

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
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Th9b

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Hearing item number: Th9b

APPEAL STAFF REPORT - SUBSTANTIAL ISSUE DETERMINATION

Appeal numberA-3-SCO-05-013, McNece SFD

ApplicantElmer & Barbara McNece

AppellantsLes McCargo

Local governmentSanta Cruz County

Local decisionApproved with Conditions (January 26, 2005)

Project location622 and 624 Bayview Drive, in the Aptos-Rio del Mar area of south Santa Cruz County.

Project descriptionRemodel an existing 1,715 square foot single story residence and construction of a 1,000 square foot addition to an existing single family residence. Project also includes partial demolition of an existing garage encroaching on the property line.

File documentsSanta Cruz County Certified Local Coastal Program (LCP); Santa Cruz County CDP Application File 03-0430.

Staff recommendation ...**No Substantial Issue**

Summary of staff recommendation: Santa Cruz County approved a proposal to remodel and construct a 1,000 square foot addition to an existing 1,715 square foot residence located on Bayview Drive in the Aptos-Rio Del Mar area of Santa Cruz County. The existing single story residence was originally constructed along the top of the shoreline bluff in the late 1930's along with a detached guesthouse. The applicant proposes a remodel and 1,000 square foot second story addition to the existing residence. The existing 642 square foot garage will reduced to 280 square feet. The Appellant contends that the approved project would adversely impact private views of the ocean, would inappropriately expand a non-conforming structure, would preclude public use of an access path down the bluff, requires a variance, should be evaluated as a single legal lot, and is incompatible with the neighborhood.

The County-approved project is similar in size, scale, and design to existing residential structures along this stretch of Bayview Drive. The existing residence and addition is located approximately 100' from the coastal bluff edge in an area with extensive residential development along the bluffs, and therefore will not significantly impact public views from the beach or Bayview Drive. The remodel and addition has been designed to decrease the existing non-conformities, and it will not interfere with public access to the beach, because no *public* access exists on the site and there is improved public access less than

**California Coastal Commission****June 9, 2005 Meeting in San Pedro**

Staff: M. Watson Approved by:

A-3-SCO-05-013 McNece NSI 5.19.05.doc

one-quarter mile to the south.

In sum, the County approved project is not atypical of existing residential development in this heavily developed shoreline area. Houses line the foot of the bluffs along the Beach Drive residential area as well as the residential blufftop area that includes Bayview Drive. This project will not significantly alter the public viewshed, will not affect public access, and would not be incompatible with the existing built environment.

Thus, Staff recommends that the Commission find that no substantial issue exists with respect to this project’s conformance with the certified LCP, and that the Commission decline to take jurisdiction over the coastal development permit for the project.

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1. Appeal of Santa Cruz County Decision

A. Santa Cruz County Action

Santa Cruz County approved this proposed project subject to multiple conditions on January 26, 2005 (see exhibit C for the County’s adopted staff report, findings and conditions on the project). The County’s approval was by the Planning Commission following an appeal of the Zoning Administrator’s original approval. The current Appellant in this matter before the Commission is a neighbor and the



owner of the property east of the subject property lot. The Planning Commission's approval was not appealed locally (i.e., to the Board of Supervisors).¹

Notice of the Planning Commission's action on the coastal development permit (CDP) was received in the Coastal Commission's Central Coast District Office on February 11, 2005. The Coastal Commission's ten-working day appeal period for this action began on February 14, 2005 and concluded at 5pm on February 28, 2005. One valid appeal (see below) was received during the appeal period.

B. Appeal Procedures

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because it is located seaward of the first public road and is located within 300 feet of the top of the coastal bluff.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission conducts a de novo hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is so located and thus this additional finding would need to be made in a de novo review in this case.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal.

¹ Normally local appeals must be exhausted before an appeal can be made to the Coastal Commission. In Santa Cruz County's case, the appeals process is that Zoning Administrator decisions can be appealed to the Planning Commission, and Planning Commission decisions can be appealed to the Board of Supervisors (and the Board can also independently elevate an item to the Board for consideration). However, because Santa Cruz County charges a fee for local coastal permit appeals, aggrieved parties can appeal lower decisions directly to the Commission. Since the appeal in this case is of a Planning Commission decision, the Appellants have availed themselves of the direct appeal route.



