

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
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5/19/99

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Staff: R Hyman
Staff Report: 5/19/99
Hearing Date: 6/8/99
Commission Action:

STAFF REPORT: CONSENT CALENDAR

APPLICATION NUMBER: 3-99-027

APPLICANT: Melvin & Margaret Kaplan

AGENT: James Lloyd

PROJECT LOCATION: 174 Spindrift Rd, Carmel Highlands, Monterey County
AP# 241-301-018

PROJECT DESCRIPTION: Demolition of existing 2,800 sq. ft. single family residence and carport; construction of replacement two-story, 6,190 sq. ft. single family residence with detached garage, new septic system, tennis court; associated grading (80 cu. yds.), and vegetation removal and replanting.

Lot Area: 62,840 sq. ft.
Building Coverage: 4265 sq. ft.
Pavement Coverage: 6,200 sq. ft.
Landscape Coverage: 5000 sq. ft.
Zoning: Low density residential (LDR(1)(CZ) (uncertified)
Plan designation: Low density residential (uncertified)
Height above finished grade: 30 feet

LOCAL APPROVAL: Monterey County Design Approval 2/8/99

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending that the Commission grant a coastal development permit for the proposed project with special conditions relating to septic approval, demolition of the existing house, not blocking an existing accessway, archaeological resource protection, geologic stability, water conservation, future additions, and a grading permit. With these

conditions, any potential adverse impacts will be mitigated for this replacement house within an existing developed area.

STAFF RECOMMENDATION

The staff recommends that the Commission adopt the following resolution.

I. Approval With Conditions

Resolution: The Commission hereby **grants** a permit for the proposed development as conditioned below, on the grounds that, as conditioned, it will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provision of Chapter 3 of the Coastal Act, that it is located between the nearest public road and the sea, and that there are no additional feasible mitigation measures that would lessen any significant adverse effects on the environment within the meaning of the California Environmental Quality Act (CEQA).

II. Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions

1. Phasing of Permit

This coastal development permit shall be issued in two parts: (1) for the septic system and (2) for the house. Prior to issuance of the permit for the septic system, the applicant shall provide evidence of a valid County Environmental Health Department permit for a septic system conforming to the one shown on the grading plans (or on revised plans submitted for Executive Director review and approval). Prior to issuance of the permit for house construction, the applicant shall provide for Executive Director review and approval 1) evidence of a functioning system for the size of proposed house; 2) indication from the Environmental Health Department that the house plans meet septic setbacks and other requirements, 3) final site and landscaping plans, and 4) if necessary revised house plans conforming to the above. Any changes in plans require approval of the Executive Director.

2. Removal of Existing Dwelling

Within one week of the date of issuance of an occupancy permit for the new dwelling, the existing dwelling's utilities shall be disconnected. Within one month of said date, the existing dwelling shall be demolished.

3. Protection of Public Access

No construction work and no development shall occur within the pedestrian easement area. The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

4. Archaeological Resources

If archaeological resources or human remains are accidentally discovered during construction, work shall be halted within 50 meters (150 feet) of the find until it can be evaluated by a qualified professional archaeologist (i.e., an archaeologist registered with the Society of Professional Archaeologist). The Coastal Commission and a qualified archaeologist shall be immediately contacted. The qualified archaeologist shall inspect the project site to determine the nature and significance of the archaeological materials and develop appropriate mitigation measures using standards of the State Historic Preservation Office. This mitigation plan shall then be approved by the State Historic Preservation Office and the Executive Director and fully implemented by the property owner. In addition the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director which states that for purposes of protecting archaeological resources, development can only be undertaken according to the provision

of the approved archaeological mitigation plan. The plan must be recorded concurrently with the deed restriction as an exhibit. The deed restriction shall include a legal description of the applicants' parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission approved amendment to this permit.

5. Geotechnical

The applicant shall follow all recommendations of the *Geotechnical Investigation* (Haro, Kasunich & Associates, October 1995), or of a revised report, submitted for Executive Director review and approval.

6. Water Conservation:

The applicant shall comply with Ordinance No. 3539 of the Monterey County Water Resources Agency pertaining to mandatory water conservation regulations. The regulations for new construction require, but are not limited to:

- All toilets shall be ultra-low flush toilets with a maximum tank size or flush capacity of 1.6 gallons, all shower heads shall have a maximum flow capacity of 2.5 gallons per minute, and all hot water faucets that have more than ten feet of pipe between the faucet and the hot water heater serving such faucet shall be equipped with a hot water recirculating system.
- Landscape plans shall apply xeriscape principles, including such techniques and materials as native or low water use plants and low precipitation sprinkler heads, bubblers, drip irrigation systems and timing devices.

7. Grading

Prior to issuance of the permit, the applicant shall provide of evidence of a valid Grading Permit issued by Monterey County Building and Inspection Department. Failure to comply with the County Grading Permit will be considered a violation of this coastal permit as well.

