

**Council Meeting: August 28, 2012**

SUBJECT: 2012-7034: Appeal of a decision by the Planning Commission to grant a Variance from SMC 19.46.060(a) (5) to allow partial conversion of a garage to living space. The conversion results in one covered parking space where two is required. The project site is located 317 Hiddenlake Drive

REPORT IN BRIEF

Existing Site Conditions Single Family Home

Surrounding Land Uses

North	Single Family Home
South	Single Family Home
East	Single Family Home
West	Single Family Home

Issues Parking and Neighborhood Compatibility

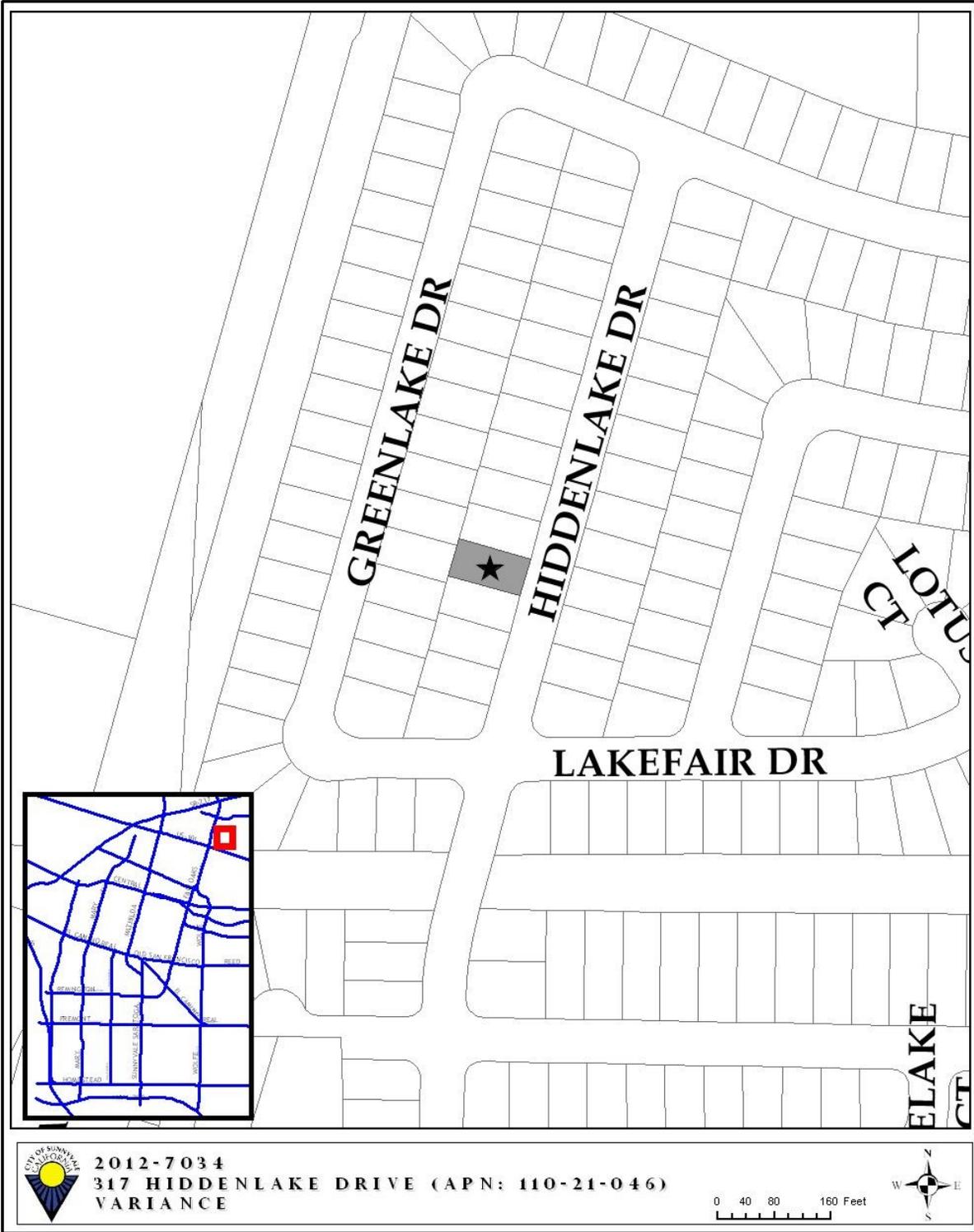
Environmental Status A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.

Zoning Administrator Action Denied the Variance

Planning Commission Action Approved the Variance with Conditions

Staff Recommendation Uphold the appeal and deny the Variance

VICINITY MAP



PROJECT DATA TABLE

	Existing	Proposed
General Plan:	Residential Low Density	Same
Zoning District:	R-0	Same
Lot Size:	5,670 sq. ft.	Same
Lot Width:	54 ft.	Same
Parking:	1 covered and 2 uncovered	Same
Lot Coverage:	25% (1,468 sq. ft. total)	Same

BACKGROUND

- **November 2, 2011** – The Neighborhood Preservation division receives a complaint about an illegal garage conversion at 317 Hiddenlake Drive.
- **January 30, 2012** – The applicant applies for a Variance to legalize the garage conversion.
- **February 29, 2012** – The Zoning Administrator denies the Variance, in accordance with staff recommendation.
- **March 15, 2012** - The applicant appeals the decision to Planning Commission.
- **June 25, 2012** - After a continuance in April, Planning Commission grants the appeal and approves the Variance with Conditions.
- **June 29, 2012** - Councilmember Moylan appealed the Planning Commission action to City Council.

DISCUSSION

Use Description: The property owner has converted half of the garage into an office space approximately 5-6 years ago. No permits were obtained. The remaining garage area is usable for parking.

