Branyan's home is designated as Home "B". The Subject Property (Home "A") and Home "C" have 20 ft rear setbacks on their east side and The Branyan's Home (Home "B") and Home "D" have 20 ft rear yard setbacks on their west side. This allows a minimum of 40 ft separation between Home "A" and Home "B" and a minimum separation of 40 ft between Home "C" and Home "D". There are no two homes in the entire Peninsula Community that has less than this 40 ft separation between the rear of one home and any other home.



Figure 1 – Dearborne and Village Oaks Homes

Home "A" happens to have two rear yard setbacks. There is one rear yard setback facing east just like all the other homes on the east side of Village Oaks and there is another rear yard setback facing south towards the golf course. Just because Home "A" has two rear yard setbacks does not entitle the CITY to grant special privilege to Home "A" and change their 20 ft rear yard setbacks to 10 ft setbacks. The Subject Property (Home "A") has a 20 ft rear yard setback on its east side to protect Home "B". Likewise, Home "C" has a 20 ft rear yard setback to protect Home "D". If the CITY grants this special privilege, the new separation between the rear of Home "B" and Home "A" will now be 30 ft. The rear of the Branyan's home is 20 ft from the property line and the Subject Property will be 10 ft from the rear property line if this variance is granted. Nowhere in the Peninsula Community is the rear of one home allowed to come within 30 ft of another home. It appears that the minimum separation between the rear of one home and any other home in the community is currently greater than 45 ft. If this variance is granted and the separation is reduced by more than 33%, the Branyan's home will become the black sheep of the community. The Branyan's home will become unmarketable for future sales drastically depreciating its value. Furthermore, if this variance is granted, Home "C" will have every legal right to seek a variance and build within 10 ft of the rear property line of Home "D". Does the CITY plan to allow every homeowner in the Peninsula Community the legal right to build inside of their rear yard setbacks?

A search of Huntington Beach zoning code for flag lots came up empty but the standard is well documented in other California communities. For instance, section 17.52.190 of the Napa

zoning code documents the standard that is applied to flag lots and can be found at http://qcode.us/codes/napa/view.php?topic=17-17_52-17_52_190&frames=on. The code states:

17.52.190 Flag lots.

- A. Purpose. To provide standards for the review and approval of flag lots as an alternative when conventional zoning standards prevent the effective utilization of property.
- B. Definition. Lots that have less than the minimum required frontage on a public or private street, have access to a public or private street by a narrow strip of land, and the largest portion of the lot is situated behind adjoining lots which front on a public or private street.
- C. Variations to District Standards. The density and development standards of the zoning district in which a property is located shall apply to a flag lot development except that:
 - 1. Lot frontage standards of the underlying district do not apply. The lot frontage shall be the width needed to meet access standards.
 - 2. Density and Lot Size. The panhandle portion of the lot shall be included when calculating residential densities, but excluded when determining compliance with minimum lot size standards. Unless the applicant can demonstrate that onsite turnaround, onsite guest parking and increased yards needed to address unusual lot configurations can be met, lot sizes may be required to be increased up to 20% over the district's minimum lot size.
 - 3. Setbacks and Yards. The Community Development Director shall determine the front, side and rear of a flag lot for purposes of identifying required district setbacks and yards, guided by the relationship of the lot to surrounding lot and structures. In general, the flag lot yards should match the yard on adjacent lots. The panhandle portion of the lot shall be excluded when determining setbacks and yards. All setbacks and yards shall be shown on any tentative map or parcel map creating a flag lot.

Pretty much the same standard is also found in St. Helena CA. St Helena's zoning standard for flag lots can be found at <http://www.codepublishing.com/CA/sthelena/frameless/index.pl?path=../html/StHelena17/StHelena17112.html#17.112.030> and states:

17.112.100 Flag lot standards.

Many residential properties with the potential for additional dwelling units are difficult to develop under conventional zoning standards. The purpose of this section is to provide standards for the review and approval of flag lots for residential use in the city as an alternative when conventional zoning standards prevent the effective utilization of the property. The following standards shall be observed in conjunction with the creation and development of flag lots:

- A. Flag lots shall only be allowed if specifically permitted within the zoning district in which a property is located. Review of flag lots will be subject to use permit approval as well as the provisions of the St. Helena subdivision ordinance.

B. The density and development standards of the zoning district in which a property is located shall apply to a flag lot development with the following exceptions:

...

4. The location of the required setbacks and yards shall be determined by the planning commission which shall be guided by the relationship of the lot to surrounding lots, buildings and structures. The panhandle portion of the lot shall be excluded when determining the required setbacks and yards. Location of setbacks and yards shall be recorded with the final map.

In another example, within Section 6 under "Flag Lot Criteria for Flat Land Areas" of the San Jose Flag Lot Policy, Policy 6-19 found at <http://www.sanjoseca.gov/DocumentCenter/Home/View/362>, the Flag Lot zoning policy states:

Setbacks from interior project boundaries should be:

- To a neighboring rear yard, 10 feet for first floor and 20 feet for second floor.
- To a neighboring side yard, 5 feet.

As per the standard zoning code for different communities within California, in determining setback requirements for flag lots, the panhandle portion of the lot should be ignored. Setback requirements should be guided by the relationship of the lot to its surrounding lots. In general, the flag lot setbacks should match the adjacent lots. Therefore, the zoning on the east side of the Subject Property should match that of the adjacent property or that of Home "B" in Figure 1. Since the rear yard of Home "B" is adjacent to the east side of the Subject Property, the Subject Property should have a rear yard setback of 20 ft on its east side. This is the current setback.

In the CITY's Findings and Conditions of Approval, it makes reference to another home on the same cul-de-sac for justification in granting the variance to the Subject Property. The lot the CITY makes reference to is designated as Home "E" in Figure 2. Home "E" is located 3 homes to the west of the Subject Property and has the same basic shape as Subject Property but reversed. The Subject Property and Home "E" are both designated as flag lot configurations.

There is one major difference, however, between Home "E" and the Subject Property. Home "E" has the side of another home (Home "F" in Figure 2) on its west side while the Subject Property has the rear of two other homes on its east side. Home "E" was designed by the developer and approved by the CITY back in 1997 to have one rear yard setback while the developer designed and the CITY approved the Subject Property to have two rear yard setbacks. The reason why Home "E" was built 5 ft from the property line was because the west side of Home "E" was zoned as a side yard.

The zoning of Home "E" that was approved by the CITY back in 1997 matches the zoning code standard for flag lots found in other California communities. Per the zoning code standard for flag lots found in other California communities, "The panhandle portion (driveway) of the lot shall be excluded when determining setbacks and yards. In general, the flag lot yards should match the adjacent lots". The setbacks for a flag lot should be guided by the relationship of the flag lot to surrounding lots. Therefore, the zoning on the west side of Home "E" should match that of the adjacent property or that of Home "F". Since the side yard of Home "F" is adjacent to

the west side of Home "E", Home "E" was correctly zoned back in 1997 with a side yard setback of 5ft on its west side.

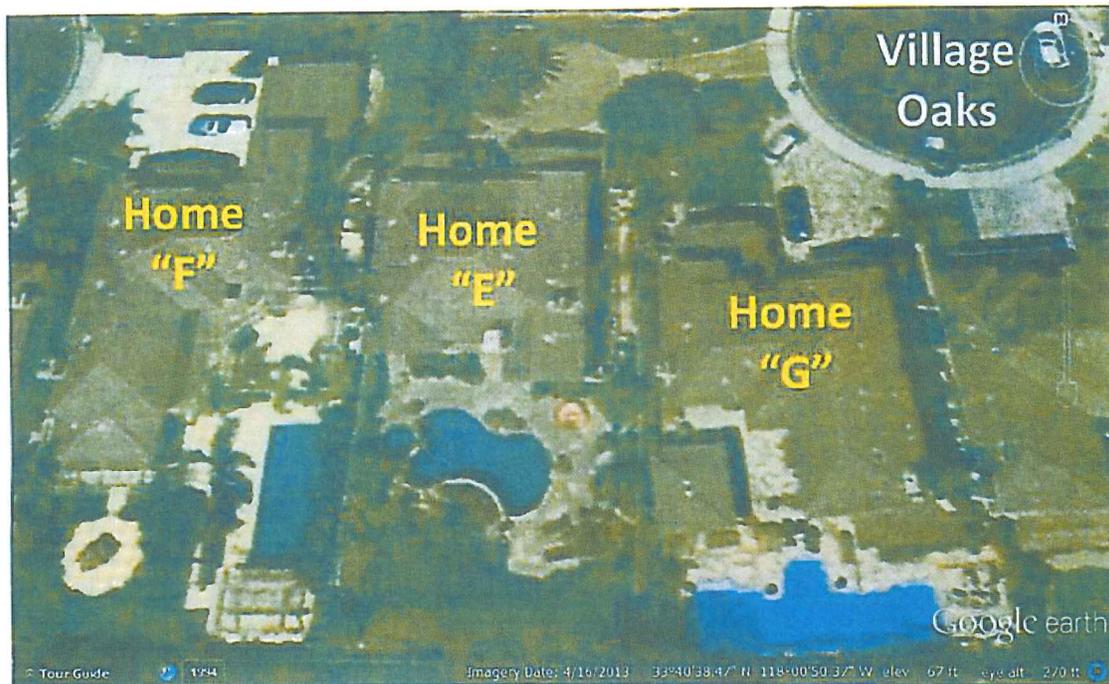


Figure 2 – Village Oaks Homes

Fifteen years later, the Guptas make a request to the CITY for a variance on their 20 ft rear yard setbacks. The variance was assigned to one of the CITY's Associate Planners Tess Nguyen. Most likely, the assigned Associate Planner was not familiar with flag lots and never before came across a variance request for a flag lot. Making things even more difficult, Huntington Beach zoning code is silent on setbacks for flag lots. It's unfortunate but the CITY's Associate Planner most likely never performed any research on how to determine the setbacks for flag lots. The CITY's Associate Planner decided to use Home "E" in Figure 2 to justify the granting of the variance on the Subject Property. This was the same home that the Subject Property's design engineer Mr Stutzel used in justifying the variance to the CITY in a memo entitled Variance – Supporting Findings that was received by the CITY on January 17, 2014. Ignoring the surrounding lots, it was Mr. Stutzel's argument to the CITY that since Home "E" (Lot 11) had only one rear yard setback on the golf course, he wanted the Subject Property to have just one rear yard setback.