8. Future Additions:

Any future additions, including but not limited to decks, antennas, satellite dishes, towers, utility poles or fencing within view of Highway 1 or other public viewpoint shall require a separate permit, or amendment to this permit, unless waived by the Executive Director or preempted by Federal law.

IV. Findings:

The Commission hereby finds and declares:

A. Project Background and Public Access

The proposed project is located off of Spindrift Road in the Carmel Highlands area of Monterey County. It is one of six lots containing gated and locked pathways that lead to Yankee Beach (a small pocket beach). The pathways are available for use by residents of the area only, there is no public access to the beach from the land. These lots are in an area of deferred certification. When the Coastal Commission considered approving the *Carmel Area Land Use Plan*, it denied certification to this enclave because of public access concerns. The Commission was desirous of seeing public access to the beach, but the County did not provide for such access in the *Land Use Plan*. At that time, the Commission often required public access easements as part of new developments on the sites. After subsequent court cases (e.g. *Nollan*) the tests for requiring public access changed. In this case there is no impact on access from this project and hence no basis to require any access. Although the replacement home is substantially larger than the existing one, there is no significant change in intensity due to the project because the site will continue to contain one single-family dwelling. There is a private accessway along the western border of the site. It is a five foot wide private, pedestrian easement granted to the area's homeowners' association for their exclusive use at the time of subdivision (pre-Coastal Act). The existing location of the private path would be appropriate for any future public access should the necessary rights or permissions be obtained. No construction or other development, though is shown as occurring in that area. Thus, as long as there is no interference with the accessway, as conditioned, no public access is required at this time. In addition, this approval and this finding in no way precludes any future arrangements that might occur to open access to this beach. Thus, approval of this permit does not prejudice the ability of Monterey County to prepare a Local Coastal Program for this enclave conforming to the provision of Chapter 3 of the Coastal Act. Nothing in this permit approval shall be construed to constitute a waiver of any sort or a determination on any issue of prescriptive rights which may exist on the parcel.

B. Other Coastal Act Issues

There are no other unresolved Coastal Act issues of concern associated with this project. Although the area in question is in an area of deferred certification, there is a certified local coastal program for the remainder of the neighborhood. The project complies with all of the provisions of the *Carmel Area Land Use Plan* and associated zoning provisions.

With regard to **visual resources**, the new house will be larger and taller than the existing one. But, it will not block any public views of the ocean. The site is tucked away among trees and slopes away from the public roadways, and there are intervening homes. The

top of the house is at the same elevation as Spindrift Road. It will not be noticeable from Highway One. As conditioned to ensure that there are no future visible additions without further review, the project is consistent with Section 30251 of the Coastal Act.

An **archaeological** reconnaissance was performed finding no surface evidence of potentially significant cultural resources (Archaeological Consulting, April 1997). As conditioned to require work to stop if archaeological resources are discovered and prepare appropriate mitigation, the project is consistent with Section 30244 of the Coastal Act.

With regard to **water quality**, a drainage plan with energy dispersion trenches is included in the application. As conditioned for evidence of a County grading permit, the project will have to follow the County's grading and erosion control requirements. With regard to **water supply**, the site has an existing connection from the Carmel Riviera Mutual Water Company. As conditioned, the project will have to comply with the County's Water Conservation Ordinance. These conditions will render the project consistent with Section 30231 of the Coastal Act.

A **Geotechnical Investigation** was performed by Haro, Kasunich & Associates, October 1995 which contains recommendations for safe construction. As conditioned to require that these recommendations be followed the project is consistent with Section 30253(1 & 2) of the Coastal Act.

C. Septic System and Project Phasing

The proposed project will require a new septic system. The lots in this area are somewhat problematical for septic systems; however, there is an existing house with an existing functioning septic system. However, a new septic system will be needed both because the existing one is in the location of the proposed new house and because this new house will be larger. The County Environmental Health Department anticipates no problems in approving the new system; however, it's exact specifications are subject to further testing and design. The applicants propose to install the new system first to ensure that it properly works before constructing the new house. If the septic design needs to be altered or if the system's capacity is less than anticipated, the house plans (siting and/or size) may have to change. To provide for these possibilities and avoid the need for a permit amendment, it is advisable to condition the permit to be issued in phases and to allow for adjustments to the submitted plans.

The applicants wish to continue living in the existing house until the new one is completed. The parcel can only support one house (one acre minimum zoning). Therefore, a condition is needed to ensure that the demolition of the existing house actually occurs.

D. California Environmental Quality Act

Section 13096 title 14 of the California Code of Regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the

application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(a) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse effect with the activity may have on the environment.

The proposed project, as conditioned, has been found consistent with Chapter 3 policies of the Coastal Act. All adverse impacts have been minimized and there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