Floor Plan: An area of 13 ft. by 9 ft. was converted to an office. This conversion leaves an area over 9 ft. wide by 20 ft. deep for the parking of one vehicle. (Attachment B, Plans).

Exterior Changes: There are no exterior changes proposed. The garage door remains operable.

Converted Garages in the Lakewood Area: Since 2003, there have been 42 Neighborhood Preservation complaints regarding converted garages in the Lakewood area. Approximately 33% of the complaints were for garages that were not considered “converted” (i.e. no partition walls were installed and the garage door remains operable.) Another 40% of complaints resulted in the partition walls being removed and the garage door being reinstalled. Approximately 15% were found to have a previous permit legalizing the garage,

and only two received planning approval by building replacement parking. No variances were found recently granting garage conversions in the Lakewood area. One Variance for a garage conversion at 697 Lakehaven Drive was denied by City Council after two appeals on April 22, 2008 (Project 2007-0928).

Public Contact: Eight notices were sent to surrounding property owners and residents adjacent to subject site in addition to standard noticing practice. No letters or comments were received.

Environmental Determination: A Categorical Exemption Class 1 (minor changes in use) relieves this project from CEQA provisions.

Zoning Administrator Hearing: On February 29, 2012 the Zoning Administrator heard this item. No members of the public attended the hearing. After receiving testimony from the property owner, the Zoning Administrator denied the Variance because the findings could not be met.

Planning Commission Appeal: The property owner appealed this decision. In the appeal letter (Attachment F), reference was made to the following points:

- Approximately 20% of the homes in the neighborhood have converted garages.
- The removal of one garage space does not create a parking impact on the neighborhood, as the owner's two vehicles are parked on the driveway.
- Other homes in the neighborhood have significantly more than two vehicles which creates a parking impact on the neighborhood.
- Concern is expressed about how staff and the Zoning Administrator made the findings.

Planning Commission Hearing: The Planning Commission heard this item at their April 23, 2012 hearing. After deliberation, the Planning Commission moved to continue the item to June 25, 2012 to allow the applicant to work with staff and explore other options for this project (Attachment G, Planning Commission Minutes.) The following options were explored:

1. **Extra Parking in Front of the Driveway.** The applicant has the option to pave an area 20 feet deep by 25.5 feet wide. This would allow for the uncovered parking of three vehicles while still complying with R-0 limitation of 50% paving of the front yard. However, it can be difficult to access three spaces with a driveway approach designed for two spaces. The City can permit the driveway to be widened a maximum of 24 feet. Widening the approach would enhance usability of the three parking spaces. However, this would incur additional cost to the applicant and remove area for on-street parking.

2. **Temporary Conversion:** The applicant would be required to reconvert the garage to two parking spaces upon sale of the property (Condition of Approval GC-4). In the meantime, the applicant would need to obtain a building permit to legalize the garage (Condition of Approval GC-3).

Staff Discussion of Applicant Appeal: Staff recognizes that it is not uncommon for homeowners to use the garage as a storage room and park on the driveway. However, our standard requires two covered parking spaces plus two uncovered parking spaces per home.

However, there are two primary differences in this office conversion. First, the conversion is permanent. Flooring, walls, and a heating system have all been installed. Legalizing it will add to the “living” area of the home as described by the City and the County Assessor’s office. In addition, converting the space back into parking would require a more significant financial investment than removing stored materials.

Staff discussed the options with the applicant, who preferred the second option of temporary conversion. This option incurs the least expense and provides for the property to be brought back into conformance upon sale.

Planning Commission Action on June 25, 2012: Staff recommended denial for the Variance. The Planning Commission approved the Variance at their June 25, 2012 hearing (Attachment H, Minutes). Planning Commission recommended conditions requiring the garage to be reconverted upon sale to a different property owner.

Councilmember Appeal: Councilmember Moylan appealed this decision on June 29, 2012. In the letter of appeal, he states concerns with making the finding for exceptional or extraordinary circumstances (Attachment I, Appeal Letter). Based on the fact that a neighbor complained about the garage, there is also concern that granting the Variance will be materially detrimental to the surrounding properties.

Staff recommends that Council grant the appeal and deny the Variance, in effect overturning the Planning Commission decision. Although, with the Planning Commission-recommended conditions for temporary conversion, the long-term impact of this conversion could be mitigated. Staff continues to be unable to find exceptional or extraordinary circumstances about the property or use, or that this Variance meets the intent of the parking ordinance. In order to approve a Variance, all three findings must be made. The garage conversion regulations were designed specifically to prevent this type of conversion.

FINDINGS

In order to approve the Variance the following findings must be made:

1. Because of exceptional or extraordinary circumstances or conditions applicable to the property or use, including size, shape, topography, location or surroundings, the strict application of the ordinance is found to deprive the property owner of privileges enjoyed by other properties in the vicinity and within the same zoning district. ***[Finding not met]***

Although the minimum lot width for new R-0 subdivisions is 57 feet, the subject lot width of 54 feet is typical in the Lakewood area. The lot widths in the area vary from 53 to 55 ft. in the nearby area (See Attachment C, Assessor Parcel Map).

There are legal garage conversions in the nearby area, however, this privilege does not appear to be widely shared throughout the neighborhood. Over 85% of garage conversion complaints received in the last nine years resulted in the provision of two covered spaces and two uncovered spaces, bringing the properties back into compliance with the zoning requirements.

2. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property, improvements or uses within the immediate vicinity and within the same zoning district. ***[Finding not met]***

The purpose of the garage conversion requirement is to ensure that private properties provide adequate on-site parking. As a complaint has been recorded for the property, this conversion could be detrimental to the neighborhood.

