

GARDEN GROVE CITY COUNCIL

RESOLUTION NO. 9293-15

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE  
DENYING THE APPEAL OF SOPHIE INGE AND UPHOLDING THE PLANNING  
COMMISSION'S DECISION TO DENY VARIANCE NO. V-010-2015

WHEREAS, the subject case was initiated by Inge Realty/Sophie Inge ("Applicant");

WHEREAS, the Applicant is requesting approval of a Variance to deviate from the sign design and removal requirements of Garden Grove Municipal Code Section 9.20.045, in order to allow the existing nonconforming freestanding pylon sign, located on the west side of Harbor Boulevard, north of Lampson Avenue, at 12461 Harbor Boulevard (Assessor's Parcel No. 231-451-33) to remain in its current location, partially within the Harbor Boulevard right-of-way;

WHEREAS, on May 13, 2014, the Garden Grove City Council adopted Ordinance No. 2837, enacting Municipal Code Section 9.20.045 and adopting specified standards for the placement of design of freestanding signs ("Sign Standards") for specified properties located along or near Harbor Boulevard, north of the Garden Grove Freeway, including the Applicant's property;

WHEREAS, pursuant to Municipal Code Section 9.20.045, existing freestanding signs that have been in place for 15 years or more prior to the effective date of Ordinance No. 2837, and which do not conform to the Sign Standards, are subject to removal under specified circumstances;

WHEREAS, the subject sign is an approximately forty-foot (40'-0") tall pylon sign that does not conform to the Sign Standards and which has been in place since approximately 1965;

WHEREAS, the subject sign is also partially located within the existing public right-of-way;

WHEREAS, pursuant to the proposed Variance No. V-010-2015, the Applicant is requesting complete relief from the Sign Standards, i.e., to permanently maintain a non-conforming pole sign, and in addition, is seeking the grant of a permanent right to keep the sign in its current location, which is partially within the Harbor Boulevard right-of-way;

WHEREAS, pursuant to Resolution No. 5842-15, the Planning Commission, following a public hearing held on March 5, 2015, denied Variance No. V-010-2015;

WHEREAS, the Applicant has appealed the Planning Commission's denial of Variance No. V-010-2015;

WHEREAS, because the application is denied, the project is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15270(a);

WHEREAS, pursuant to legal notice duly given, a Public Hearing was held by the City Council on May 12, 2015, and all interested persons were given an opportunity to be heard; and

WHEREAS, the City Council gave due and careful consideration to the matter during its meeting of May 12, 2015.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDEN GROVE HEREBY RESOLVES, DETERMINES, AND FINDS AS FOLLOWS:

SECTION 1. The above recitals are true and correct, and are incorporated herein by reference.

SECTION 2. A copy of Planning Commission Resolution No. 5842-15 is on file in the office of the City Clerk, was concurrently submitted in the agenda materials for the May 12, 2015, Public Hearing regarding Variance No. V-010-2015 (hereafter, "Variance"), and incorporated herein by reference with the same force and effect as set forth in full.

SECTION 3. In order to approve the Variance, all of the findings required by California Government Code Section 65906 and set forth in Garden Grove Municipal Code Section 9.32.030.D.6 must be made. In this case, based on the totality of information provided, the City Council concurs with the recommendation of the Planning Commission and finds that for the facts, findings, and reasons set forth in Planning Commission Resolution No. 5842-15 and for the following reasons, the following required findings for approval of the Variance cannot be made:

1. Required Finding: That there are exceptional or extraordinary circumstances or conditions applicable to the property or to the intended use that do not apply generally to other property or classes of use in the same vicinity or zone.

Reasons Required Finding Cannot Be Made: The size, shape, topography, location, surroundings, and other physical characteristics of the subject property are not "special" or "exceptional" in comparison to those of other properties within vicinity of the property and the overlay area to which the Sign Standards apply. The physical characteristics of the subject site are similar to numerous other properties within the overlay area.