C. Appellant's Contentions

The Appellant contends that the approved project is inconsistent with the LCP in several areas: (1) the approved project would adversely impact private views of the ocean; (2) the approved project is inconsistent with the goals of the LCP because it will expand a non-conformity; (3) the project will impact public access to the beach; 4) there is only one legal lot of record; 5) the County-approved project requires a variance; and 6) the project, as proposed, will not compliment or harmonize with the surrounding neighborhood. Please see exhibit D for the Appellant's complete appeal document.

2. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of no substantial issue would mean that the County's decision in this matter would be final (conversely, a finding of substantial issue would bring the project under the jurisdiction of the Commission for hearing and action).

Motion. I move that the Commission determine that Appeal Number A-3-SCO-05-013 raises **no** substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act.

Staff Recommendation of No Substantial Issue. Staff recommends a yes vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

Resolution to Find No Substantial Issue. The Commission hereby finds that Appeal Number A-3-SCO-03-032 does not present a substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act regarding consistency with the Certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.

Recommended Findings and Declarations

The Commission finds and declares as follows:

3. Project Description

A. Project Location

The proposed development is located on Bayview Drive in the unincorporated Aptos-Rio del Mar area of Santa Cruz County. Bayview Drive generally follows the coastal bluff above Rio Del Mar beach and



the Beach Drive residential area fronting the sandy beach and is the first public "through" road. Most, if not all, of the privately owned lots west of Bayview Drive have been improved with single-family residences and enjoy spectacular ocean and beach views. Similarly, the privately held properties east of Bayview Drive have been improved with single-family residences and also enjoy blue water views over and between the existing residences west of Bayview Drive. The character of the residential stock is somewhat eclectic, and most homes have two-story elements if not full second stories. The coastal bluff in this area is very steep, rising approximately 70' from the toe of the bluff to the existing Bayview Drive elevation. Most of the bluff top lots on Bayview extend from the toe of the bluff at Beach Drive to the County road right-of-way at Bayview Drive. At the toe of the bluff are a string of residential homes on Beach Drive fronting the beach between State Parks' Seacliff State Beach unit and Hidden Beach. See exhibit A for a location map of the project area.

The proposed project is located on two lots at 624 and 622 Bayview Drive (APNs 043-152-12 and 043-152-13). These two sites were originally one lot, but were subdivided into two legal parcels in the 1960's. Both properties remain in common ownership, though are recognized as separate legal lots. The main residence, which is the subject of the remodel and addition (APN 043-152-12), is a 1,715 square foot one-story single-family residence and is located closest to Bayview Drive –approximately 100' from the bluff edge. A portion of the attached 2-car garage encroaches onto parcel 13 (APN 043-152-13, 622 Bayview). The Appellant owns a neighboring property generally east (inland) of the subject site. The site is designated in the LCP Land Use Plan (LUP) as Urban Low Residential, and zoned R-1-6, Single-Family Residential (6,000 sq. ft. minimum). Please see exhibit A for map of the site and surrounding area.

B. County Approved Project

The County approved a remodel and 1,000 square foot addition to an existing 1,715 square foot, single family, one-story residence. Of this amount, nearly the entire additional floor area is a second-story addition to the northwest wing of the existing U-shaped residence on parcel 12. The project also includes demolition of 365 square feet of garage space that currently straddles the lot line for parcel 12 and the entrance drive to the rear lot (parcel 13). The demolition will make it so that each lot contains separate residential structures that do not cross property lines.² The County allowed a variance to the side yard setback for maintaining the remaining portions of the garage within 2 feet of the property line.

See exhibit B for County-approved plans and exhibit C for the adopted County staff report, findings, and conditions approving the project.

² The LCP designates structures across property lines as "significantly non-conforming." The demolition corrects the significant non-conformity



4. Substantial Issue Findings

A. Policies Cited by Appeal

The Appellant identifies LCP policy 13.20.130 as the main basis for his appeal. Aside from this one LCP policy, the Appellant generally refers to the project not meeting other goals of the LCP, such as not being compatible with the neighborhood, expanding non-conformities, impacting public access and having adverse view impacts. The Appellant also raises issues about the variances approved in this case (allowing for a reduction in the side yard setback from 5 feet to approximately two feet), and that they don't conform to the LCP. Note that this variance contention could be read to mean both that variances are not allowed by the LCP, as well as that the impacts of the variances (on LCP goals, compatibility, and views) are not consistent with the LCP. See exhibit D for the Appellant's complete appeal document.