The CITY's Associate Planner had been working for months with Mt. Stutzel and wanted to get this variance approved. Not knowing the standard that should be applied for setbacks on flag lots, the CITY's Associate Planner basically ignored any of the surrounding lots and turned to the zoning diagrams found in the CITY's zoning code. Not knowing any better, the Associate Planner determined that the diagram found in Figure 3b met her objective in getting this variance passed. As explained to me by the CITY's Associate Planner on the afternoon of March 19th, the Associate Planner claimed that the north side of the panhandle or driveway of Home "E" was the

side yard of Home "E". This would be the side yard designated on the right side of the diagram found in Figure 3b. The Associate Planner then concluded that since the north side of the driveway was the side yard of Home "E", then per the zoning diagram in Figure 3b, the west side of Home "E" (along the side of Home "F") was a rear yard. Per the zoning diagram in Figure 3b, this would be the rear yard designated on the top side of Figure 3b. The Associate Planner then incorrectly concluded that Home "E" must have been granted a variance of its 20 ft rear yard setback on its west side because Home "E" was built 5 ft from the property line on its west side. The Associate Planner stated that she wasn't able to locate this variance. Despite not being able to locate this variance, the Associate Planner still concluded that a variance must have been granted to the 20 ft rear yard setback on the west side of Home "E" that allowed this home to come within 5 ft of the property line. It was the Associate Planner's incorrect recommendation to the Zoning Administrator that since Home "E" received a variance on its 20 ft rear yard setback on its west side, the Subject Property should also be granted this same variance on its east side. With this recommendation in hand, the Zoning Administrator came to the hearing already planning to approve this variance and wasn't willing to listen to any counter arguments.

The Associate Planner's whole chain of logic however was flawed. The reason why the Associate Planner couldn't find the variance for the 20 ft rear yard setback on the west side of Home "E" is because this variance never existed. The west side of Home "E" was never zoned as a rear yard needing a variance. The west side of Home "E" has always been zoned as a side yard. If the west side of Home "E" was really a rear yard, then why wasn't this home built along the east property line. In looking at Figure 2, there is plenty of room on the east side of Home "E". The CITY approved the west side of Home "E" back in 1997 as a side yard before the homes were even built. This presents a problem to the CITY's Associate Planner. In order to get the variance approved, the Associate Planner needed to designate the west side of Home "E" not as a side yard but as a rear yard. Then she could argue no special privilege in granting the variance request for the Subject Property because Home "E" already received the same variance.

Per the flag lot standard documented in other California Communities, the Associated Planner should have ignored the panhandle or driveway of Home "E". As dictated in the zoning code of other California communities, the Associate Planner should have looked at the surrounding properties and used the same setbacks on adjacent properties. The Associate Planner should have recognized that the west side of Home "E" was the side yard of Home "F". The Associate Planner should have concluded that the west side of Home "E" was a side yard that allowed the builder to build this home within 5 ft of the property line. No variance was ever granted.

Since the west side of Home "E" always had a side yard setback, this home cannot be used by the CITY as justification for granting the variance of the rear yard setback on the Subject Property. A side yard setback on one home is not grounds to justify the variance of a rear yard setback on another home. If the CITY grants this variance, it will be the granting special privilege to the Subject Property which is unlawful.

Home "G" in Figure 2 is also a flag lot configuration just like the Subject Property and Home "E". The only difference is the panhandle portion is much smaller. Just like Home "E", Home "G" does not have a rear yard setback on its west side but has a side yard setback. There is not even enough room on this lot to provide a 20 ft "rear yard" setback on any of its sides. Is the CITY also going to claim that Home "G" received a variance on the rear yard setback on its west

side? It is obvious that Home "E" and Home "G" were both originally zoned by the CITY back in 1997 with one rear yard setback along the golf course. In using Home "E" or Home "G" as justification in granting the variance on the Subject Property is negligence by the CITY.

Although the shapes of the Subject Property, Home "E" and Home "G" are all the same, the zoning of the Subject Property with two "rear yard" setbacks and zoning Home "E" and Home "G" with one "rear yard" setback is still consistent with the CITY's guidelines in designating side and rear yard setbacks. In Figure 3, there are two diagrams of the CITY's Zoning code found in Title 20 Chapter 203.06. Figure 3a is actually consistent with the Subject Property having two rear yard setbacks (seen on the right side and top portion). Figure 3b is actually consistent with Home "E" and Home "G" having just one rear yard setback and multiple side yard setbacks.

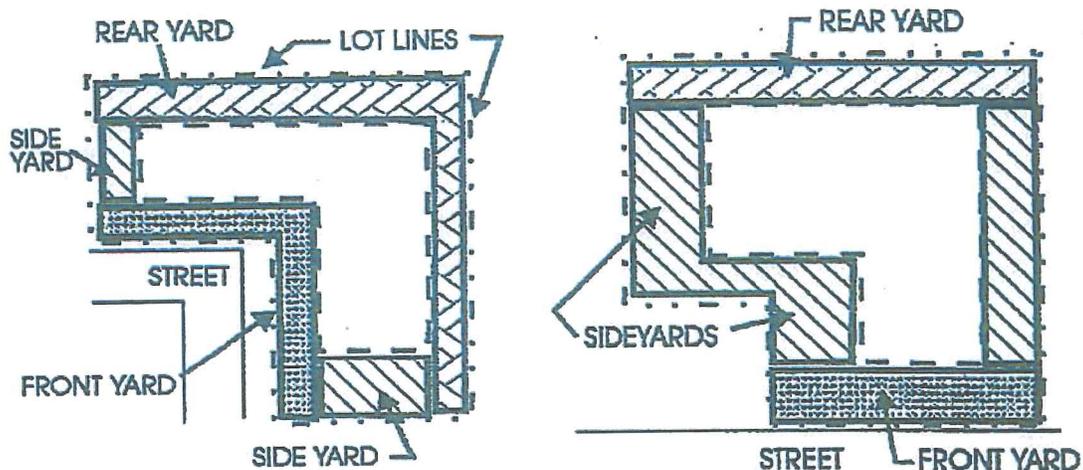


Figure 3a Huntington Beach City Zoning Diagrams Figure 3b

The CITY's Associate Planner incorrectly designated that the north side of the driveway on Home "E" was the side yard found on the right side of Figure 3b and the west side of Home "E" was the rear yard found on the top side of Figure 3b and that the golf course was just another rear yard not shown in Figure 3b. This was the CITY's Associate Planner explanation to Norman Branyan the afternoon of March 19th on how she came up with the setbacks for Home "E". The CITY's Associate Planner logic, however, was flawed. She could have just as easily designated that the north side of the driveway of Home "E" was the side yard found on the left side (not the right side) of Figure 3b and the west side of Home "G" was not a rear yard but another side yard also found on the left side of Figure 3b and that the golf course was the rear yard found at the top of Figure 3b. The reason why the CITY's Associate Planner didn't use this configuration is because it didn't allow the variance on the Subject Property to be granted.

There is another home in the community that has a similar lot configuration as to the Subject Property. This home was not part of the CITY's justification in granting the variance but

nonetheless should be addressed. This home is designated as Home "H" in Figure 4. This home was zoned back in 1997 as having one rear yard setback along the golf course and a side yard setback on its west side. Home "H" was actually built 7 ft from their west side property line.



Figure 4 - Larchmont Circle

Home "I" has some similarity to the Branyan's home (Home "B") in Figure 1 but there are major differences. Home "I" has two rear yard setbacks and the Branyan's home has just one. Home "I" is located more than 40 ft from property line on its east side and approximately 150 ft from the property line on the golf course. The Branyan's home is located 20 ft from the property line. The rear of Home "I" is more than 47 ft. from Home "H". This distance is significantly greater than the 40 ft minimum distance that is currently found anywhere else in the Peninsula Community.

Home "H" could have been zoned and built back in 1997 with the west side having a rear yard setback because adjacent to the west side of Home "H" is the rear yard of Home "I". Home "A" through Home "H" were all built by Shea Homes and are part of the Rivera Community. Home "I" on the other hand is part of the Turnberry Community. Two different builders built these homes. Home "I" shows up on a different CITY planning map than that of Home "H". When Shea Homes built Home "H" they most likely thought that a side yard would be on the west side of Home "H". All the golf course homes in Rivera were lined up together side by side. When the builder of the Turnberry homes built Home "I", they knew that Home "H" was zoned as a side yard and built 7 ft from the property line. The CITY approved and the Turnberry builder built Home "I" exactly 40.43 ft from their east property line. This distance basically doubled the 20 ft rear yard setback requirement and maintains the 40 ft minimum separation between the rear of one home and any other home. With Home "I" being built 40.43 ft from the property line, Home "I" was not harmed. I'm sure Home "I" much preferred that they were given an extra 20 ft in their rear yard and Home "H" had a side yard setback than giving that 20 ft to Home "H"

along with a 20 ft rear yard setback. This is a common practice in circumstances when the configuration of surrounding lots require the rear yard of one home to be adjacent to the side yard of another home. I know the Branyans would have much preferred that they were giving an extra 20 ft in their rear yard making their rear yard 40 ft to the property line and that the Subject Property had 20 ft less on their east side along with a side yard setback instead of their current 20 ft rear yard setback. The problem is Guptas want the best of both worlds. They want the larger rear yard on their east side with a variance of their rear yard setback. It must be understood that no variance was ever requested or granted to Home "H". Home "H" was originally zoned with a side yard setback (not a rear yard setback) on its west side and Home "I" was compensated with a rear yard that doubled the 20 ft rear yard setback.

The original buyer of Home "I" purchased their home knowing its configuration with Home "H" being built just 7 ft from the property line. In essence, there was acceptance of zoning when the owners of Home "I" purchased their home. The reason why Home "I" was built exactly 40.43 ft from the rear property line on its east side was because it basically doubled the 20 ft rear yard setback requirement on adjacent lots. There is a distance of more than 47 ft between the homes that maintains the minimum 40 ft separation. In contrast, the Branyans, have a super small backyard and purchased their home knowing that the Subject Property had a 20 ft rear yard setback on its east side. The Branyan's home is located just 20 ft from their rear property line. With the 20 ft rear yard setback on the Subject Property, there is still a minimum of 40 ft separation between the homes. If the CITY grants the variance to the Subject Property, the distance between the back of Home "B" and the Subject Property, will be just 30 ft. This distance will be significantly smaller than the current 40 ft minimum standard found anywhere else in the Peninsula Community.

The Branyans have lived in Huntington Beach for more than 25 years and are the original purchaser of Home "B". The Guptas, on the other hand, are not the original owners of the Subject Property. The Gupta's purchased their home knowing that it had a 20 ft rear yard setback on its east side. The Branyan's will be significantly harmed by the CITY if this variance is granted to the Guptas.

II. Strict Application of the Zoning Ordinance does not Deprive the Subject Property of Privileges Enjoyed by Other Properties

No other homeowner within the Peninsula Community has ever had a variance granted that allowed the homeowner to build within a rear yard setback. The CITY has not been able to produce a single variance that was ever granted that allowed a homeowner within the Peninsula Community to build within a rear yard setback. Homeowners in the Peninsula Community are not allowed to build within rear yard setbacks. Yes, homes have been built and homeowners have been allowed to build up to within their setbacks but this does not deprive the Subject Property a privilege enjoyed by other properties. The Subject Property can build up to within their setbacks. The Subject Property is asking for a variance to build inside of a rear yard setback and this privilege has not been granted to any other property within the Peninsula Community. The CITY's Associate Planner has incorrectly claimed that other flag lots received variances and were able to build within their rear yard setbacks. This is not true. Other flag lot properties were built up to their 5 ft side yard setbacks. The truth is this variance will not deprive the Subject Property of any privilege enjoyed by other properties, but if passed, will

allow any other homeowner inside the Peninsula Community to request a variance of their rear yard setback and argue that the Subject Property has received this same privilege.