In support of this required variance finding, the Applicant has asserted, among other things, that, unlike certain other businesses on Harbor

Boulevard, the Inge Realty business is a stand-alone small business without regional and/or national branding; that the existing sign has historical significance and has sentimental value to its owners; that no other small business subject to the Sign Standards have a forty-foot (40'-0") tall sign; and that the business of Inge Realty relies heavily on its signage. None of the reasons asserted by the Applicant warrant approval of the Variance.

Although some hotel and retail chains are located on Harbor Boulevard, there are also several other stand-alone small businesses without regional and/or national branding. Inge Realty is a general office type use, which is a common type of use along Harbor Boulevard in the overlay area. This corridor along Harbor Boulevard includes a wide variety of uses which include commercial and office type uses. Like Inge Realty, many of the other businesses on Harbor Boulevard are small businesses that likely rely on their signage to attract customers. The Sign Standards, including the sign removal requirements therein, apply equally to all of property owners within the overlay area.

Subjective sentimental value to the owner is not a legally sufficient justification for granting a variance. In addition, although the Applicant subjectively believes its sign is "historically significant," the subject nonconforming sign is not listed on any identifiable local, state, or national historic register, deeming it to be historically significant. Further, when adopting the Sign Standards, the City Council specifically considered and made the policy decision to not exempt the Inge Realty sign, or signs of alleged "historical significance" generally, from application of the Sign Standards. To do so via a variance would be contrary to the intent of the Sign Standards.

The fact that the Applicant has chosen to maintain a nonconforming pylon sign on its property that is older and larger than the signs erected by other property owners does not constitute the type of "exceptional circumstance or condition applicable to the property" that would justify the granting of a variance.

Further, the granting of the Variance would undermine the goals and policies of underlying uniform sign program contemplated by the Sign Standards. The stated purpose and intended effect of the Sign Standards is to implement a program that results in uniform and consistent signage on all properties and businesses within the overlay area in order to effect a collective improvement of all of the properties in the Harbor corridor. Granting a wholesale exception to the Applicant will undermine the purpose of the Sign Standards and significantly frustrate the City's implementation of the Sign Standards.

2. Required Finding: That the Variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same vicinity and zone, but which is denied to the property in question.

Reasons Required Finding Cannot Be Made: The primary purpose of the Sign Standards is to implement a program that results in uniform and consistent signage on all properties and business within the overlay area. The Sign Standards, including the removal requirements of non-conforming signs, apply equally to all property owners within the overlay area. A new freestanding sign installed on any other parcel of property within the overlay area must be a monument sign complying with the Sign Standards and in addition, may not be located within the dedicated public right-of-way. To the extent that, like the Applicant's property, other properties in the vicinity of the Applicant's property and within the overlay area currently contain nonconforming signs that are inconsistent with the Sign Standards, such signs are subject to removal and replacement with conforming signs. Accordingly, other similarly situated property owners do not possess greater property rights vis-à-vis freestanding signage than the Applicant. Conversely, granting the Variance would give the Applicant property rights that are not generally possessed by other similarly situated property owners.

Further, to the extent the Variance seeks to maintain the subject sign at its current location within the public right-of-way, the Applicant no property right to locate the sign in the public right-of-way, let alone a substantial one. At most, the Applicant's sign is located in the public right-of-way as an encroachment. An encroachment is not a property right but rather constitutes a mere revocable license which may be withdrawn at will, and an adjacent property owner cannot legally obtain a property right in the public right-of-way.

3. Required Finding: The granting of the requested Variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located.

Reasons Required Finding Cannot Be Made: A primary purpose of the uniform Sign Standards is to implement a program that results in uniform and consistent signage on all properties and business within the overlay area in an effort to improve both the visual and functional attributes of the area, to establish a sense of place and continuity and consistency of development standards, and to create a consistent visual theme in the Grove District to promote its brand as a premier, urban, resort destination. The City Council made this policy decision only last year, when it enacted the Sign Standards. Granting the Variance expressly limiting the City's authority to effectuate removal of the Applicant's existing forty foot (40'-0") tall pylon sign would result in a sign on the subject property that looks vastly different from the signs on other Harbor Boulevard properties, would detract from the

aesthetics and design consistency of the area, and would frustrate the primary stated purpose and intended effect of the Sign Standards. These detrimental and injurious consequences would result even if the sign was moved to another location on the property outside of the public right-of-way.