3. Upon granting of the variance the intent and purpose of the ordinance will still be served and the recipient of the variance will not be granted special privileges not enjoyed by other surrounding property owners within the same zoning district. ***[Finding not met]***

The property owner has submitted a justification letter explaining the garage conversion (See Attachment D, Applicant Letter). Staff understands the desire for additional floor area, and agrees that converting existing garage area can be the most economical way to gain additional space.

Staff also agrees that there are legal garage conversions in the area, mostly from prior to the 1990s; however, this right is not shared extensively throughout the neighborhood.

However, the code requires two covered spaces for single-family homes. Staff does not find that the intent of the code would be served by granting this Variance.

FISCAL IMPACT

No fiscal impact expected.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

ALTERNATIVES

1. Grant the appeal and deny the decision of the Planning Commission to approve the Variance.
2. Deny the appeal and approve the decision of the Planning Commission to approve the Variance with recommended Conditions in Attachment A.
3. Deny the appeal and approve the Variance with modifications.

RECOMMENDATION

Alternative 1. Grant the appeal and deny the Variance.

Reviewed by:

Hanson Hom, Director, Community Development

Prepared by: Diana O'Dell, Senior Planner

Approved by: Trudi Ryan, Planning Officer

Gary M. Luebbbers
City Manager

Attachments

- A. Standard Requirements and Recommended Conditions of Approval
- B. Project Plans
- C. Assessor Parcel Map
- D. Letter from the Applicant
- E. Minutes from Zoning Administrator Hearing of February 29, 2012
- F. Appeal Letter from the Applicant
- G. Minutes from Planning Commission hearing of April 23, 2012
- H. Minutes from Planning Commission hearing of June 25, 2012
- I. Letter of Appeal from Councilmember Moylan

**RECOMMENDED
CONDITIONS OF APPROVAL AND
STANDARD DEVELOPMENT REQUIREMENTS
August 28, 2012**

Planning Application 2012-7034

317 Hiddenlake Drive

Variance to allow an office space within a garage

The following Conditions of Approval [COA] and Standard Development Requirements [SDR] apply to the project referenced above. The COAs are specific conditions applicable to the proposed project. The SDRs are items which are codified or adopted by resolution and have been included for ease of reference, they may not be appealed or changed. The COAs and SDRs are grouped under specific headings that relate to the timing of required compliance. Additional language within a condition may further define the timing of required compliance. Applicable mitigation measures are noted with "Mitigation Measure" and placed in the applicable phase of the project.

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following Conditions of Approval and Standard Development Requirements of this Permit:

**GC: THE FOLLOWING GENERAL CONDITIONS OF APPROVAL AND
STANDARD DEVELOPMENT REQUIREMENTS SHALL APPLY TO THE
APPROVED PROJECT.**

- GC-1. CONFORMANCE WITH APPROVED PLANNING APPLICATION:
All building permit drawings and subsequent construction and operation shall substantially conform to the approved planning application, including: drawings/plans, materials samples, building colors, and other items submitted as part of the approved application. Any proposed amendments to the approved plans or Conditions of Approval are subject to review and approval by the City. The Director of Community Development shall determine whether revisions are considered major or minor. Minor changes are subject to review and approval by the Director of Community Development. Major changes are subject to review at a public hearing.
[COA] [PLANNING]
- GC-2. PERMIT EXPIRATION:
The permit shall be null and void two years from the date of approval by the final review authority at a public hearing if the approval is not

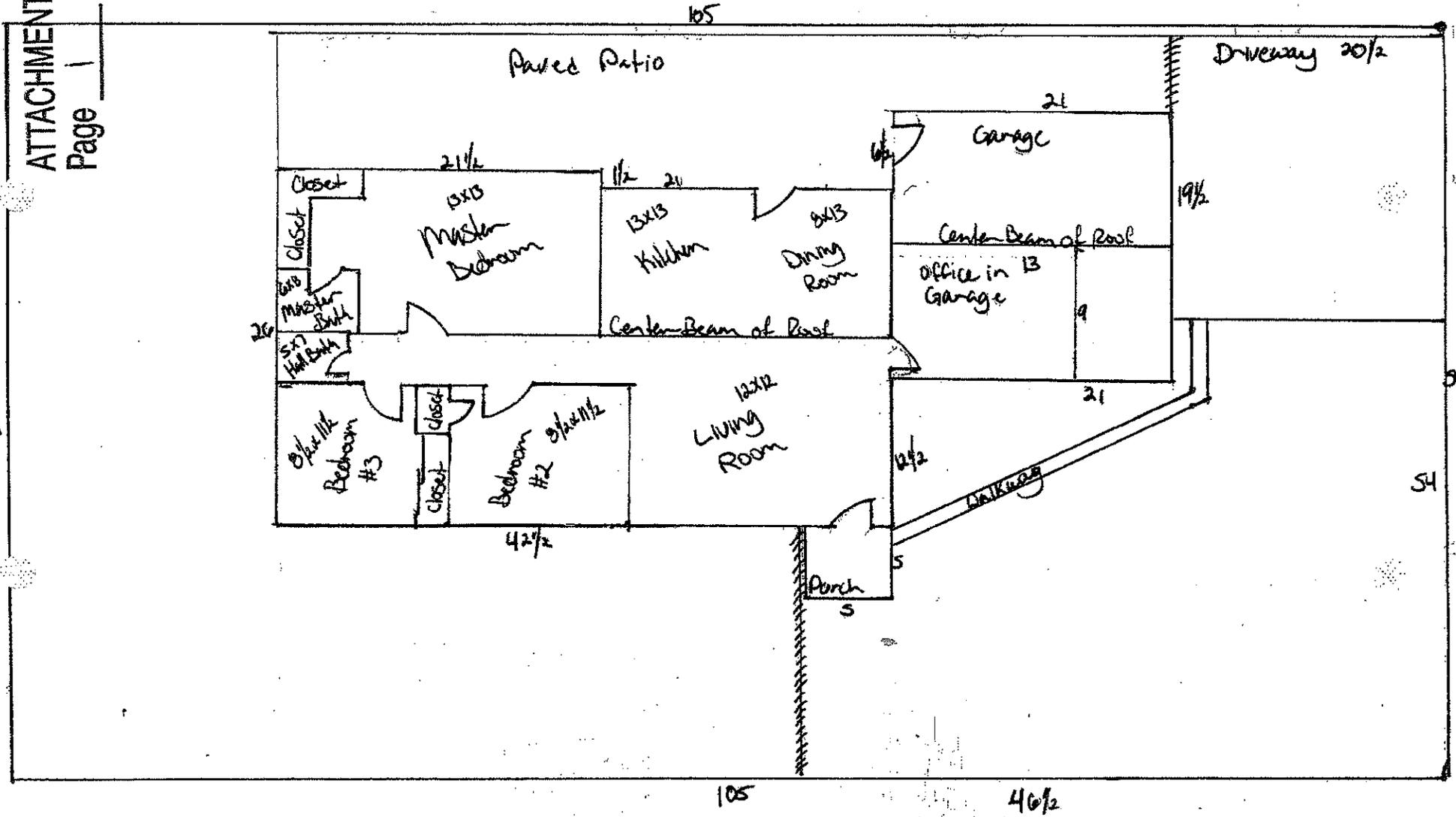
exercised, unless a written request for an extension is received prior to expiration date and is approved by the Director of Community Development. [SDR] (PLANNING)