III. Granting of the Variance is not Necessary to Preserve the Enjoyment of One or More Property Rights

Homeowners within the Peninsula Community do not have a right to build inside their 20 ft rear yard setbacks. This is not a right that other homeowners in the Peninsula Community have gotten to enjoy. The rights property owners do get to enjoy is that they can build up to their setback limits. The claim by the CITY's Associate Planner that other homeowners were allowed to build within their rear yard setbacks is not true. The CITY cannot produce a single variance that was ever granted to a homeowner that allowed that homeowner to build inside a rear yard setback. The CITY's Associate Planner is incorrect when she claims that the side yards of other flag lots within the community are actually rear yards and that those homeowners were previously granted the same variance. Other flag lot property owners have not had the right to build inside of their rear yard setbacks so this is not a right that the Subject Property is lacking. Other flag lot property owners have the right to build up to within their side yard setback and this is not a right that the Subject Property is requesting or lacking.

IV. The Granting of this Variance will be Injurious to Property in the Same Zone Classification

In paragraph 4 of the CITY's Findings and Conditions of Approval, the CITY states "The granting of the variance will not be materially detrimental to the public welfare or injurious to property in the same zone classification". This statement is completely false because the CITY knows that this variance will be injurious to the Branyans and therefore cannot be granted per CITY's Zoning Code Title 24 Chapter 241.10 (B)(4). The CITY further states "... adequate separation will be provided between the proposed addition and the single-family dwelling abutting the rear of the lot. No detrimental impacts to surrounding properties are anticipated". Nothing further can be from the truth. There will not be adequate separation. Nowhere else in the Peninsula Community will there be just 30 ft separation between the rear of one home and any other home. The current minimum distance found anywhere else in the Peninsula Community is more than 40 ft. The CITY cannot claim that they can reduce the minimum separation between the rear of any home in the Peninsula Community from approximately 45 ft to 30 ft and claim there is adequate separation. That is a reduction of approximately 33%.

Furthermore, CITY's code Title 24 Chapter 241.10 (B)(4) states that the variance cannot be injurious to any other property or materially detrimental to the public welfare. In the CITY's Findings and Conditions of Approval, it states "No detrimental impacts to surrounding properties are anticipated" but this is not the standard. The zoning code does not state the variance must have no detrimental impact to other property in the same zone. The CITY's code says the variance cannot be injurious to any other property. If the impact of this variance is injurious to other properties, then this variance must be defeated.

This variance inflicts five major injuries on the Branyan's home. The injuries that this variance will impose on the Branyans is the loss of our golf course and ocean view, the loss of privacy in

our backyard and pool, the loss of sunlight on our pool, the sight of a massive building just 10 ft from their rear property line that was not there before, and the substantial decrease in value of the Branyan's home. The CITY cannot toss these injuries aside and claim no impact. Per the CITY's zoning code, the variance is injurious to the Branyans and must be defeated. Together these injuries do have detrimental impact to the Branyans but that is not the standard that need be applied.

The first major injury that this variance will impose on the Branyans is that the Branyans will lose a good portion of their golf course and ocean view. Our home has a very small view of the golf course, the ocean and Catalina Island. Although our neighbor tried to minimize the loss of view of Catalina Island, and the Branyans appreciate that, the Branyan will still lose a good portion of their golf course, ocean and Catalina views. Pretty much the entire golf course view seen by the Branyans in Figure 5 will be lost if the City grants this variance and the Guptas build a two story addition to the side of their home. Figure 5 was taken from the balcony off the master bedroom. On a clear day, one can also see the ocean from this view. The Branyans purchased this lot from the builder and had a balcony installed for this view. The Branyans will sustain serious injury if this variance is granted and the Branyans lose a good portion of the golf course and ocean view.



Figure 5 – Branyan's Golf Course View from Balcony

The second major injury of granting this variance to the Branyans is that they will lose whatever privacy they have in their backyard and pool. We have a very small backyard. Our home is located just 20 ft from our backyard fence. Our neighbor's lot is huge compared to ours. Our neighbor's side yard backs up to our backyard and from our home, we look directly into the side of his home. If our neighbor builds to within 10 ft of our fence, instead of his home being 50 feet from the back of our home, his home will be located just 30 ft from the actual back of our home. Our pool is located about 5 ft from the property line so his home would be located 15 ft from our pool. Our neighbor will be looking right down on our pool and backyard from their second story windows. The Guptas argued in the hearing that their home is located 5 or 6 feet below our home. With their home being located 5 or 6 feet below our home will put their second story windows just a few feet above the wall separating our two homes. The Gupta's home being located 5 or 6 feet below ours has no impact on the loss of the Branyan's golf course or ocean view but has a significant impact on the Branyan's privacy. Having the Gupta's windows just a few feet above the wall separating our homes will bring those windows that much closer to the Branyans backyard and pool and will that much more invade the privacy of the Branyans. In essence, the Branyans will have no privacy in their backyard and pool.

The third major injury of granting this variance to the Branyans is that the Gupta's home will further block the sun on our pool. Figures 6 – 8 show that the Gupta's current home blocks the sunlight on our backyard and pool. If this home was moved to within 10 ft of the property line, it would further decrease the amount of sunlight we receive on our pool causing injury to the Branyans.



Figure 6 - Subject Property Home Blocking Sunlight on Branyan's Pool & Backyard



Figure 7 – Sun Receding Behind the Subject Property



Figure 8. Subject Property Home Blocking Sunlight on Branyan's Pool and Backyard

The forth major injury of granting this variance to the Branyans is that is that the Branyans will be looking out from their home and backyard and seeing this massive building structure. Nobody wants to look out from their backyard and see a huge home built just 10 feet from their property line. Furthermore, if the variance is approved, the occupants of the Subject Property will be allowed to operate and park cars 10 ft from the Branyan's rear property line. The 20 ft rear yard setback is protection to adjacent properties and that is why the city has setback requirements.

The fifth major injury of granting this variance to the Branyans is that it will make the home unmarketable substantially decreasing its value. Anybody looking to buy this home in the future would be immediately turned away from what they see in the backyard.

Together, the five major injuries that the Branyans will suffer defeat the proposed variance per the CITY's Zoning Code Title 24 Chapter 241.10 (B)(4). Although not required per code, these five major injuries have detrimental impact to the Branyan's property.

V. Conclusion

Per the Waiver of Development Standards, the Director may waive development standards for setbacks, open space, separation between buildings, height of buildings or fences, site coverage and landscaping without a conditional use permit or a variance, only if he finds that such a waiver improves project design and does not exceed 10 percent deviation. The applicant is asking for a 50% variance which is beyond the city waiver standards and should not be granted by the CITY.

Per the CITY's code Title 24 Chapter 241.10, a variance can only be granted if all four findings in section B can be upheld. If any one of the four findings in section B below cannot be upheld, the CITY's code requires mandatory denial of this variance request. For the variance at hand, none of the findings in section B can be upheld and therefore, the CITY's code requires mandatory denial of this variance request. The Subject Property variance is a request of special privilege, will not deprive the Subject Property of a privilege enjoyed by other homeowners, the granting of the variance is not necessary to preserve the enjoyment of the Subject Property's rights, and granting of this variance will be injurious to the Branyan's. The Branyans injuries cannot be tossed aside by the CITY. The Branyans have documented five injuries that include the loss of our golf course and ocean view, the loss of privacy in their backyard and pool, the loss of sunlight on their pool, the sight of a massive building just 10 ft from their rear property line that was not there before, and the substantial decrease in value of the Branyan's home. Although not required to show, these injuries have detrimental impact to the Branyans.

In the CITY's Findings and Conditions of Approval for Variance No. 14-001, the CITY states that "Granting a reduced setback for the proposed addition would allow the subject property the opportunity to be designed in the same manner as the nearby property with the similar lot configuration under the identical zone classification". This statement is made to claim no special privilege but this statement is incorrect. None of the nearby properties ever requested or was granted a variance to a rear yard setback. The nearby properties were all built to within their side yard setbacks, not inside their rear yard setbacks. Granting this variance on the Subject Property will give the Gupta's special privilege to build an addition to within 10 ft of their rear property line that has never been granted or enjoyed by any other property owners.

It was obvious from the hearing that the Zoning Administrator had already planned to grant this variance before the hearing. The CITY's Associate Planner had been working with the Guptas for months and supported their efforts in getting this variance granted. The CITY's Associate Planner ignored the surrounding lots, failed to research setback standards as applied to flag lots, and miss-applied the CITY's zoning diagrams to incorrectly claim that similar homes in the neighborhood were granted this same variance on their rear yard setbacks. The truth is that no other home in the Peninsula Community was ever granted a variance on their rear yard setback. The granting of this variance will grant special privilege to the Guptas that requires mandatory denial. In summary, the granting of this variance on a rear yard setback will grant special privilege that no other homeowner in Peninsula Community has ever obtained, reduce the rear yard setback by 50% that is way beyond the CITY's 10% waiver standard, reduce the minimum distance of the rear of any home to any other home in the Peninsula Community from at least 45 ft to 30 ft, and impose at least five injuries to the Branyans. Furthermore, every homeowner in the Peninsula will have legal grounds to seek a variance and build inside their rear yard setbacks.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**ON APPEALS, STATE OF CALIFORNIA
COUNTY OF ORANGE
CITY OF HUNTINGTON BEACH
PLANNING COMMITTEE**

The Branyan Family
Appellant

v.

City of Huntington Beach
Respondent

On Appeal from Branyan Residence
(19631 Dearborne Circle, Huntington Beach, California 92648)
Variance No. 2014-001 (Gupta Residence Addition)

**DECLARATIONS OF TSARINA BRANYAN
IN SUPPORT OF NOTICE OF APPEAL**

BARRY G. COLEMAN, SBN: 75383
23931 Sofia St.
Mission Viejo, CA 92691
(949) 716-8046
Attorney for Appellant

DECLARATION OF TSARINA BRANYAN

My name is Tsarina Branyan. I am the owner of and reside at the real property located at 19631 Dearborne Circle, Huntington Beach, CA 92648 (Dearborne). Dearborne backs up to the Gupta property currently with a 20 feet setback from the Dearborne property line (Gupta property). Gupta is seeking a variance from the setback requirements to build a two-story 1,012 s.f. addition extending a minimum of 14 feet toward the Dearborne property.

I'm submitting this declaration in support of the appeal of the setback variance applied by Gupta and conditionally approved by the planning staff and administrator. The conditional approval must be overruled as it constituted a special privilege and will cost substantial harm to the appellant.

Dearborne is subject to certain zoning regulations for the current setback requirement for which Gupta is seeking a variance¹. Pursuant to the zoning regulations a variance should only be granted only upon a showing of extreme hardship which is lacking in the present case. Gupta was aware of the setback when they purchased their property. The setback is consistent with the design and land use in the master planned community. City's claim that a larger lot with an extended front yard or driveway is a hardship to the Gupta is arbitrary and unsupported. It reflects the overall bias and pro-development sentiments and contributes an abuse of administrative authority.