Further, allowing the applicant to maintain the sign within the public right-of-way would frustrate completion of the City's pending Harbor Boulevard Landscape Improvement Project and the City's intended use of its right-of-way. This would clearly be contrary to the public interest and materially detrimental to the public's welfare in that the public would be prevented from using the right-of-way for the very purpose for which it was dedicated. Because a variance constitutes a permanent property interest, the City is without legal authority to grant the Variance to the extent it requests to remain located in the right-of-way.

4. Required Finding: The granting of the Variance will not adversely affect the comprehensive General Plan.

Reasons Required Finding Cannot Be Made: The Sign Standards were expressly adopted in furtherance of, and to implement, the goals, policies, and intent of the International West Mixed Use Land Use designation of the City's General Plan Land Use Element. Granting the Variance would frustrate the primary purpose of the Sign Standards and, thus, would have an adverse effect on implementation of such General Plan goals, policies and intent.

The Applicant has asserted that its sign is "historically significant," and its preservation would be consistent with certain General Plan policies promoting the preservation of historically, architecturally, and culturally valuable resources in the City. However, the subject nonconforming sign is not identified in the General Plan as a historical, architectural, or cultural resource of value to the City and is not listed on any identifiable local, state, or national historic register deeming it to be historically significant. The City Council does not find the subject sign to be historically, architecturally, or culturally valuable within the meaning of the General Plan provisions cited by the Applicant.

5. Required Finding: The granting of the Variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is situated.

Reasons Required Finding Cannot Be Made: The Applicant is requesting an exception to the entire zoning scheme established by the adoption of the Sign Standards approximately one year ago – which exception would be applicable only to the Applicant and the Applicant's property. If the City Council were to approve the Variance, it would give the Applicant special privileges inconsistent with the Sign Standards applicable to all other

property owners within the overlay area. The Variance includes not only a request to deviate from the setback requirements, it also seeks to permanently maintain the sign within the public right-of-way. To the extent other property owners are not permitted the same exception, the granting of such a request would bestow a highly special privilege on the Applicant and as noted, the City Council has no legal authority to grant a permanent encroachment in public right-of-way. Even if the Applicant offered to move the existing sign to another location on its property outside of the public right-of-way, the Applicant would still be the beneficiary of special privileges for the reason it would be allowed to keep an existing non-conforming pylon sign which is not remotely consistent with the Sign Standards, while all other properties within the overlay area could be limited a much smaller monument sign. Accordingly, the Variance is inconsistent with the limitations imposed by California Government Code Section 65906.

Section 4. Based upon the foregoing findings, and the upon the facts, findings and reasons set forth in Planning Commission Resolution No. 5442, the Applicant's appeal is hereby denied, the Planning Commission's decision is upheld, and Variance No. V-010-2015 is hereby denied.

Adopted this 9<sup>th</sup> day of June 2015.

ATTEST:

/s/ BAO NGUYEN  
MAYOR

/s/ KATHLEEN BAILOR, CMC  
CITY CLERK

STATE OF CALIFORNIA    )  
COUNTY OF ORANGE     ) SS:  
CITY OF GARDEN GROVE )

I, KATHLEEN BAILOR, City Clerk of the City of Garden Grove, do hereby certify that the foregoing Resolution was duly adopted by the City Council of the City of Garden Grove, California, at a meeting held on the 9<sup>th</sup> day of June 2015, by the following vote:

AYES:     COUNCIL MEMBERS:   (5) BEARD, BUI, JONES, PHAN, NGUYEN  
NOES:     COUNCIL MEMBERS:   (0) NONE  
ABSENT:   COUNCIL MEMBERS:   (0) NONE

/s/ KATHLEEN BAILOR, CMC  
CITY CLERK