GC-3. BUILDING PERMIT:

A building permit for the conversion must be obtained within 45 days of the date of approval for the Variance.

GC-4. TEMPORARY CONVERSION:

The garage shall be reconverted to two parking spaces upon sale of the property to a new owner.



317 Hiddenlake Dr
Sunnyvale CA 94089



Page 1 of 1 ATTACHMENT

LAWRENCE E. STONE — ASSESSOR
 Aerial map for assessment purposes only.
 Compiled under R. & T. Code, Sec. 327.
 Effective Roll Year 2007-2007

Variance Justification

#1: I live in a 3 bedroom home in Sunnyvale in Lakewood Village. When we first bought the house approx 9 years ago the 3 bedrooms were sufficient to meet our needs. As my step-daughter and son grew up in the community, I began to be more involved in Sunnyvale community and school organization as well as my work becoming more and more busy which has created the necessity of a home office in which to conduct my involvement and paperwork. I am currently on the board of directors of Sunnyvale National Little League Baseball as the Safety Officer, Columbia Middle School Site Council, Columbia Music Boosters and work from home approx 10-15 hours a week writing letters of medical necessity and doing paperwork for spinal cord injury and neurological injury patients for them to be provided power wheelchair thru their health insurance. All this has created the need to have multiple filing systems, computers and a large desk on which to work. In the house as it was, there was no space to do this. My wife and I use the master bedroom, my 11 year old son uses the rear bedroom and my 18 year old expecting step-daughter uses the bedroom closes to the living room. My wife and I go for walks around a two mile course thru the neighborhood, and as we walked we would notice that a large number of the homes in our neighborhood had the garage converted. We decided that would be the answer to our need for an office space. So approx 5-6 years ago I added two walls in the garage to make a room in which to use as an office. It never even crossed my mind that a permit was required since it was just adding an internal wall and raising the floor so to not be on cold concrete. Because of the placement of my house on the property, it precludes me from doing any other kind of modification to accommodate the need for office space while maintaining the required covered and uncovered parking other than building a second story or a major remodel project which would be an outrageous expense for some office space. I have worked with two planning guys to try to figure out a way to add covered parking but each attempt ends with a different ordinance or setback blocking the attempt. My son has gone to multiple birthday parties for friends and classmates of his in the neighborhood that are being held in a large family room which exist in those homes because the entire garage has been converted. The variance that I am requesting is not

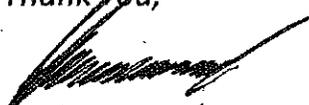
out of line for my neighborhood and a large percentage of the families currently enjoy this privilege.

#2: The granting of the requested variance to the ordinance requiring two covered parking spaces will have no impact detrimental or otherwise to the welfare of the public, the property or the immediate vicinity. It is not visible to anyone from public accessible areas and poses no injury or destruction to the property.

#3: I believe the intent and purpose of the ordinance requiring the two covered and two non-covered parking spaces is to prevent a huge number of vehicles from being parked on the city street and to prevent the garage from being converted into a rentable apartment. Our intent for the space is office space and it's too small of a space for someone to live in. My wife and I only have two vehicles which we park in the driveway each night. We never use the garage or public street for parking, rather we use the garage for storage. If the variance is granted, it would not be a special privilege not enjoyed by other property owners as a large percentage of those already have this privilege.

I would make a plea to be allowed to retain the office that already exists in my garage. Before I built the office in there, I was using the same space to conduct my obligations but was having to go in and out thru the exterior garage door on the patio and was cutoff from the rest of the family during the time I was in there working and it was very cold in the winter and very hot in the summer. Now, the room is kept the same temperature as the rest of the house since there is a door leading into the dining room where air from the house circulates thru it. Also, I am in an area where my children or wife can talk to me or ask a question by just coming down the hall rather than having to put on shoes and a jacket to go outside thru the patio and into the garage to ask or tell me something. I would hope to not have to go back to using the space like I was before. It would be such ashame as I made the office look the same as the inside of the house.