A. Background

¹ Setback

A distance from a curb, property line, or structure within which building is prohibited.

Setbacks are building restrictions imposed on property owners. Local governments create setbacks through ordinances and Building Codes, usually for reasons of public policy such as safety, privacy, and environmental protection. Setbacks prevent landowners from crowding the property of others, allow for the safe placement of pipelines, and help to preserve wetlands. Setbacks form boundaries by establishing an exact distance from a fixed point, such as a property line or an adjacent structure, within which building is prohibited. Generally, prospective buyers learn that land is subject to setback provisions when they are considering purchasing it. This information is important to future development plans, because setbacks remain in effect until changed by law or special action of a local government.

Setbacks can significantly affect a property owner's right to develop land or to modify existing structures on the land. For this reason they can influence property values; severe restrictions on land can decrease its value. Violating setback provisions can lead to legal action against a property owner, and penalties can include fines as well as an order to remove noncompliant structures. Property owners whose desire to build is stymied by setbacks have few remedies. They can petition their local government by applying for a variance—a special permission to depart from the requirements of Zoning ordinances—but variances are generally granted only in cases of extreme hardship. Litigation over setbacks is common. (legal-dictionary.com)

I purchased the Dearborn property 1998 and have resided there since the purchase. I have resided in Huntington Beach for over 25 years. Dearborne is home for my husband and my two children, Liana and Kyle, who were born in this property. Dearborne is located in a beautiful master-planned community Peninsula. At the time when we purchased our home, all home designs were made in a specific manner on particular lots with specific setback requirements. Our sub-development Rivera was built by Shea Homes.

When we made the decision to purchase our new home in the then brand new master-planned community Peninsula-Shea Rivera, the setback was one of the important considerations. We were informed and believed there was a minimum 20-25 foot minimum setback from the property adjacent to our backyard. We also expected certain amounts of open space, view and sunlight in choosing the building site. We reasonably expected that all designs and setbacks in the community had been properly considered and approved.

B. The Dearborne Property

The Dearborne property has a relatively small backyard facing southwest. The backyard has a 20 feet distance between the west corner of the structure to property line. We built a small pool with planters along the property line for enjoyment for our family. We are proud of how we best managed the space we had for our backyard. Dearborne allows our family the joy and privilege of having this home as the birth place of my two children.

The property has its drawbacks. The backyard is facing southwest. The sun is limited because of the direction the house is facing. Depending on the time of the year, the pool receives no sun as early mid afternoon due to shadows cast by adjacent property walls.

The Gupta property behind our backyard or appears to be more massive and intrusive as we are looking at the blank walls of a property instead of a typical backyard. When we look out our backyard, we see this massive white wall. (Exhibit A) Our master bedroom upstairs also faces directly to the side of the house. When we look out of the windows, we see the same white wall. (Exhibit B) I closed the windows and blinds most of the time. One the 5 windows, the one to the left has a small golf course view. (Exhibit C) That's the only window I use.

Due to limited sunlight, this property also poses a challenge to amateur gardeners. I had tried on a few occasions to grow a vegetable garden on the west side of the backyard, the lot dirt available in the backyard. The ventures had not been successful due to insufficient sunlight. We receive minimum sunlight in the morning. In the afternoon, the wall, plants and Gupta's structure would overshadow our property.

Last year (2013), I encouraged my daughter Liana to make a positive New Year resolution. Liana made the resolution that she would grow a fruit tree and it would last for the whole year. Liana decided to grow a persimmon tree. She loves the apple persimmons which, for Liana, are unique, beautiful and tasty. We planted the persimmon tree on the right side of the backyard, the only dirt that was available for a fruit tree. Because of lack of sunlight, it did not survive 2013. In fall, I took out the persimmon tree. It was sad as persimmon was Liana's first resolution and first fruit tree. However, we didn't give up. In 2014 she renewed her resolution. We got a new persimmon tree and a few other fruit trees. (To make sure that at least one survives.) We leave all the plants in pots and move them around in the sunniest spot in the backyard along the house to assure the plants would receive maximum sunlight. So far they are doing well.

The Guptas moved into the neighborhood 5 - 10 years ago. We have had no conflicts or animosity. Both ours and the Gupta's property have been enjoying all rights and privileges as other homeowners in Peninsula - Shea Riviera, a master plan community. We have same zone classification and are part of the community plan. The floor plans, designs and set backs were all known before they purchased the properties. Our son Kyle and Gupta's son belong to the same Boy Scout troop in Huntington Beach. I held the Guptas in high respect.

The Gutpa's desire to build an addition of two-story on the side adjacent to our backyard is a complete surprise. I had expressed my concerns with Mr. Gutpa and urged him to discuss with his architect. Mr. Gutpa assured that the addition would not block our sunlight. I believed that Mr. Gutpa could find a solution meeting his objective of expanding his living quarter without invading our property rights, given the privilege of its oversized lot. Ultimately, that didn't happen.

C. Violation of Substantial Rights

My fundamental rights have been substantially violated. I declare that I would not have purchased this property if the house behind us had a structure a mere 10 feet from the backyard property line. As is, I probably would not have purchased the subject property if the property to our backyard had already been built at the time of purchase. Because we are looking at the side of the house, it looks much closer, massive and invasive even with the 25 feet from property line. I would have chosen a different lot or avoid the purchase all together.

Had I known or made known that I could not rely on the setback which could be changed and was not permanent, I would not have purchased the property. I would have chosen a different lot or avoid the purchase all together.

Had I known or been made aware that a structure could be built right with poison chi, (Fung Shui) pointing at the master suit potentially harming the welfare of my family, I would not have purchased the property. I would have chosen a different lot or avoided making the purchase all together.

Had I known or been made aware that the structure had a mere 10 feet from the property line, I would not have built a pool in the backyard. The pool structure cost my family over \$80,000 of which we are still paying.

Had I known or been made aware that the City would allow future structure to completely block out sunlight in the afternoon, I would not have purchased the property. I would have chosen a different lot or avoided the purchase all together.

Had I known or been made aware that the City had negligently or incorrectly designated the setback requirement, resulting in any form of justification for the City to alter that set back, I would have avoid the purchase all together. I was under the belief that the master planned community set-backs requirements were properly approved under careful consideration in balancing different property interests. I have made a substantial investment to make Dearborne my home based on the master plan with existing setbacks and conformity.

Had I known or been made aware that the City would/could ignore vested property rights in favor of development and revenue, I would have chosen a different property and avoided a building a home in Huntington Beach all together.

D. Harms to the Branyans:

Sunlight and the open space in the backyard are important to me and my family. Restated, the proposed 2 story-addition of the minimum of 14' extension will completely block the sunlight in our backyard in early afternoon -- whatsoever limited sunlight that we currently have. My children will be deprived of the right enjoy the pool in the afternoon. Liana's persimmon plant along with all other fruit trees would not have adequate sunlight to thrive. I will not be able to have a vegetable garden. The existing view will be compromised if not eliminated entirely.

My right of privacy and those of my family will be violated. new massive structure looking right into our backyard will have a direct view of my backyard. My families' safety and my sense of safety will be substantially harmed.

The addition will certainly add value and tax revenue to the city. On the other hand, the proposed addition will completely destroy the market value of our home Dearborne. As it, due to the massive structure right in the backyard, it is less desirable than other properties in this master planned community.

Further, with the proposed structure extending a minimum of 14 feet toward our backyard direction, the N corner of the new addition will be pointing directly at the balcony of our master bedroom. In the Chinese culture, it would create a very conspicuous poison arrow harming the residents it is directing at. Such poison arrow is extremely offensive and harmful according to my culture and those who practice Feng Shui living. With those poison arrows and other negative chi/energy created by this variance, I will have to take protective measures to protect my family. The placement of poison arrows or other protective objects at the offensive structure will cause harm to the chi and energy of the residents of the offensive structure which is our backyard neighbors. Litigation is inevitable. This is very unfortunate as from then on there will be ill feelings and negative energy surrounding both of properties. That is not the environment I would want to raise my children.

In addition to harming the welfare of my family, the variance will substantially diminish the property value of our home. It closes of the market to most traditional Asians and those who practice Feng Shui living. My family will have to relocate, facing substantial losses by just living their vested rights. In essence, my family will be constructively evicted/ousted out of our own home.

In closing, I respectfully invite the committee to visit our property. You see it, you will understand. The proposed 'addition' is indeed an addition to existing rights - a special privilege not warrant under existing law and in equity. The variance will be at the expense of the welfare my family. The variance will open another flood gate for potential abuse or justification to tremble on vested and existing rights. These are the basic rights that a resident of Huntington Beach and a member of this master planned community has and has had or expected.

Respectfully submitted,

Tsarina Branyan
(714) 907-6928

Exhibit "A"



View from Back Door off of Kitchen and Family Room

Exhibit "B"



View from Branyan's Master Bedroom

Exhibit "C"



Only window from Brayan's Master Bedroom without view of Subject Property

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**ON APPEALS, STATE OF CALIFORNIA
COUNTY OF ORANGE
CITY OF HUNTINGTON BEACH
PLANNING COMMITTEE**

**The Branyan Family
Appellant**

v.

**City of Huntington Beach
Respondent**

**On Appeal from Branyan Residence
(19631 Dearborne Circle, Huntington Beach, California 92648)
Variance No. 2014-001 (Gupta Residence Addition)**

**DECLARATIONS OF LIANA BRANYAN
IN SUPPORT OF NOTICE OF APPEAL**

**BARRY G. COLEMAN, SBN: 75383
23931 Sofia St.
Mission Viejo, CA 92691
(949) 716-8046
Attorney for Appellant**

I don't want them to build off, because I have an organic garden that needs sun light to help them grow and be strong. I also think it will block the view that we paid for. I don't want them to also do that because it interrupts mom's chi, and in that case makes her stressed and unhappy, and last but not least are backyard will be very dark and sad, and they can look at us when swimming.

BY:LIANA BRANYAN
age 12 =)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**ON APPEALS, STATE OF CALIFORNIA
COUNTY OF ORANGE
CITY OF HUNTINGTON BEACH
PLANNING COMMITTEE**

The Branyan Family
Appellant

v.

City of Huntington Beach
Respondent

**On Appeal from Branyan Residence
(19631 Dearborne Circle, Huntington Beach, California 92648)
Variance No. 2014-001 (Gupta Residence Addition)**

**DECLARATIONS OF KYLE BRANYAN
IN SUPPORT OF NOTICE OF APPEAL**

**BARRY G. COLEMAN, SBN: 75383
23931 Sofia St.
Mission Viejo, CA 92691
(949) 716-8046
Attorney for Appellant**

My name is Kyle Branyan. I am 10 years old and attend Seacliff Elementary School. I do not want them to build because we would not get that much sun light. It would also make us feel enclosed even more. We would not get any more golf course view and we don't even have much of it. It would also make us colder when we go swimming to. We would also have people looking at us when we go swimming.