Thus, the appeal contentions can be distilled to a contention that the approved project would be incompatible with the neighborhood's built environment, would adversely impact private and public views due to the mass, scale, and design approved, and would interfere with public access. LCP "goals" are inherent in this discussion, as are related technical issues regarding variances.

B. Analysis of Consistency with Cited Policies

As detailed below, the appeal does not raise a substantial issue with respect to the project's conformance with the Santa Cruz County LCP.

1. Neighborhood Compatibility

The LCP requires visual compatibility. For example, LCP Section 13.20.130(b)(1) states:

Visual Compatibility. All new development shall be sited, designed, and landscaped to be visually compatible and integrated with the character of surrounding neighborhoods or areas.

The Appellant contends that the size and scale of the project is not compatible with neighboring development along Bayview Drive and will expand an existing non-conformity. However, the proposed structure is the same general size and scale of development that is currently found along this part of Bayview Drive. Aerial photographs of the surrounding neighborhood show that there are numerous two-story structures in close proximity to the proposed development that can provide neighborhood compatibility context. Maximum height allowed in the R-1-6 zoning district is 28' and the proposed finished roof height of the structure will be 26' 4," which is within the limits of the standard. The addition is setback approximately 100 ft. from the bluff edge, and is inland of existing residential development located along the bluff at this location. In other words, the project blends into the existing built environment.

The County found the project to be within the floor area ratio (FAR) for development in the R-1-6



district: FAR is 41.6% when 50% is the maximum allowed. Although a portion of the garage would be removed, the structures on site will remain non-conforming with respect to lot coverage. Lot coverage is 32.5% when 30% is the maximum allowed. This is a fairly minor deviation at this location inasmuch as its effect on coastal resources is negligible. The proposed addition will not alter the existing footprint, save for removal of the existing portion of the garage encroaching onto parcel 13. See County report in exhibit C.

The County also indicates that the habitable space is within the established range for homes in this section of Bayview Drive. The County indicates that the project is located in a neighborhood with one and two-story single family dwellings of varying sizes, with the largest homes on the bluff side of Bayview Drive in the range of 2,000 square feet to 4,000 square feet. In this case, 2,705 square feet of habitable space was approved. Again, see County report in exhibit C.

Another contention raised by the Appellant is that the second story element and related neighborhood compatibility issues could have been avoided if the County had reviewed the project as one large site containing two residences (i.e., as if APNs 943-152-12 and -13 were one legal lot with two single family dwellings). Historically there has been some confusion and inconsistency in the treatment of these two sites. In one instance, the County approved an addition to the existing single-family dwelling on parcel 13 separate from the dwelling on parcel 12. In another instance, the County approved the construction of an addition to the garage attached to the dwelling on parcel 12 where the plans submitted represented both parcels as one lot. The addition resulted in the two-car garage that now straddles the property line between parcels 12 & 13, effectively blocking the driveway corridor to parcel 13. During its review and approval of this appealed application, the County first acknowledged that current deeds describe both properties as one parcel but later changed its position under advisement from County Counsel.

The Appellant appears to be implying that if there was only one lot, the Applicant might not have been approved for a second story element that blocks private views. But that is not the case because the zoning for this area would allow the two-story addition whether there were one or two parcels. As noted above, the proposed addition is compatible in size and scale to existing neighborhood development. It is consistent with the development and visual compatibility policies of the certified LCP and will correct an existing significant non-conformity, albeit with a variance. The proposed project will not introduce any atypical visual impacts to the surrounding area. (see also Visual Resources finding below).

The main implication of recognizing a second legal lot lies in the future development potential of the adjacent site to the west (i.e. on APN 043-152-13) not the site on which the two-story addition is proposed. If it had been determined that there was only one legal lot of record and if there were an application for residential development involving the second unit at the rear of the site, this second unit would be limited to the floor area and coverage standards of 640 square feet for "granny" units as opposed to those for a the primary single family residence. That is however, not at issue in this case. Nonetheless, the public view shed in this area has seen a significant amount of urban development in and along the coastal bluffs, and as a result, is fairly cluttered with residential structures. Accordingly, although the fact that the County treated these properties as separate legal lots when the history of lot creation is rather unclear raises an issue, it does not rise to the level of substantial issue.



