

**CITY OF PASADENA
MEMORANDUM**

TO: CITY COUNCIL SITTING AS THE BOARD OF APPEAL
FROM: MICHELE BEAL BAGNERIS, CITY ATTORNEY *mbb*
SUBJECT: APPEAL OF BUILDING OFFICIAL DECISION - 1496 KENMORE RD.
REVOCATION OF BUILDING PERMITS 99-05258, 00-00139, AND 00-00184

RECOMMENDATION:

- (1) Consider the attached findings, conclusions, and recommendations of Henry A. Ojendyk, Civil and Structural Engineer, and any information received during the public hearing process regarding the appeal of the Building Official's decision to revoke the building permits for an accessory structure on the property located at 1496 Kenmore Drive.
- (2) Make findings and decision regarding whether to uphold the decision of the Building Official, reverse the decision of the Building Official, or modify the decision of the Building Official.

UPDATE

At the City Council meeting of February 26, 2001, the Board conducted a public hearing and continued the hearing until March 19, 2001. The Board also requested that the attorneys for the applicant and the neighbors submit three-page memos setting forth the grounds for their positions. The City Council was briefed in closed session regarding the status of the pending litigation in closed session on March 5th. As suggested by the Board, the City Attorney conducted a meeting in an effort to reach a settlement of this matter. This meeting was attended by City Attorney Michele Bagneris, James Nelson, his attorney Dan Hogue, Richard Neal (one of the neighbors), and the neighbors' attorney Jonathan Curtis. The meeting and subsequent telephone conversations did not result in a settlement of the matter. Since no settlement has been reached, it is recommended that the Board receive any new information, conclude the public hearing, and take an action regarding the appeal on the revocation of the building permit.

BACKGROUND

On November 4, 1999, a building permit was issued to Mr. Nelson (the owner of the property) to construct an accessory structure (which included a garage and workshop) for the property located at 1496 Kenmore Dr. In March of 2000, complaints were received about the construction of the accessory structure being built too close to the street in violation of the set back requirement for a double frontage lot. The complaint was investigated by Denver Miller, Zoning Administrator, who after visiting

the site determined that the property was a double frontage lot and that therefore the accessory structure violated the Code in that the structure was being built in the required set back. The

zoning code requires a 25 foot set back and the accessory structure was being built within 3 feet of the property line.

Mr. Nelson appealed the Zoning Administrator's determination that the property was a double frontage lot to the Board of Zoning Appeals. On April 19, 2000, the Board of Zoning Appeals heard Mr. Nelson's appeal. The Board of Zoning Appeals upheld the Zoning Administrator's determination that the property was a double frontage lot. The decision of the Board of Zoning Appeals was not called up by the City Council.

On May 2, 2000, the Zoning Administrator advised the Building Official that the Board of Zoning Appeals had upheld his determination that the property was a double frontage lot. The Zoning Administrator requested the Building Official to revoke the building permits since they were issued in violation of the zoning code. The Building Official revoked the building permits.

Mr. Nelson filed a lawsuit challenging the Board of Zoning Appeals determination that the property was a double frontage lot. The Superior Court stayed the hearing on this issue when it recognized that Mr. Nelson had not appealed the decision of the Building Official to revoke his building permits and ordered Mr. Nelson to file and the City to entertain this appeal. This appeal follows. Mr. Nelson has provided written documentation in support of his appeal.

Mr. Henry A. Ojendyk, PE, a civil and structural engineer, was selected to serve as a consultant to assist the City Council sitting as the Board of Appeal. To that end, Mr. Ojendyk conducted a fact finding hearing on February 16, 2001. Mr. Ojendyk's letter outlining his findings, conclusions and recommendation is attached. At the hearing, the Building Official submitted written documentation in support of his position, the appellant Mr. Nelson submitted additional written documentation in support of his position, and the interested neighbors submitted written documentation in support of their position. These documents are attached.

CITY COUNCIL CONSIDERATION

1. The City Council can uphold the Building Official's decision and find that the building permits were not revoked in error if the council concludes that the Board of Zoning Appeals has the responsibility of interpreting the zoning ordinances and that a zoning interpretation is beyond the scope of the consultant's authority. If this conclusion is reached, it could be based on a finding that the Building Official reasonably relied on the Board of Zoning Appeal's decision as set forth in the attachments "B" and "D". OR
2. The city council can reverse the Building Official's decision and find that the building permits were revoked in error if the council concludes that the Board of Zoning Appeals erred in its interpretation. If this conclusion is reached, it could be based on information contained in information submitted by the appellant and in attachment "C".