EXHIBIT C
MODIFIED PLANS

stüzel
DESIGN

3150 Alhambra Avenue
Costa Mesa, CA, 92626
714.926.0043

1455 Village Oaks Circle
Huntington Beach, CA

SUPPLEMENTAL

DATE: 01/15/15

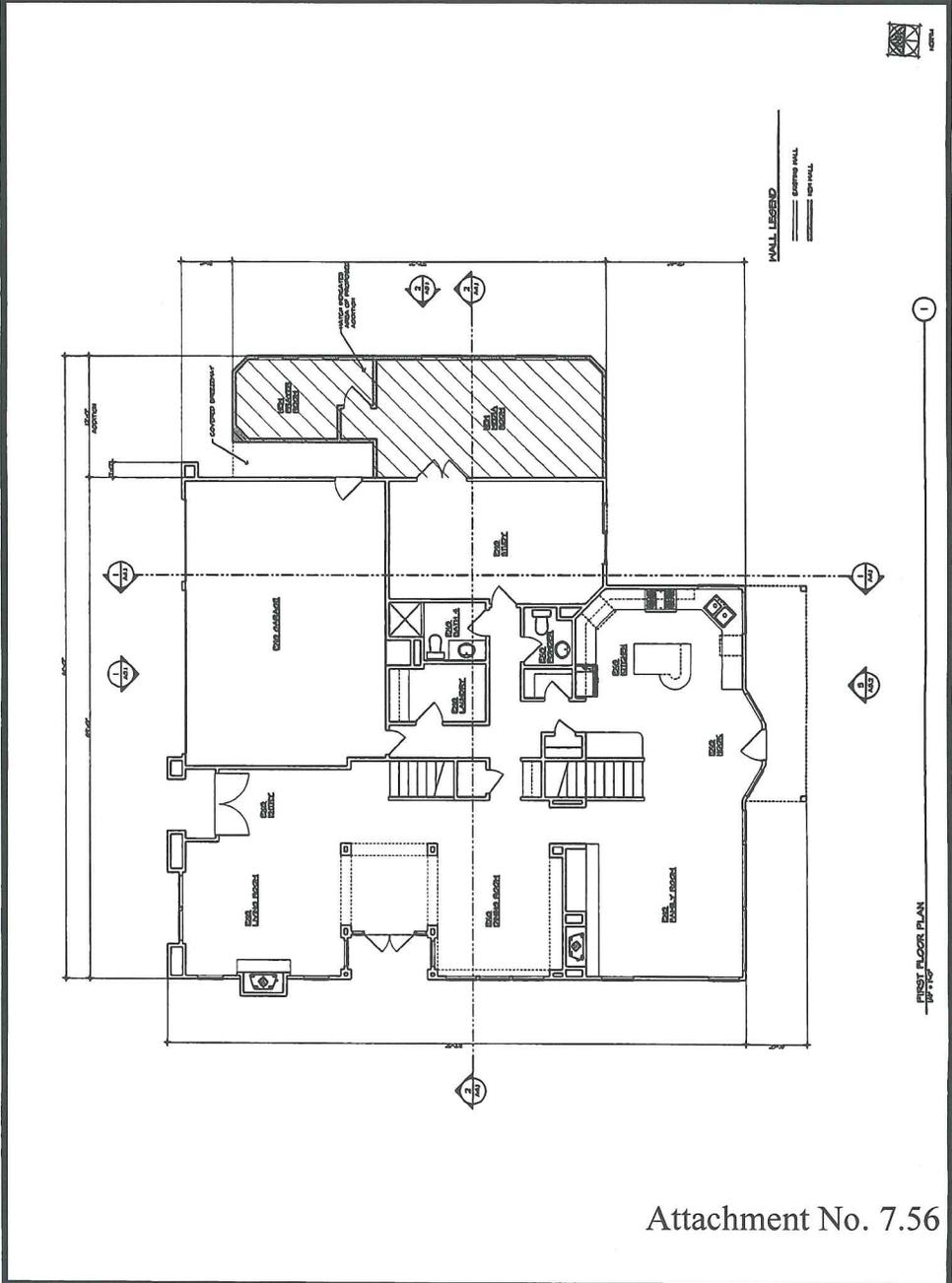
BY: [Signature]

01/15/15

THIS DRAWING IS THE PROPERTY OF STÜZEL DESIGN. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF STÜZEL DESIGN.

FIRST FLOOR PLAN

A2.1



stüzel
DESIGN

3350 Avenue Avenue
Corte Madera, CA 94929
714.926.0043

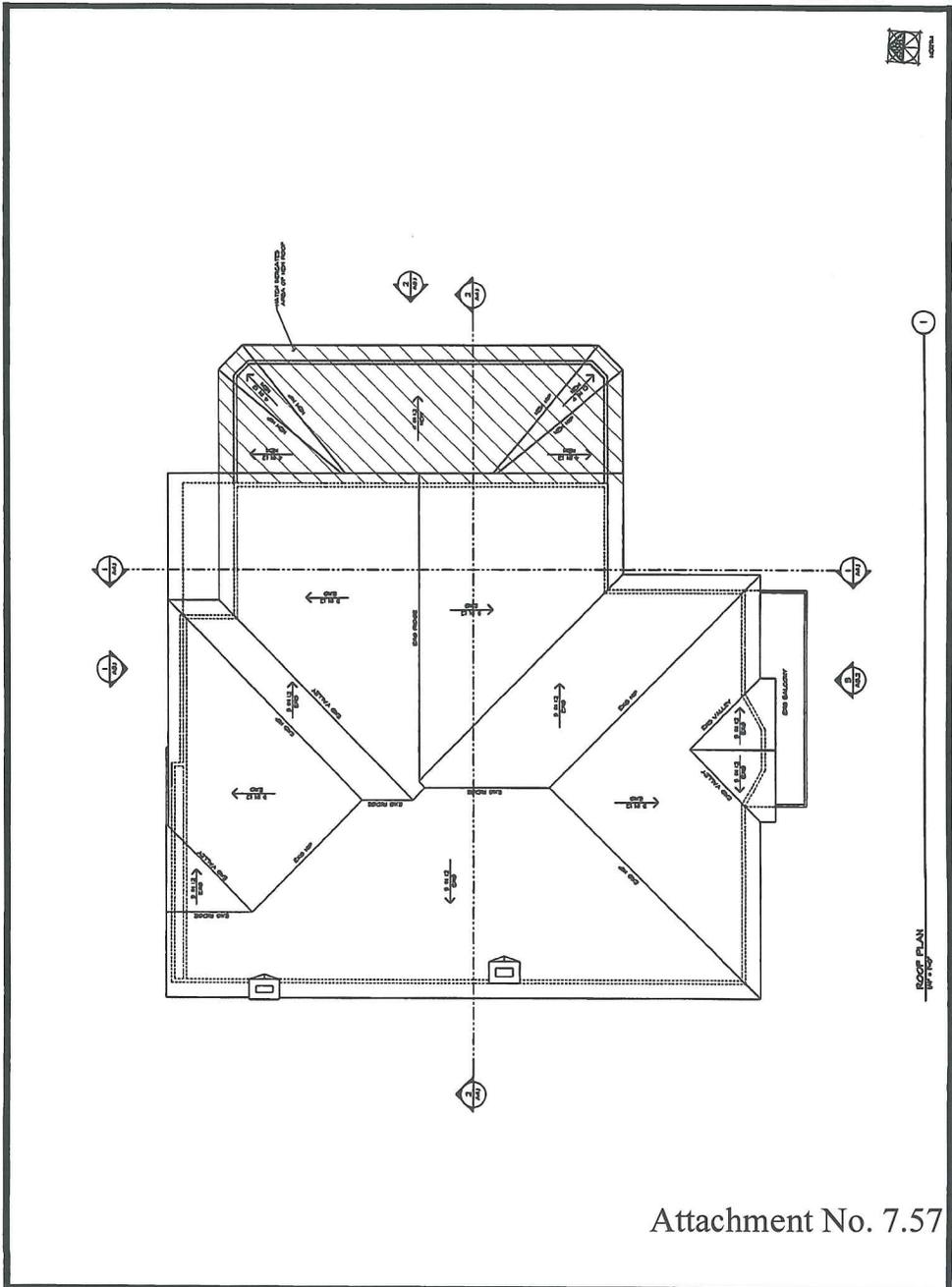
SUPITA RESIDENCE
14656 Village Oaks Circle
Huntington Beach, CA

