

RESOLUTION NO. PC 2023-08**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF INDIAN WELLS, CALIFORNIA, RECOMMENDING APPROVAL OF VARIANCE NO. 2023-0003 TO ALLOW ENCROACHMENT INTO THE FRONT YARD SETBACK FOR A NEW 128 SQUARE FOOT GOLF CART GARAGE ADDITION TO AN EXISTING RESIDENCE LOCATED AT 77748 COTTONWOOD COVE (APN 623-390-024), PURSUANT TO CEQA AND SECTION 15303(e), NEW CONSTRUCTION OR CONVERSION OF SMALL STRUCTURES**

WHEREAS, Jim Snellenberger (the "Applicant") filed an application with the City of Indian Wells ("City") for Variance No. 2023-0003, pursuant to Indian Wells Zoning Code Section 21.06.050, to allow a 4' encroachment into the front yard of an existing residential site located at 77748 Cottonwood Cove, Indian Wells, California to add a new 128 square foot golf cart garage, which requires a variance from the required 20-foot front yard setback identified in Indian Wells Zoning Code Section 21.23.050(a) (the "Project"); and

WHEREAS, on October 26, 2023, the City's Planning Commission held a duly noticed public hearing on the Project in conformance with the California Government Code and various Indian Wells Municipal Code sections and adopted Resolution No. PC 2023-08 recommending that the City Council approve the Project; and

WHEREAS, on October 18, 2023, the Design Review Committee approved the aesthetic design of the Project as required under Indian Wells Municipal Code Section 21.60.020; and

WHEREAS, after careful consideration of the staff report, public testimony and all of the information presented at the hearing, the Planning Commission finds that:

1. The strict application of the Indian Wells Zoning Code deprives the property of privileges enjoyed by other property in the vicinity and under identical zoning classification because of special circumstances applicable to the property, including size, shape, topography, location, or surroundings.

FACT: The property is located within the gated confines of the Indian Wells Country Club community and is zoned Residential Very Low Density ("RVLD"). Its location on a curvilinear segment of Cottonwood Cove uniquely impacts this property and the immediate residential site to the north. A public right-of-way ("ROW") easement further restricts 4-feet of its frontage depth. The property's distinct shape and the ROW easement necessitate a "stair-step" design at its forefront, leading to a 26 sq. ft. portion of the proposed golf cart garage encroaching into the 20-foot front setback.

Given the unique design constraints of the property, a 4-foot encroachment into the front setback is warranted. Without this adjustment, the Indian Wells Zoning Code's rigid application would unduly restrict the homeowner from expanding the floor area at the front of the home consistent with other homes in the vicinity within the RVLD zoning district.

2. The granting of the Variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.

FACT: The Project maintains the applicable side and rear yard setbacks for public safety access in compliance with the RVLD zoning requirements. In addition, a 4' public right of way exists along the front property line that will maintain a minimum 20-foot distance from the existing curb face, ensuring complete emergency access around the entire structure.

3. The granting of the Variance does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and same zoning classification.

FACT: The existing curvilinear street condition, 4-foot ROW, and irregularly shaped lot are unique hardship exhibited at the site. Past variances have been approved under similar zoning and site characteristics as the property in question. Therefore, granting of the Variance does not constitute any special privileges on the Project.

4. The granting of the Variance does not authorize a use of activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property.

FACT: The granting of the Variance would not authorize a use that is not otherwise expressly authorized by the Zoning regulations governing the property.

NOW, THEREFORE, the Planning Commission of the City of Indian Wells **does hereby resolve, determine, find, and order** as follows:

SECTION 1. The foregoing recitals are true and correct and are incorporated herein as substantive findings of this Resolution.

SECTION 2. This Project has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State and local CEQA Guidelines, and the environmental regulations of the City. The City, acting as Lead Agency, determined that the project is exempt from CEQA pursuant to Public Resources Code Section 21080 and CEQA Guidelines Section 15303(a)(e) New Construction or Conversion of Small Structures.

SECTION 3. The Planning Commission **ADOPTS** Resolution No. PC 2023-08 recommending that the City Council approve Variance No. 2023-0003 concerning the proposed Project subject to the conditions listed on Exhibit "A" and site plan shown in Exhibit "B" attached hereto and by this reference incorporated herein.