In sum, the County-approved project is not atypical of the size and scale of development along this stretch of Bayview Drive. The proposed second story addition is a relatively modest size second floor in comparison to other homes located in this built out neighborhood. Overall height is below the maximum allowed. The existing lot coverage non-conformity will remain, but the proposed development will not make it worse. With a floor area ratio of 41.6% the proposed remodel and addition is still below that which is allowed. And the proposed architectural design appears to be compatible with the character of the neighboring development along Bayview Drive.

Therefore, this issue does not rise to the level of a substantial issue in terms of the project's conformance with the certified LCP.

2. Visual Resources

In addition and related to the compatibility issues described above, the LCP protects the public viewshed, particularly along the shoreline. The LCP states:

Objective 5.10.a Protection of Visual Resources. To identify, protect, and restore the aesthetic values of visual resources.

Objective 5.10.b New Development in Visual Resource Areas. To ensure that new development is appropriately designed and constructed to minimal to no adverse impact upon identified visual resources.

LUP Policy 5.10.2 Development Within Visual Resource Areas. Recognize that visual resources of Santa Cruz County possess diverse characteristics.... Require projects to be evaluated against the context of their unique environment and regulate structure height, setbacks and design to protect these resources consistent with the objectives and policies of this section....

LUP Policy 5.10.3 Protection of Public Vistas. Protect significant public vistas...from all publicly used roads and vistas points by minimizing disruption of landform and aesthetic character caused by grading operations, ... inappropriate landscaping and structure design.

The Appellant contends that the approved project adversely impacts his (and other Bayview Drive homeowners) private views, and would severely negatively impact the public view, particularly due to the second-story. The LCP does not protect private views. As a result, the private view portion of this contention does not raise a substantial issue. As to public views, the existing single story residence blocks any public views from Bayview Drive. The biggest concern in this case is therefore to the view of the site from the beach and offshore.

The public beach and offshore viewshed at this location has long been defined (mostly pre-Coastal Act) by existing residential stock, seawalls, and rip-rap along Beach Drive, and by homes extending all along the top the bluff (including Bayview Drive) fronted in many cases by larger retaining structures. The homes along Beach Drive are relatively boxy and developed close together. There are multiple 2 and 3 story residential structures on the inland side of Beach Drive, and a series of 1 and 2 story structures on



the seaward side. Rip-rap and seawalls front all of the homes, and many include large decks and other structures extending to the shoreline armoring. Atop the bluffs, fairly large-scale residential development lines the meandering edge. More often than not, large retaining walls and like structures extend down the bluff slope. In other words, the public viewshed at this site has long been impacted by similar urban style development and is hardly pristine. It is against this backdrop that the project's viewshed impacts must be evaluated.

In this case, the approved project is a second story addition to an existing dwelling between two existing residences and setback nearly 100' from the coastal bluff edge. Although it will incrementally add to the amount of development within the public viewshed, its impact would be less than significant within the scope of the existing view. Its size and scale are not atypical for this stretch of Bayview Drive, and the setback will make it appear less visible than other dwellings constructed right up to the edge of the bluff.

This issue does not rise to the level of a substantial issue in terms of the project's conformance with the certified LCP.

3. Public Access

The Appellant contends that there may be a public prescriptive right to use of an access path to the beach that originates at the rear of the second property nearest the ocean (APN 043-152-13). He claims there was neighborhood use of an existing trail down to the base of the bluff and asks that a prescriptive rights survey be prepared. Coastal Act Section 30211 states in part that development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization. Section 30212 states that public access shall be provided in all new development except where adequate access exists nearby.

Section 30211. Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212. (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) Adequate access exists nearby...

The site of the proposed addition (622 Bayview, APN 043-152-12) does not have access to the bluff or any potential trail down the bluff. The flag lot property at the rear of the site (624 Bayview, APN 043-152-13) does extend down the bluff. However, based on a visual inspection of the site; there is no access down the bluff to Beach Drive below. There are some steps that traverse partway down the steep sea cliff, but end mid-face in an overgrown patch of poison oak and pampas grass directly above the row of houses fronting Beach Drive.



There also does not appear to be any *public* access to this trail from either property. Access from Bayview is blocked by a locked gate and not available to anyone other than the resident at 624 Bayview. Based on the lack of a defined trail, the lack of any information (from the appellant or otherwise), identifying significant public use of a trail, and the fact that major public access points (from bluff level down to beach exist nearby), it appears improbable that the "trail" is a "public trail" at this time.