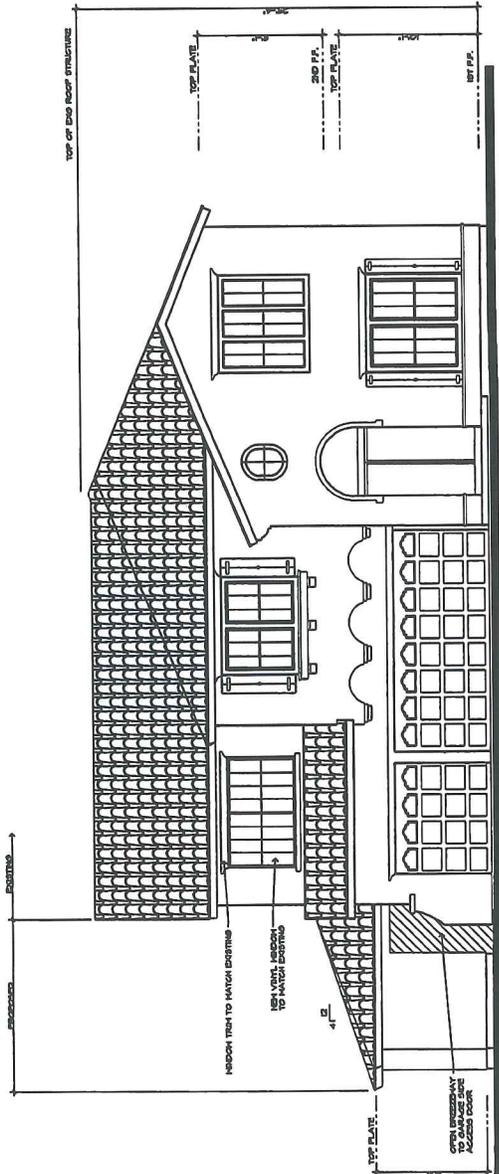
REVISIONS DATE

DATE: 08/20/12

BY: [Signature]
CHECKED: [Signature]
DATE: 08/20/12

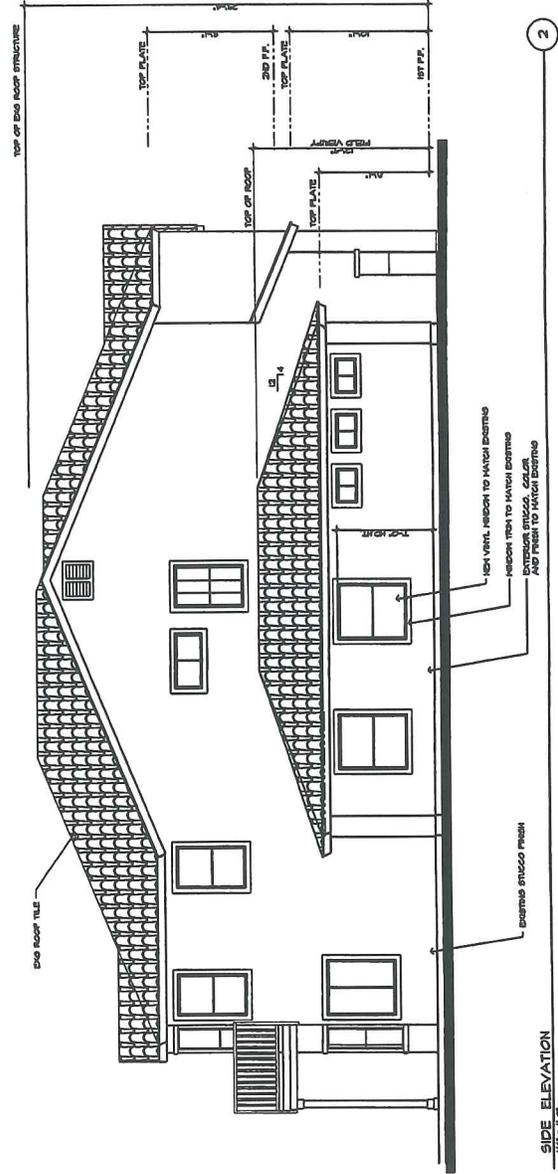
ROOF PLAN
A2.3





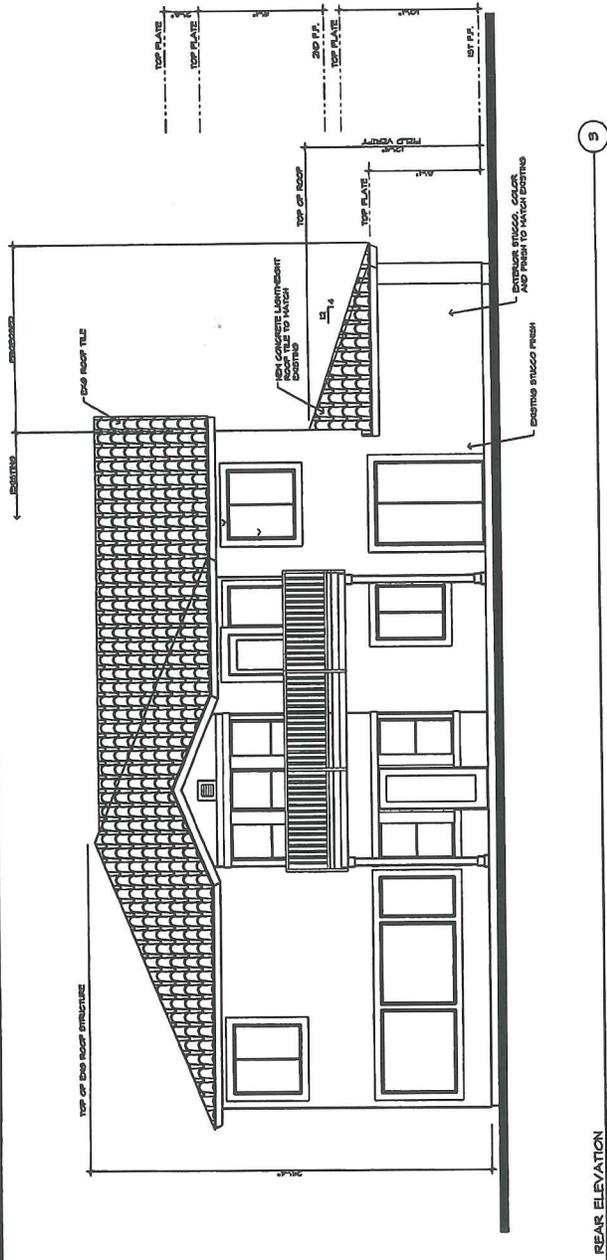
1

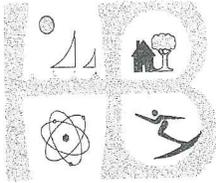
FRONT ELEVATION
1/8" = 1'-0"



2

SIDE ELEVATION
1/8" = 1'-0"





City of Huntington Beach

2000 MAIN STREET

CALIFORNIA 92648

DEPARTMENT OF PLANNING AND BUILDING

www.huntingtonbeachca.gov

Planning Division

714.536.5271

Building Division

714.536.5241

June 23, 2014

John Stutzel
3130 Airway Avenue
Costa Mesa CA 92626

**SUBJECT: VARIANCE NO. 2014-001 (GUPTA RESIDENCE ADDITION)—19636
VILLAGE OAKS CIRCLE
PROJECT IMPLEMENTATION CODE REQUIREMENTS**

Dear Mr. Stutzel:

In order to assist you with your development proposal, staff has reviewed the project and identified applicable city policies, standard plans, and development and use requirements, excerpted from the City of Huntington Beach Zoning & Subdivision Ordinance and Municipal Codes. This list is intended to help you through the permitting process and various stages of project implementation.

It should be noted that this requirement list is in addition to any "conditions of approval" adopted by the Zoning Administrator or Planning Commission. Please note that if the design of your project or if site conditions change, the list may also change based upon modifications to your project and the applicable city policies, standard plans, and development and use requirements.

If you would like a clarification of any of these requirements, an explanation of the Huntington Beach Zoning & Subdivision Ordinance and Municipal Codes, or believe some of the items listed do not apply to your project, and/or you would like to discuss them in further detail, please contact me at 714-374-1744 (tnguyen@surfcity-hb.org) and/or the respective source department (contact person below).

Sincerely,

TESS NGUYEN
Associate Planner

Enclosures

cc: Khoa Duong, Building & Safety – 714-872-5278
Bob Milani, Public Works – 714-375-1735
Jason Kelly, Planning Division
Project File

Joe Morelli, Fire - (714) 536-5531
Jane James, Planning Manager
Shalesh and Indu Gupta, Property Owners



HUNTINGTON BEACH BUILDING DIVISION

PROJECT IMPLEMENTATION CODE REQUIREMENTS

DATE: JUNE 16, 2014
PROJECT NAME: GUPTA RESIDENCE ADDITION
PLANNING APPLICATION NO.: PLANNING APPLICATION NO. 14-012
ENTITLEMENTS: VARIANCE NO. 14-001
DATE OF PLANS: MAY 28, 2014
PROJECT LOCATION: 19636 VILLAGE OAKS CIRCLE (EAST SIDE OF VILLAGE OAKS CIRCLE, SOUTH OF DEWBERRY DRIVE)
PROJECT PLANNER: TESS NGUYEN, ASSOCIATE PLANNER
PLAN REVIEWER: KHOA DUONG, P.E
TELEPHONE/E-MAIL: (714) 872-6123 / KHOA@CSGENGR.COM
PROJECT DESCRIPTION: TO PERMIT A 12 FT. REAR YARD SETBACK IN LIEU OF A 20 FT. SETBACK FOR A 513 SQ. FT. FIRST AND SECOND STORY ADDITION TO AN EXISTING TWO-STORY SINGLE FAMILY RESIDENCE

The following is a list of code requirements deemed applicable to the proposed project based on plans stated above. The list is intended to assist the applicant by identifying requirements which must be satisfied during the various stages of project permitting and implementation. A list of conditions of approval adopted by the Planning Commission in conjunction with the requested entitlement(s), if any, will also be provided upon final project approval. If you have any questions regarding these requirements, please contact the Plan Reviewer.

I. SPECIAL CONDITIONS:
None.

II. CODE ISSUES BASED ON PLANS & DRAWINGS SUBMITTED:

1. Project shall comply with the current state building codes adopted by the city at the time of permit application submittal. Currently they are 2013 California Building Code (CBC), 2013 California Residential Code (CRC), 2013 California Mechanical Code, 2013 California Plumbing Code, 2013 California Electrical Code, 2010 California Energy Code, 2013 California Green Building Standards Code, and the Huntington Beach Municipal Code (HBMC). Compliance to all applicable state and local codes is required prior to issuance of building permit.
2. Please check required light and ventilation for all rooms adjacent to new addition.
3. Structural calculations, energy calculations, and soil report are required for this project.
4. Review and provide compliance with Title 17 of the City of Huntington Beach Municipal Code, Building and Construction. This document can be found online on the city's website.

5. In addition to all of the code requirements of the 2010 California Green Building Standards Code, specifically address Construction Waste Management per Sections 4.408.2, 4.408.3, 4.408.4, 5.408.1.1, 5.408.1.2, and 5.408.1.3 and Building Maintenance and Operation, Section 5.410. Prior to the issuance of a building permit the permittee will be required to describe how they will comply with the sections described above. Prior to Building Final Approval, the city will require a Waste Diversion Report per Sections 4.408.5 and 5.408.1.4.

III. COMMENTS:

1. Planning and Building Department encourage the use of pre-submittal building plan check meetings.
2. Separate Building, Mechanical, Electrical and Plumbing Permits will be required for all exterior accessory elements of the project, including but not limited to: fireplaces, fountains, sculptures, light poles, walls and fences over 42" high, retaining walls over 2' high, detached trellises/patio covers, gas piping, water service, backflow anti-siphon, electrical, meter pedestals/electrical panels, swimming pools, storage racks for industrial/commercial projects. It will be the design professional in charge, responsibility to coordinate and submit the documents for the work described above.
3. Provide on all plan submittals for building, mechanical, electrical and plumbing permits, the Conditions of Approval and Code Requirements that are associated with the project through the entitlement process. If there is a WQMP, it is required to be attached to the plumbing plans for plan check.

RECEIVED

Joe Morelli

JUN 18 2014

Dept. of Planning
& Building



CITY OF HUNTINGTON BEACH
PROJECT IMPLEMENTATION CODE REQUIREMENTS

DATE: MAY 29, 2014
PROJECT NAME: GUPTA RESIDENCE ADDITION
PLANNING APPLICATION NO.: PLANNING APPLICATION NO. 14-012
ENTITLEMENTS: VARIANCE NO. 14-001
DATE OF PLANS: MAY 28, 2014
PROJECT LOCATION: 19636 VILLAGE OAKS CIRCLE (EAST SIDE OF VILLAGE OAKS CIRCLE, SOUTH OF DEWBERRY DRIVE)
PROJECT PLANNER: TESS NGUYEN, ASSOCIATE PLANNER
PLAN REVIEWER:
TELEPHONE/E-MAIL: (714) 536-XXX/ XXXXX@surfcity-hb.org
PROJECT DESCRIPTION: TO PERMIT A 12 FT. REAR YARD SETBACK IN LIEU OF A 20 FT. SETBACK FOR A 513 SQ. FT. FIRST AND SECOND STORY ADDITION TO AN EXISTING TWO-STORY SINGLE FAMILY RESIDENCE

The following is a list of code requirements deemed applicable to the proposed project based on plans stated above. The list is intended to assist the applicant by identifying requirements which must be satisfied during the various stages of project permitting and implementation. A list of conditions of approval adopted by the Planning Commission in conjunction with the requested entitlement(s), if any, will also be provided upon final project approval. If you have any questions regarding these requirements, please contact the Plan Reviewer.