SECTION 4. The Community Development Director shall transmit this recommendation to the City Council, and Variance No. 2023-0003 shall be scheduled for consideration on the consent calendar before the City Council.

SECTION 5. The Planning Department shall certify to the adoption of this Resolution and shall mail by first class, prepaid, United States mail, a certified copy of this Resolution to Applicant.

PASSED, APPROVED, AND ADOPTED by the Planning Commission of the City of Indian Wells, California at a regular meeting held on this 26th day of October 2023.

NICHOLAS CONWAY
CHAIRMAN

CERTIFICATION FOR RESOLUTION NO. PC 2023-08

I, Jon Berg, Community Development Director of the City of Indian Wells, California, **DO HEREBY CERTIFY** that the whole number of the members of the Planning Commission is five (5); that the above and foregoing Resolution was duly and regularly passed and adopted at a regular meeting of the Planning Commission of the City of Indian Wells on the 26th day of October, 2023, by the following vote:

AYES:
NOES:

ATTEST:

APPROVED AS TO FORM:

JON BERG
COMMUNITY DEVELOPMENT DIRECTOR

CRAIG HAYES
CITY ATTORNEY

EXHIBIT "A"
Conditions of Approval for
Variance No. 2023-03

October 26, 2023

GENERAL:

1. The Applicant shall defend, indemnify, and hold harmless the City of Indian Wells and its officials, officers, employees, and agents from and against any claim, action, or proceeding against the City of Indian Wells, its officers, employees, or agents to attack (including any judicial proceedings or an referendum), set aside, void, or annul any approval or condition of approval of the City of Indian Wells concerning this project, including but not limited to, any alleged act or failure to act related to the California Environmental Quality Act ("CEQA"), any approval or condition of approval by the Planning Commission or City Council. The City shall promptly notify the Applicant of any such claim, action, or proceeding concerning the project and the City shall cooperate fully in the defense of the matter. Applicant shall defend, with counsel mutually chosen by City and Applicant Applicant's own cost, expense and risk, any and all such aforesaid suits, actions or other proceedings of every kind that may be brought or instituted against City, its officials, officers, employees and agents. Applicant shall pay and satisfy any judgment, award or decree that may be rendered against City, its officials, officers, employees or agents in any such suits, actions or other proceedings. Applicant shall also reimburse City for the cost of any settlement paid by City arising out of any such claims, demands, causes of action, costs, expenses, liabilities, loses, damages, injuries, suits, actions, or other proceedings. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Applicant shall reimburse City, its officials, officers, employees and agents for any and all legal expenses and costs, including expert witness fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Applicant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, officers, employees or agents. In all cases, the City reserves the right, at its own option and cost, to choose its own attorney to represent the City, its officials, officers, employees, and agents in the defense of the matter.
2. In the event that any condition contained herein is determined to be invalid or legally unenforceable, then all remaining conditions shall remain in force.
3. The Project shall be developed in accordance with the approved plans, and failure to comply with any conditions of approval shall be deemed just cause for revocation of project approval by the City Council. However, the Community Development Director or designee shall have the authority to approve minor deviations in the conditions of approval, and all plans including the construction drawings, if deemed necessary by both the Applicant and the City to implement the Project as approved.

4. The Applicant shall pay development impact fees at the established rates and amounts. Such fees may include, but not be limited to, new construction fee, and building permit and plan check fees.
5. This approval of Variance No. 2021-01 shall be used within one (1) year after final approval, or it shall become null and void unless the time limit is extended by the City Council per City Zoning Code Section 21.06.040(e). The phrase "be used" above for purposes of the proposed Project shall mean the application for and approval of all applicable building permits, and commencement of physical installation of the Project. In addition, this approval of Variance No. 2021-01 shall become null and void if any such building permit no longer remains in effect due to its lapse, if such occurs following the foregoing one-year permit.
6. Approval of this request shall not waive compliance with all applicable sections of the Indian Wells Municipal Code, all other applicable City ordinances, and applicable specific plans.
7. This variance approves the front yard building setback encroachment as shown, or in substantial conformance to, the attached site plan "Exhibit B."