Thank You,


Jay Krusemark

317 Hiddenlake Dr. Sunnyvale, CA 94089



MINUTES
Wednesday, February 29, 2012

FILE #: 2012-7034
Location: 317 Hiddenlake Dr. (APN: 110-21-046)
Proposed Project: Variance from SMC 19.46.060(a)(5) to allow partial conversion of a garage to living space, resulting in one covered parking space where two is required in an R-0 (Low Density Residential) zoning district.
Environmental Review: Categorically Exempt Class 1
Staff Contact: Diana O'Dell, 408-730-7257, dodell@ci.sunnyvale.ca.us

In attendance: Jay Krusemark, Applicant; Andrew Miner, Zoning Administrator; Diana O'Dell, Project Planner; Luis Uribe, Staff Office Assistant.

Mr. Andrew Miner, Zoning Administrator, on behalf of the Director of Community Development, explained the format that would be observed during the public hearing.

Mr. Miner announced the subject application.

Diana O'Dell, Project Planner, presented the item and stated that the garage door is operable. There has been high number of garage conversions in this area, and staff has done a lot of research on the conversions. Ms. O'Dell stated there was a Neighborhood Preservation case for a garage conversion across the street at 314 Hiddenlake, and it stated in their file that the conversion had been removed.

Mr. Miner opened the public hearing.

Jay Krusemark, Applicant, received and reviewed a copy of the staff report. The applicant stated that he has seen other properties with conversions that have added pavement to create another parking space. Mr. Krusemark stated that he understands the reasoning for the two covered parking spaces and that parking will not be an issue on their end. He also stated that some of the properties in the neighborhood house multiple families' which creates parking issues.

Mr. Miner closed the public hearing.

Denied, Mr. Miner was unable to make the findings.

Mr. Miner stated that the decision is final unless appealed to the Planning Commission with payment of the appeal fee within the 15-day appeal period.

The meeting was adjourned at 2:19 p.m.

Minutes approved by:



Andrew Miner, Principal Planner

Variance Justification Appeal Letter

To Whom It May Concern,

I disagree with the City of Sunnyvale's denial of the variance for a garage conversion and wish to have it looked at again.

In finding #1 it was stated that "while there are some legal garage conversions in the nearby area, this privilege does not appear to be widely shared throughout the neighborhood. Over 85% of the garage conversion complaints received in the last nine years resulted in the provision of two covered spaces." I applied to have an additional covered space and was denied because the shape and layout of my lot prohibited one from being installed while being able to meet other city ordinances of setbacks and amount of covered space in the front. I observed there to be approx 20% of the homes in the surrounding neighborhood having garage conversions. So what is the percentage that is considered by the city to be widespread? Most of the homes that added the required covered parking do not meet the no more than 50% covered front setback which is what denied my permit for the additional covered parking. Because I am unable to install the additional required covered parking space, I feel that would meet the requirement of circumstances or conditions of the property including size, shape topography and surrounding which deprives me of the same privileges shared by many properties in the same vicinity and same zoning district.

In finding #2 and #3 I again believe that the findings are met. The addition of the office in my garage does not have a single effect on the surrounding area. I only own two vehicles and park them both in my two uncovered parking spaces. The purpose of the ordinance is to ensure adequate parking on the street, which will not be changed at all by the granting of the variance. In addition the ordinance is being circumvented by others in the immediate area that are completely legal. For example, the two houses directly across the street, house many who own homes in the central valley and work in the Sunnyvale area during the week and go home on the weekend. During any weeknight evening these two houses produce 12-14 vehicles that use street parking in addition to an additional 5 vehicles that park in the driveways. The purpose of the ordinance is to try to prevent this, but is targeting the wrong thing. With my garage door

still functional and no visible change to the property and no additional parking being used I believe that I also meet the requirements of #2 and #3

I am unable to ascertain a standard by which these findings are judged other than personal opinion. In my justification letter I feel the findings and needs are met but in the hearing it was felt that they were not. What is the standard? I have a friend who is also a Sunnyvale resident who bought his house already having the garage converted. He also received a complaint regarding this. He was told after the neighborhood preservation office inspected his home that he only needed to attain a permit for the conversion and was able to keep it without adding additional covered spaces. This took place within the last 3 years. He did not have to go thru the variance process. Why are two Sunnyvale residences being treated differently with two different outcomes for the same infraction?

Thank You,

Jay Krusemark

317 Hiddenlake Dr. Sunnyvale, CA 94089

3. **File #:** 2012-7034
Location: 317 Hiddenlake Dr. (APN: 110-21-046)
Proposed Project: Appeal of a decision of the Zoning Administrator to deny a Variance from SMC 19.46.060(a)(5) to allow partial conversion of a garage to living space. The conversion results in one covered parking space where two is required in an R-0 (Low Density Residential) zoning district.
Environmental Review: Categorically Exempt Class 1
Staff Contact: Diana O'Dell, 408-730-7257, dodell@ci.sunnyvale.ca.us

Trudi Ryan, Planning Officer, presented the staff report.

Vice Chair Larsson discussed with staff the many garage conversions in the neighborhood with staff saying that until the 1980s it was legal to convert garages, with building permits, without replacing parking. Staff said since the 1980s all garage conversions, must have a permit and replace the parking.

Chair Hendricks referred to the findings in Attachment A and asked staff about conditions that an applicant might be granted a Variance for a garage conversion. Ms. Ryan discussed the neighborhood situation agreeing there are many garage conversions and that she does not have the data regarding all of the garage conversions. Ms. Ryan discussed possible situations that Variances might be granted including, narrow or substandard-sized lots. She said staff thinks there is enough room on this property to add the office elsewhere, acknowledging the applicant has already spent time and money on the existing office. Chair Hendricks discussed Finding 3 and staff said in this case, the applicant is not trying to remove a parking space, he is trying to add an office, and staff thinks there are other options without removing parking. Chair Hendricks asked about a secondary fire access with staff saying the applicant may want to address this question.