PLEASE PROVIDE COMMENTS BY JUNE 19, 2014

- The HBPD has no comments. JPB FPA 6/19/14



CITY OF HUNTINGTON BEACH PLANNING DIVISION

PROJECT IMPLEMENTATION CODE REQUIREMENTS

DATE: JUNE 23, 2014
PROJECT NAME: GUPTA RESIDENCE ADDITION
PLANNING APPLICATION NO.: PLANNING APPLICATION NO. 14-012
ENTITLEMENTS: VARIANCE NO. 14-001
DATE OF PLANS: MAY 28, 2014
PROJECT LOCATION: 19636 VILLAGE OAKS CIRCLE (EAST SIDE OF VILLAGE OAKS CIRCLE, SOUTH OF DEWBERRY DRIVE)
PLAN REVIEWER: TESS NGUYEN, ASSOCIATE PLANNER
TELEPHONE/E-MAIL: (714) 374-1744/ TNGUYEN@SURFCITY-HB.ORG
PROJECT DESCRIPTION: TO PERMIT A 12 FT. REAR YARD SETBACK IN LIEU OF A 20 FT. SETBACK FOR A 513 SQ. FT. FIRST AND SECOND STORY ADDITION TO AN EXISTING TWO-STORY SINGLE FAMILY RESIDENCE

The following is a list of code requirements deemed applicable to the proposed project based on plans received and dated May 28, 2014. The list is intended to assist the applicant by identifying requirements which must be satisfied during the various stages of project permitting and implementation. A list of conditions of approval adopted by the Zoning Administrator or Planning Commission in conjunction with the requested entitlement(s), if any, will also be provided should the project be approved. If you have any questions regarding these requirements, please contact the Plan Reviewer.

1. The site plan, floor plans, and elevations approved by the Planning Commission shall be the conceptually approved design.
2. The Development Services Departments (Planning and Building, Fire, Planning and Public Works) shall be responsible for ensuring compliance with all applicable code requirements and conditions of approval. The Director of Planning may approve minor amendments to plans and/or conditions of approval as appropriate based on changed circumstances, new information or other relevant factors. Any proposed plan/project revisions shall be called out on the plan sets submitted for building permits. Permits shall not be issued until the Development Services Departments have reviewed and approved the proposed changes for conformance with the intent of the Planning Commission's action. If the proposed changes are of a substantial nature, an amendment to the original entitlement reviewed by the Planning Commission may be required pursuant to the provisions of HBZSO Section 241.18. (HBZSO Section 241.18)
3. Variance No. 2014-001 shall not become effective until the ten working day appeal period from the Planning Commission approval of the entitlements has elapsed. For projects in the appealable area of the coastal zone, there is an additional ten working day appeal period that commences when the

California Coastal Commission receives the City's notification of final action. **(HBZSO Section 245.32)**

4. Variance No. 2014-001 shall become null and void unless exercised within one year of the date of final approval or such extension of time as may be granted by the Director pursuant to a written request submitted to the Planning Department a minimum 30 days prior to the expiration date. **(HBZSO Section 245.36)**
5. The Planning Commission reserves the right to revoke Variance No. 2014-001 pursuant to a public hearing for revocation, if any violation of the conditions of approval, Huntington Beach Zoning and Subdivision Ordinance or Municipal Code occurs. **(HBZSO Section 249.06)**
6. Construction shall be limited to Monday – Saturday 7:00 AM to 8:00 PM. Construction shall be prohibited Sundays and Federal holidays. **(HBMC Section 8.40.090)**
7. The applicant shall submit a check in the amount of \$50.00 for the posting of the Notice of Exemption at the County of Orange Clerk's Office. The check shall be made out to the County of Orange and submitted to the Planning Department within two (2) days of the Planning Commission's action. **(California Code Section 15094)**
8. All landscaping shall be maintained in a neat and clean manner, and in conformance with the HBZSO. Prior to removing or replacing any landscaped areas, check with the Departments of Planning and Public Works for Code requirements. Substantial changes may require approval by the Planning Commission. **(HBZSO Section 232.04)**
9. The project shall comply with all applicable requirements of the Municipal Code, Building & Safety Department and Fire Department, as well as applicable local, State and Federal Fire Codes, Ordinances, and standards, except as noted herein. **(City Charter, Article V)**



CITY OF HUNTINGTON BEACH

PUBLIC WORKS INTERDEPARTMENTAL
COMMUNICATION

PROJECT IMPLEMENTATION CODE REQUIREMENTS

DATE: JUNE 12, 2014
PROJECT NAME: GUPTA RESIDENCE ADDITION
ENTITLEMENTS: VAR 14-01
PLNG APPLICATION NO: 2014-0012
DATE OF PLANS: MAY 28, 2014
PROJECT LOCATION: 19636 VILLAGE OAKS CIRCLE
PROJECT PLANNER: TESS NGUYEN, ASSOCIATE PLANNER
TELEPHONE/E-MAIL: 714-374-1744 / TNGUYEN@SURFCITY-HB.ORG
PLAN REVIEWER: BOB MILANI, SENIOR CIVIL ENGINEER *Bom*
TELEPHONE/E-MAIL: 714-374-1735 / BOB.MILANI@SURFCITY-HB.ORG
PROJECT DESCRIPTION: TO PERMIT A 12 FT. REAR YARD SETBACK IN LIEU OF A 20 FT. SETBACK FOR A 513 SQ. FT. FIRST AND SECOND STORY ADDITION TO AN EXISTING TWO-STORY SIGNLE FAMILY RESIDENCE
ATTACHED: SITE PLAN & NARRATIVE

The following is a list of code requirements deemed applicable to the proposed project based on plans as stated above. The items below are to meet the City of Huntington Beach's Municipal Code (HBMC), Zoning and Subdivision Ordinance (ZSO), Department of Public Works Standard Plans (Civil, Water and Landscaping) and the American Public Works Association (APWA) Standards Specifications for Public Works Construction (Green Book), the Orange County Drainage Area management Plan (DAMP), and the City Arboricultural and Landscape Standards and Specifications. The list is intended to assist the applicant by identifying requirements which shall be satisfied during the various stages of project permitting, implementation and construction. If you have any questions regarding these requirements, please contact the Plan Reviewer or Project Planner.

THE FOLLOWING DEVELOPMENT REQUIREMENTS SHALL BE COMPLIED WITH DURING GRADING OPERATIONS:

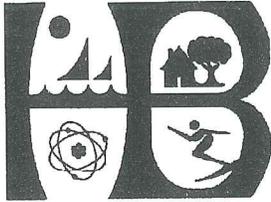
1. An Encroachment Permit is required for any work within the City's right-of-way. (MC 12.38.010/MC 14.36.030)
2. Water will be utilized on the site and shall be available to be used throughout the day during site grading to keep the soil damp enough to prevent dust being raised by the operations. (California Stormwater BMP Handbook, Construction Wind Erosion WE-1)
3. All haul trucks shall arrive at the site no earlier than 8:00 a.m. or leave the site no later than 5:00 p.m., and shall be limited to Monday through Friday only. (MC 17.05)
4. Wet down the areas that are to be graded or that is being graded, in the late morning and after work is completed for the day. (WE-1/MC 17.05)
5. The construction disturbance area shall be kept as small as possible. (California Stormwater BMP Handbook, Construction Erosion Control EC-1) (DAMP)
6. All haul trucks shall be covered or have water applied to the exposed surface prior to leaving the site to prevent dust from impacting the surrounding areas. (DAMP)
7. Prior to leaving the site, all haul trucks shall be washed off on-site on a gravel surface to prevent dirt and dust from leaving the site and impacting public streets. (DAMP)
8. Comply with appropriate sections of AQMD Rule 403, particularly to minimize fugitive dust and noise to surrounding areas. (AQMD Rule 403)
9. Wind barriers shall be installed along the perimeter of the site. (DAMP)
10. All construction materials, wastes, grading or demolition debris and stockpiles of soils, aggregates, soil amendments, etc. shall be properly covered, stored and secured to prevent transport into surface or ground waters by wind, rain, tracking, tidal erosion or dispersion. (DAMP)

THE FOLLOWING DEVELOPMENT REQUIREMENTS SHALL BE COMPLETED PRIOR TO ISSUANCE OF A BUILDING PERMIT:

11. The applicable Orange County Sanitation District Capital Facility Capacity Charge shall be paid to the City Department of Public Works. (Ordinance OCSD-40)

THE FOLLOWING DEVELOPMENT REQUIREMENTS SHALL BE COMPLETED PRIOR TO FINAL INSPECTION OR OCCUPANCY:

12. Any new utilities shall be undergrounded. (MC 17.64)
13. All applicable Public Works fees shall be paid at the current rate unless otherwise stated, per the Public Works Fee Schedule adopted by the City Council and available on the city web site at http://www.surfcity-hb.org/files/users/public_works/fee_schedule.pdf. (ZSO 240.06/ZSO 250.16)