The County-approved project includes a roughly 1,000 square feet second story addition to an existing residence and removal of a portion of the garage that straddles the lot lines. The new structure will be constructed within the building footprint of the existing residence and therefore there is no potential for the development to impact access and no nexus to require it. Furthermore, there are public beach access paths down the bluff at two locations within a few minutes of this site. There is the County access path that runs from Kingsbury Drive down to the State Park unit at the (public) end of Beach Drive and an improved access path and recreation area to Hidden Beach. Both are a short walk from the proposed development site and provide convenient and safe public access to the beach.

Therefore, there is no substantial issue in terms of the project's conformance with the Public Access policies of the certified LCP and the public access and recreation policies of the Coastal Act.

4. Variances

The Appellant appears to contend that the County's approval in this case does not conform to the LCP, because it is predicated on one or more variances. He notes that the project could not be approved if it weren't for variances to the side yard setback, the front yard setback, and lot coverage. However, the LCP allows for variances to development standards in certain circumstances. LCP Section 13.10.230 (Variance Approvals) states:

A Variance Approval is a discretionary authorization of exceptions to the zoning district site and development standards for a property including design criteria and regulations for special uses...The following findings shall be made prior to granting a Variance Approval in addition to the findings required for the issuance of a Development Permit pursuant to Chapter 18.10:

- 1. That because of special circumstances applicable to the property, including size, shape, topography, location, and surrounding existing structures, the strict application of the Zoning Ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.*
- 2. That the granting of such variance will be in harmony with the general intent and purpose of zoning objectives and will not be materially detrimental to public health, safety or welfare or injurious to property or improvements in the vicinity.*



3. *That the granting of such variance shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such is situated.*

In this case, the required side yard setback in the R-1-6 zoning district is 5 feet and maximum lot coverage 30%. Reconstruction of the demolished garage is constrained by the U-shaped design of the existing residence, the driveway corridor to parcel 13, and the width of the lot. Demolition and reconstruction of the garage will eliminate the encroaching significant non-conformity onto parcel 13 and realign the structure with the existing residence, but will not eliminate the side yard and lot coverage non-conformities. Strict application of the ordinance would require the removal of the entire garage (due to lot coverage) and deny the applicant the privileges enjoyed by other property owners absent significant alterations to the footprint of the existing residence. As reported in the Neighborhood Compatibility finding above, lot coverage will be 32.5%.

Secondly, granting of the variance will be consistent with the intent of the zoning district and not be detrimental or injurious to the public, property, or improvements in the vicinity. The side yard setback is from the driveway access to parcel 13, an area that will remain undeveloped and will act as an additional setback from neighboring structures. The demolition and reconstruction of the garage will remedy an existing significant non-conformity (encroachment over the property line) further enhancing the objectives of the zoning district. Relocation of the garage complies with County requirements for adequate sight distance for structures within setbacks.

With respect to the third point, granting a side yard setback variance to retain a one-car garage adjacent to the driveway access for parcel 13 does not constitute a grant of special privilege. The existing residence on parcel 12 already exceeds the maximum 30% lot coverage for the R-1-6 zone district, so the complete demolition and reconstruction of a new one-car garage in a conforming location would not be possible without a variance to lot coverage. All neighboring properties have at least one-car garages, most have two or more. Thus, retention of a one-car garage will not constitute a grant of special privilege. Similarly, the Bayview neighborhood contains many two-story homes with virtually all homes having their parking in the front yard setback. Therefore, allowing parking to occur within the front yard setback would not appear to constitute a grant of special privilege.

The County approval clearly indicates that a variance was granted for the side yard setback, but less clear regarding variances to lot coverage and front yard. Though the requisite findings were made for variances to lot coverage and front yard setback, only the side yard setback variance appears to be specifically identified in the project description and approved by the Planning Commission. From a procedural standpoint this raises an issue, but it is not a coastal resource issue. Presumably, if explicitly identified, the County would have authorized the additional minor variances for the same types of reasons they identified in their variance findings.. In any case, the County's approval de facto allowed for them and the resulting project. The project impacts do not raise substantial issue (see previous sections). Thus, although the appeal raised a valid procedural issue, it does not rise to the level of substantial issue.



Therefore, there is no substantial issue in terms of the project's conformance with the certified LCP.