Kathryn Berry, Senior Assistant City Attorney, added that in general planning situations that the Planning Commission may be able to make the findings after hearing from the public. She said the staff is constrained and the Planning Commission has more discretion, yet the Planning Commission needs to be consistent.

Chair Hendricks discussed with staff when parking and garage conversion rules and policies were last studied by staff.

Vice Chair Larsson confirmed with staff that if the applicant were allowed the conversion, they would have one parking space in the garage and may need to provide one replacement parking space.

Comm. Dohadwala asked how old is the conversion and was it permitted. Ms. Ryan said it is not permitted and Comm. Dohadwala could confirm when the conversion occurred with the applicant.

Chair Hendricks opened the public hearing.

Jay Krusemark, applicant, said he converted about 1/3 of his garage to office space about six years ago. He said he used the left side of garage for office space and that there is a window for secondary access on the right side. He said there are many converted garages in the neighborhood and his conversion cannot be seen from the outside, acknowledging there was a complaint. He said he applied to add a second covered parking space, however the application was denied as it resulted in too much cement in the front of the house so he decided to apply for a Variance. Mr. Krusemark said he does not feel he is applying for a special privilege since so many of the homes in the area have converted garages. He commented that two homes nearby him that have converted garages have so many people that live in them during the week that there is no street parking. He said he was willing to put in a carport, though he does not care for it aesthetically.

Martin Landzaat, a Sunnyvale resident, spoke in support of granting the appeal. He said most people do not even use their garages for parking and the applicant should be allowed to use his garage however he would like to. He said it seems the Planning Commission grants Variance and exceptions to large developers, however for individual citizens the rules seem unbendable. He encouraged the Commission to bend the rules for the applicant.

Mr. Krusemark said he needs office space as he does a lot of work out of his house. He said for him it was best financially to add an office in the garage. He said even if he tears it out he will have set up his office in the garage. He said he agrees that many people do not park in their garages.

Vice Chair Larsson discussed with the applicant the layout of the lot and other possibilities for building an office or parking elsewhere on the lot, without determining any new options. The options discussed did not meet City code and resulted in visual impacts or significant costs.

Chair Hendricks confirmed with staff and clarified to the applicant that if this Variance were approved there would be a condition requiring a building permit to make sure the structure is up to code. Mr. Krusemark said he has family that work in construction that helped build the office and there should not be a problem meeting building code requirements.

Comm. Dohadwala asked the applicant if his family that helped build the office advised him that he would need permits. He said no.

Chair Hendricks closed the public hearing.

Chair Hendricks expressed his concern about the difficulty of this decision and how moving forward to grant this type of Variance could potentially set precedence. He said at the same time, it appears many others in this neighborhood have garage conversions.

Comm. Dohadwala said she has a problem with setting precedence that might suggest it is okay to construct a project first and apply for a permit after the work is already completed. Comm. Dohadwala discussed with staff what the probable outcome of this application if the applicant had applied for the garage conversion before construction. Ms. Ryan said the fact that

money has already been spent is a dilemma, however it sounds like the Commission might want to continue this item to another date, if the applicant is interested, and explore other options.

Chair Hendricks discussed with staff potential options.

Comm. Travis said, from a devil's advocate standpoint, that he thinks that the neighborhood has already set a precedent that garages can be used for other uses and the applicant is looking to be included in this precedent.

Comm. Dohadwala commented that the code is designed to keep neighborhoods from deteriorating and too much paved area, or a reduction of parking reduces the livability of the neighborhood. She said she would encourage others to use garages for parking. She said if the whole neighborhood deviates from the code, in the end, the home prices could be reduced affecting the whole community.

Chair Hendricks said he was trying to not use the word precedent as he does not think the Commission is setting precedence, however he is struggling with the continuation of the situation and giving more authority to the existing situation.

Vice Chair Larsson said he agrees this is a hard decision as there is not a lot of flexibility in the code as Variances are not easy to grant. He said when developers come before the Commission, we hold them to the parking requirements. He said he does not like the option of putting a carport in front of the living room window. He said he would be more open to three uncovered parking spaces in the front.

Chair Hendricks commented that what is making this interesting to decide is the consistency factor. He said whatever way the Commission decides, if someone is before the Commission in the future are we going to be able to provide a consistent decision.

Comm. Kolchak said the Commission would deal with future projects on a case by case basis and that each situation would have different considerations involved.

Comm. Travis moved for Alternative 2 to grant the appeal and approve the Variance with the recommended Conditions in Attachment A. Chair Hendricks seconded the motion. Chair Hendricks discussed a possible Friendly Amendment regarding expanding the driveway so it could support three cars. Staff commented that if the Friendly Amendment is acceptable that the Commission would be granting two different Variances instead of the original Variance. Chair Hendricks withdrew his Friendly Amendment.

Comm. Travis said Variances are supposed to be hard to obtain. He said he can make the Findings: Finding 2, that the project is not materially detrimental; Finding 3 that the applicant is not being granted a special privilege; and Finding 1, which is a little trickier that this is an "exceptional or extraordinary circumstance" justifying this Finding based on the size and shape of the driveway.

Ms. Ryan said she recommends **the motion include a condition requiring a building permit for the existing conversion. The maker and seconder agreed that the motion would include a requirement for a building permit.**

Chair Hendricks said he agrees with Comm. Travis and that he can make the same findings. He said some of the suggested options seem to make the approval worse. He said the Variance goes with to the property and not the applicant.

Vice Chair Larsson asked for a clarification of the motion, with Comm. Travis confirming that the motion is Alternative 2 with the addition of a condition requiring a building permit for the existing structure. Vice Chair Larsson said he would not be supporting the motion as he was not able to make Findings 1 and 3. He said the fact that there are similar conversions in neighborhood is not enough for him. He said the code changes over time and there are reasons for the code and for having the parking requirement. He said he is interested in preserving four parking spaces.