**OFFICE of the ZONING ADMINISTRATOR
CITY OF HUNTINGTON BEACH • CALIFORNIA**

~~~~~  
**P.O. BOX 190**

**CALIFORNIA 92648**

**(714) 536-5271**

**NOTICE OF ACTION**

March 20, 2014

John Stutzel  
3130 Airway Avenue  
Costa Mesa, CA 92626

**SUBJECT:** VARIANCE NO. 14-001 (GUPTA RESIDENCE ADDITION)

**APPLICANT:** John Stutzel

**REQUEST:** To permit a 10 ft. rear yard setback in lieu of a 20 ft. setback for a 1,012 sq. ft. first and second story addition to an existing two-story single family residence.

**PROPERTY OWNER:** Shalesh and Indu Gupta, 19636 Village Oaks Circle, Huntington Beach, CA 92648

**LOCATION:** 19636 Village Oaks Circle, 92648 (east side of Village Oaks Circle, south of Dewberry Drive)

**CITY CONTACT:** Tess Nguyen

**DATE OF ACTION:** March 19, 2014

On Wednesday, March 19, 2014, the Huntington Beach Zoning Administrator took action on your application, and your application was **conditionally approved**. Attached to this letter are the findings and conditions of approval.

Please be advised that the Zoning Administrator reviews the conceptual plan as a basic request for entitlement of the use applied for and there may be additional requirements prior to commencement of the project. It is recommended that you immediately pursue completion of the conditions of approval and address all requirements of the Huntington Beach Zoning and Subdivision Ordinance in order to expedite the processing/completion of your total application. The conceptual plan should not be construed as a precise plan, reflecting conformance to all Zoning and Subdivision Ordinance requirements.

Under the provisions of the Huntington Beach Zoning and Subdivision Ordinance, the action taken by the Zoning Administrator becomes final at the expiration of the appeal period. A person desiring to appeal the decision shall file a written notice of appeal to the Secretary of the Planning Commission within ten (10) calendar days of the date of the Zoning Administrator's action. The notice of appeal shall include the name and address of the appellant, the decision being appealed, and the grounds for the appeal.

Said appeal must be accompanied by a filing fee of One Thousand Nine Hundred Seventeen Dollars (\$1,917.00) if the appeal is filed by a single family dwelling property owner appealing the decision on his own property and Two Thousand Five Hundred One Dollars (\$2,501.00) if the appeal is filed by any other party. In your case, the last day for filing an appeal and paying the filing fee is March 31, 2014, at 5:00 PM.

Provisions of the Huntington Beach Zoning and Subdivision Ordinance are such that any application becomes null and void one (1) year after final approval, unless actual construction has begun, or as modified by condition of approval.

Excepting those actions commenced pursuant the California Environmental Quality Act, you are hereby notified that you have 90 days to protest the imposition of the fees described in this Notice of Action. If you fail to file a written protest regarding any of the fees contained in this Notice, you will be legally barred from later challenging such action pursuant to Government Code §66020.

If you have any questions regarding this Notice of Action letter or the processing of your application, please contact Tess Nguyen, the project planner, at (714) 374-1744 or via email at [Tnguyen@surfcity-hb.org](mailto:Tnguyen@surfcity-hb.org) or the Department of Planning and Building Zoning Counter at (714) 536-5271.

Sincerely,



Ricky Ramos  
Zoning Administrator

RR:TN :jd  
Attachment

c: Honorable Mayor and City Council  
Chair and Planning Commission  
Fred A. Wilson, City Manager  
Scott Hess, Director of Planning and Building  
Jane James, Planning Manager  
William H. Reardon, Division Chief/Fire Marshal  
Debbie DeBow, Civil Principal Engineer  
Mark Carnahan, Building Manager  
Jim Brown, Fire Protection Analyst  
Joe Morelli, Fire Protection Analyst  
Shalesh and Indu Gupta  
Project File

**ATTACHMENT NO. 1**

**FINDINGS AND CONDITIONS OF APPROVAL**

**VARIANCE NO. 14-001**

**FINDINGS FOR PROJECTS EXEMPT FROM CEQA:**

The Zoning Administrator finds that the project will not have any significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15301 of the CEQA Guidelines, because the project consists of an addition to an existing structure that will not result in an increase of more than 50 percent of the floor area.

**FINDINGS FOR APPROVAL - VARIANCE NO. 14-001:**

1. The granting of Variance No. 14-001 for a 10 ft. rear yard setback in lieu of a 20 ft. setback (10 ft. reduction) for a 1,012 sq. ft. first and second story addition to an existing two-story single family residence will not constitute a grant of special privilege inconsistent with limitations upon other properties in the vicinity and under an identical zone classification. The subject property is located at the terminus of a cul-de-sac creating a flag lot configuration with two rear yards. There is one similarly shaped lot at the terminus of the same cul-de-sac as the project site, which has a residence with a 5 ft. setback along one rear yard. The proposed setback of 10 ft. along one rear yard for an addition at the subject site is consistent with other properties in the vicinity and under an identical zone classification.
2. Because of special circumstances applicable to the subject property, including shape and location, the strict application of the zoning ordinance is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification. The subject site is located at the terminus of a cul-de-sac, which creates a narrow front property line resulting in a flag lot configuration with two rear yards. The shape of the lot and the two rear yards deprive the property owner of the ability to construct an addition that meets the rear yard setback on the side of the house.
3. The granting of a variance is necessary to preserve the enjoyment of one or more substantial property rights. Due to the odd shape of the lot created by the property's location at the terminus of a cul-de-sac, the resulting flag lot has two rear yards, which is similar to a nearby property. The proposed addition will allow the subject property to be designed in the same manner as the property with the similar flag lot configuration.
4. The granting of the variance will not be materially detrimental to the public welfare or injurious to property in the same zone classification. The proposed addition is designed to match the architectural style and exterior finishes of the existing residence. In addition, adequate building separation will be provided between the proposed addition and the single-family dwelling abutting the rear of the lot. No detrimental impacts to surrounding properties are anticipated.

5. The granting of the variance will not adversely affect the General Plan. It is consistent with the Land Use Element designation of RL-7-sp (Residential Low Density-7 units/acre-Specific Plan) on the subject property, including the following policy.

LU 7.1.2: Require that development be designed to account for the unique characteristics of project sites and objectives for community character as appropriate.

The requested variance accounts for the unique configuration of the subject property resulting from the property's location at the terminus of a cul-de-sac, creating a flag lot with two rear yards. Granting a reduced setback for the proposed addition would allow the subject property the opportunity to be designed in the same manner as the nearby property with similar lot configuration under the identical zone classification.

**CONDITIONS OF APPROVAL VARIANCE NO. 14-001:**

1. The site plan, floor plans, and elevations received and dated January 17, 2014 shall be the conceptually approved design.
2. Prior to submittal for building permits, the following shall be completed:
  - a. A letter from the Property Owners Association shall be submitted indicating that the proposed project has been approved, denied, or that the CC&R's do not require Association or Committee review.
  - b. Zoning entitlement conditions of approval shall be printed verbatim on one of the first three pages of all the working drawing sets used for issuance of building permits (architectural, structural, electrical, mechanical and plumbing) and shall be referenced in the sheet index. The minimum font size utilized for printed text shall be 12 point
3. VAR No. 14-001 shall become null and void unless exercised within two years of the date of final approval or such extension of time as may be granted by the Director pursuant to a written request submitted to the Planning Department a minimum 30 days prior to the expiration date.
4. The applicant and/or applicant's representative shall be responsible for ensuring the accuracy of all plans and information submitted to the City for review and approval.
5. The Development Services Departments and divisions (Building & Safety, Fire, Planning and Public Works) shall be responsible for ensuring compliance with all applicable code requirements and conditions of approval. The Director of Planning and Building may approve minor amendments to plans and/or conditions of approval as appropriate based on changed circumstances, new information or other relevant factors. Any proposed plan/project revisions shall be called out on the plan sets submitted for building permits. Permits shall not be issued until the Development Services Departments have reviewed and approved the proposed changes for conformance with the intent of the Zoning Administrator's action. If the proposed changes are of a substantial nature, an amendment to the original entitlement reviewed by the Zoning Administrator may be required pursuant to the provisions of HBZSO Section 241.18.

6. Incorporating sustainable or "green" building practices into the design of the proposed structures and associated site improvements is highly encouraged. Sustainable building practices may include (but are not limited to) those recommended by the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Program certification (<http://www.usgbc.org/DisplayPage.aspx?CategoryID=19>) or Build It Green's Green Building Guidelines and Rating Systems <http://www.builditgreen.org/green-building-guidelines-rating>).

**INDEMNIFICATION AND HOLD HARMLESS CONDITION:**

The owner of the property which is the subject of this project and the project applicant if different from the property owner, and each of their heirs, successors and assigns, shall defend, indemnify and hold harmless the City of Huntington Beach and its agents, officers, and employees from any claim, action or proceedings, liability cost, including attorney's fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, including but not limited to any approval granted by the City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the applicant of any claim, action or proceeding and should cooperate fully in the defense thereof.

The Peninsula HOA  
C/O FirstService Residential, California - Orange County  
(Irvine Corporate Headquarters)  
15241 Laguna Canyon Road  
Irvine, CA 92618  
Ph: 800-428-5588  
Fax: 949-448-6400



RECEIVED

JUN 16 2014

Dept. of Planning  
& Building

Friday, June 13, 2014

SHALESH GUPTA / INDU GUPTA  
19636 VILLAGE OAKS Cir  
HUNTINGTON BCH CA 92648

RE: Architectural Modification Pre-Approved  
19636 VILLAGE OAKS CIR / Customer ID #: PENIN-0337-02

Dear Shalesh Gupta / Indu Gupta:

We are pleased to inform you that your plans to add on a one story addition as shown on the approved plans were Pre-Approved on June 12, 2014 by the Architectural Review Committee.

Please ensure that you comply with the conditions noted below:

- (1) The Committee approves plans and specifications based on aesthetics and compliance with the community guidelines. They do not review for engineering design or structural integrity. Zoning and building permits are the responsibility of the homeowner.
- (2) The Committee has the right to inspect improvements, constructed or being constructed, to determine that such improvements have been or are being built in compliance with the plans and specifications approved.
- (3) That all materials, colors, eaves, and windows match existing.

Upon completion of work, please submit your Notice of Completion Form along with photographs of the completed improvements to [stacey.jackson@fsresidential.com](mailto:stacey.jackson@fsresidential.com).

Thank you for your patience and cooperation. If you have any questions, please refer to your Community Policies or contact me at 949-448-6060 or at [stacey.jackson@fsresidential.com](mailto:stacey.jackson@fsresidential.com). Thank you.

Sincerely,

Stacey Jackson  
Assistant Community Manager

The Peninsula Homeowners Association

FACING, ADJACENT AND IMPACTED NEIGHBOR NOTIFICATION STATEMENT

The attached plans were made available to the following neighbors for review:

|                                 |                                 |
|---------------------------------|---------------------------------|
| Impacted Neighbor               | Impacted Neighbor               |
| 19631 Dearborne                 | 19641 Dearborne Circle          |
| Address<br>Norman Branyan       | Address<br>James Swine          |
| Print Name<br>Norman Branyan    | Print Name<br>James Swine       |
| Signature<br><i>[Signature]</i> | Signature<br><i>[Signature]</i> |
| Date<br>5/27/14                 | Date<br>5/26/14                 |



|                                  |                                                                                    |                                  |
|----------------------------------|------------------------------------------------------------------------------------|----------------------------------|
| Adjacent Neighbor                |  | Adjacent Neighbor                |
| 19640 VILLAGE OAKS               |                                                                                    | 19640 Village Oaks Circle        |
| Address<br>TERRY CONTRUCCI       |                                                                                    | Address<br>J. SOLOMON            |
| Print Name<br><i>[Signature]</i> | Name Shalesh & Indu Gupta                                                          | Print Name<br><i>[Signature]</i> |
| Signature<br><i>[Signature]</i>  | Address 19636 Village Oaks Circle, NB                                              | Signature<br><i>[Signature]</i>  |
| Date<br>5/26/14                  |                                                                                    | Date<br>5/26/14                  |



|                                 |                                  |                                  |
|---------------------------------|----------------------------------|----------------------------------|
| Facing Neighbor                 | Facing Neighbor                  | Facing Neighbor                  |
| CRAIG ANDERSON                  | 19641 Village Oaks Circle        | 19621 Village Oaks               |
| Address<br>19631 VILLAGE OAKS   | Address<br>KEVIN & LORA CRUSE    | Address<br>Dina Rachtford        |
| Print Name<br>Craig P. Anderson | Print Name<br>Kevin & Lora Cruse | Print Name<br><i>[Signature]</i> |
| Signature<br><i>[Signature]</i> | Signature<br><i>[Signature]</i>  | Signature<br><i>[Signature]</i>  |
| Date<br>5/26/14                 | Date<br>5/26/14                  | Date<br>5/27/14                  |

My neighbors have seen the plans I am submitting for Architectural Committee Approval (see above verification). If any neighbor has a concern, they should contact Merit Property Management in writing. Please note that neighbor objections do not in themselves cause denial of the plans but the ARC may consider those concerns.

SUBMITTED BY:

Name: Shalesh Gupta / Indu Gupta Date: 5/26/14

Property Address: 19636 VILLAGE OAKS CIRCLE