Comm. Sulser said he would not be supporting the motion. He said he is able to make Finding 2 and 3 and cannot make Finding 1.

Comm. Dohadwala said she would not be supporting the motion. She said she agrees there are many conversions in the neighborhood, however the code is in place to follow and maybe there needs to be a garage study. She said she could not make Findings 1 and 3.

Comm. Chang said that he would not be supporting the motion as he cannot make the findings for the Variance.

Comm. Kolchak said he would not be supporting the motion. He said he cannot make Finding 1 and he thinks there are other venues that can be explored that do not result in more Variance issues.

The motion failed 2-5, with Comm. Kolchak, Comm. Dohadwala, Comm. Chang, Vice Chair Larsson and Comm. Sulser dissenting.

Vice Chair Larsson discussed with staff landscaping and options to soften the driveway. Vice Chair Larsson said he does not want to tell the applicant what to do and would like to continue this item to a future hearing to allow time to explore options. Ms. Berry confirmed that continuing the item to explore different options is a good solution, however you may want to talk to the applicant and see whether he would prefer a continuance over a denial. Ms. Ryan said the public hearing could be reopened to see what applicant prefers.

Chair Hendricks reopened the public hearing.

Mr. Krusemark discussed the concerns about the parking spaces and commented that many residents park on the streets. He said he would be open to having this item continued to explore options.

Vice Chair Larsson asked staff how much time is needed to work with the applicant. Ms. Ryan suggested two months, which would be June 25, 2012. Mr. Krusemark asked if something could be set up that if he were to sell the house that he would remove it before it was sold. Ms. Ryan noted that it has been done before.

Chair Hendricks closed the public hearing.

Vice Chair Larsson moved to continue this item to the Planning Commission meeting of June 25, 2012 to allow time for the applicant to work with staff to explore other options for this project. **Comm. Kolchak** seconded the motion.

Comm. Dohadwala said she would not support the motion, as she would not be able to make the Findings.

Comm. Sulser said he would not be supporting the motion and would rather give the applicant a straight denial at this time.

Comm. Chang said he would not be supporting the motion.

Chair Hendricks said he would be supporting the motion.

ACTION: Vice Chair Larsson made a motion on 2011-7034 to continue this item to the Planning Commission meeting of June 25, 2012 to allow time for the applicant to work with staff to explore other options for this project. **Comm. Kolchak** seconded. Motion carried 4-3, with **Comm. Chang**, **Comm. Dohadwala**, and **Comm. Sulser** dissenting.

APPEAL OPTIONS: This action serves as legal notification of the continuance of this item to the Planning Commission meeting of June 25, 2012.

PUBLIC HEARINGS/GENERAL BUSINESS

2. **File #:** 2012-7034
Location: 317 Hiddenlake Drive (APN: 110-21-046)
Proposed Project: Appeal of a decision of the Zoning Administrator to deny a Variance from SMC 19.46.060(a)(5) to allow partial conversion of a garage to living space. The conversion results in one covered parking space where two are required in an R-0 (Low Density Residential) zoning district.
Environmental Review: Categorically Exempt Class 1
Staff Contact: Diana O'Dell, 408-730-7257
dodell@ci.sunnyvale.ca.us
Notes: *Continued from April 23, 2012.*

Trudi Ryan, Planning Officer, presented the staff report.

Comm. Chang clarified with staff that if the Commission grants the appeal they would be approving the Variance, and they could modify the conditions so that the Variance would be allowed only until the property is resold.

Comm. Sulser discussed with staff what findings would need to be made if the Commission moved for Option 1 on page 4 of the report regarding "Extra Parking in Front of the Driveway."

Chair Hendricks opened the public hearing.

Jay Krusemark, applicant, discussed the two options provided on page 4. He said he is open to either of the options.

Comm. Sulser asked the applicant to address Finding 1, on page 4 of the report. Mr. Krusemark explained why he thinks his situation is of exceptional or extraordinary circumstance, including that the placement of his home directly in the middle of the lot, which prevents him from adding parking on the lot where other homes have this option.

Mr. Krusemark said he would appreciate if the Commission would consider approving one of the two options on page 4. He said the Temporary Conversion, option 2, would be the least expensive; however, he is open to either option.

Chair Hendricks closed the public hearing.

Vice Chair Larsson discussed with staff option 1, regarding widening the driveway, confirming with staff that it could mean the garage conversion would be permanent.

Chair Hendricks asked staff if the single-family home parking requirements suggested study issue was a result of this project. Staff said the suggested study issue was discussed on April 23, 2012, which was the same meeting that this project was continued from.

Comm. Travis moved for Alternative 3 (later changed to reflect Alternative 2) to grant the appeal and approve the Variance with modifications: that the Variance would be

temporary and would terminate upon the sale of the home subject to the conditions. Chair Hendricks seconded the motion.

Comm. Travis said he was able to make the findings at the April 23, 2012 meeting and he still can. He said this motion is a temporary solution and he feels of the two additional options listed on page 4, that this is the least costly. He said he feels this option serves both the City and the applicant's purposes. Comm. Travis said he could make Finding 1 that this is an exceptional or extraordinary circumstance as staff, the applicant, and the Commission have spent quite a bit of time looking at different ways to make this work and were not able to come to any conclusion that did not cause other problems. He said he could make Finding 3, as he does not see this as a special privilege not enjoyed by others, as there are others in the neighborhood with garage conversions.

Chair Hendricks said he would be supporting the motion. He said at the last meeting he was able to make the findings, and does not feel differently. He said he could make Finding 1 with a strict interpretation that it would "deprive the property owner of privileges enjoyed by other properties in the vicinity and within the same zoning district." He said he does not think the Commission would be granting a special privilege to the applicant. Chair Hendricks said, between the two options presented, he thinks the motion is the best option.

Comm. Sulser said he would not be supporting the motion, as he does not think this is an extraordinary circumstance and he is only be able to make Findings 2 and 3.

Comm. Kolchak said he would be supporting the motion. He said we have spent quite of bit of time to trying to make this work and we are still in the same place, which is extraordinary and not a special privilege. He said when the owner moves, the conversion would be removed, and hopefully by that time the single-family parking requirements will have been reviewed and possibly have a better solution for similar issues.

Vice Chair Larsson said at the last meeting he could not make Findings 1 and 3. He said that the applicant swayed him on Finding 1, but he is still struggling on making Finding 3 and would be interested in hearing Comm. Sulser's reasoning for making Finding 3.

Comm. Chang said he was not able to make the findings at the last meeting, and the main reason was the Variance request. He said in a way we would be setting precedence and this is a decision that should be made very carefully. He said he cannot make the findings to support the motion.

Comm. Sulser explained he was able to make Finding 3 due to the history and pattern in this neighborhood for garage conversions.

Vice Chair Larsson said that with this explanation he is able to support the motion. He said he is concerned about opening a barn door for garage conversions, however, this approval is temporary and not a special privilege.

ACTION: Comm. Travis made a motion on 2012-7034 to grant the appeal and approve the Variance with attached conditions: that the Variance would be temporary and would terminate upon the sale of the home. Chair Hendricks seconded. Motion carried, 4-2, with Comm. Chang and Comm. Sulser dissenting, and Comm. Dohadwala absent.

APPEAL OPTIONS: This action is final unless appealed to the City Council no later than July 10, 2012.

LETTER OF APPEAL

>>> On 6/29/2012 at 5:35 PM, "Christopher Moylan" <cjmoylan@comcast.net> wrote:

Trudi and Glenn,

I have now watched the June 25 planning commission meeting on this topic, and will probably have to find time to watch the April 23 one, because commissioners repeatedly invoked their positions from the previous hearing and so I didn't understand what they meant. But I have some questions that I ask staff and the commission to try to have answered in time for the appeal to council. (For those cced on this email, I'm appealing this commission decision to council).

1. The applicant said something about "complaints about garage conversions" with some large number in the 40s. Did this item come before the city because this applicant had converted half the garage without a permit, or is the applicant contemplating converting the garage and asking for a variance in order to proceed? He said something about "maintaining the conversion" which suggested that he did the work and is now belatedly asking for a variance.
2. If this came to the city's attention due to a complaint, doesn't that cause the project to fail to meet variance condition #2 automatically? If neighbors are complaining, it's pretty hard to argue that the project causes no harm to neighbors. I guess you would have to conclude that the complaint was completely invalid. I have never been able to make Finding 2 if I knew that neighbors had been complaining.
3. In the past when people did unpermitted work that would have required a variance, and then came to the commission asking for one after the fact, we never once in five years gave it to them, due to the terrible precedent it would set. That was true even in the case of the elderly handicapped man whose sons built him a workshop in Lakewood Village. Everyone felt very sorry for him, but there was no way that we could justify saying that he wouldn't have to follow the rules. This one involved a neighbor complaint as well. The tone of the commission here seems to be that their job is to help this applicant do what he wants with his property and bend the code if need be (unfortunately consistent with other recent applications that have come to council), rather than having the commission be defenders of the general plan and zoning code the way they should be. Has there been a change in direction to commissioners regarding how to approach such applications?
4. Two commissioners state that they can make Finding 1, something unusual about the property, because after spending substantial time trying to see if the applicant's desires can be force-fit into our code, it didn't work. The obvious conclusion is that the application should be denied, rather than that there is something unusual about the property. There are plenty of properties in the city that would not meet code if the owners tried to do certain things. I do not understand this commission argument that if we can't fit something into the code then it must mean that there is something unusual about the property and Finding 1 is met. It seems to me that any desired modification that is so far outside the code that it requires a variance, would likely not fit even if people spend time trying to fit it, and thus this argument seems to say that everyone is entitled to automatic satisfaction of Finding 1. The

commission logic here is incomprehensible to me and I'll need to have it explained by someone who understands it.

5. The aspect of this that inspired my appeal is Finding 3. The concept of a temporary variance, applicable to the current owner but not to a hypothetical future owner of the exact same property, violates Finding 3 by definition. It creates a special privilege for the current owner that another person in the exact same circumstances, i.e. owning this house, would not have. How does the concept of a temporary variance not violate Finding 3? This sounds like a training issue to me. My understanding of variance conditions is that variances by their nature would have to go with the property and not with a particular owner, and should be perpetual and not temporary.
6. The staff report said that the concept of the temporary variance came from working with the applicant. Was this a staff idea or the applicant's idea? Whoever came up with this idea should have to answer question 5 above. If it is the applicant, why did staff not declare the option out of bounds immediately?
7. Glenn, you seemed to speak for the majority when you stated that the staff-recommended option of simply denying the appeal was "not a good option." But you didn't say why. It's not good for the owner, but it appears to be good for the city. Why is that not the best option, and why were so many commissioners falling all over themselves to try to accommodate this applicant?
8. Finally, it is with a heavy heart (wink) that I see that my successful campaign to teach the planning commission what that object is that applicants stand behind, has eroded since my departure. After 6 years the council is finally beginning to get it; let's not let the commission backslide! It is not a "podium." A podium, as its root (pod meaning foot) suggests, is something that you stand on top of. The object with the microphone on it and space to put a document is something you read and speak from, or lecture from, hence it is called a "lectern." Just as it is all of our duty to minimize global warming, it is all of our duty to minimize the erosion of the English language!

Thanks for any answers that you can provide.

Regards,

Chris

Christopher R. Moylan

Councilmember

City of Sunnyvale