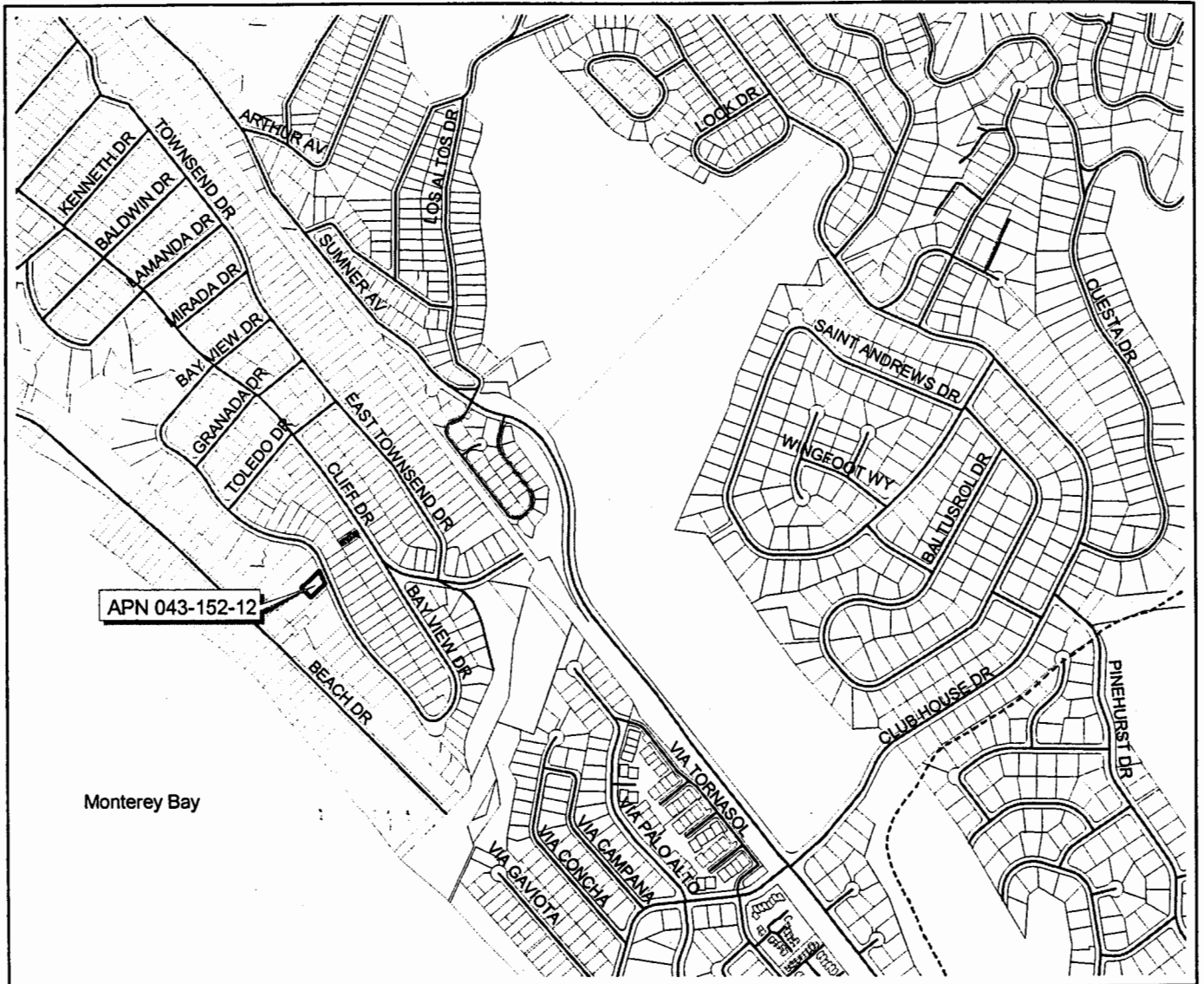
C. Substantial Issue Conclusion

The County-approved project is residential development that is not atypical from the existing Bayview Drive character in size, scale, and design. The approved project is substantially consistent with neighboring development and would have an insignificant impact on the public viewshed. Granting of variances for the yards and lot coverage is consistent with the intent of the zoning district and will not be detrimental or injurious to the public, property, or improvements in the vicinity. There also does not appear to be any prescriptive use or other public access impacts associated with the project.

Thus, the Commission finds that no substantial issue exists with respect to this project's conformance with the certified Santa Cruz County LCP and the public access and recreation policies of the Coastal Act and declines to take jurisdiction over the coastal development permit for the project.



Location Map



Map created by Santa Cruz County
Planning Department:
October 2003



CCC Exhibit A1
(page 1 of 2 pages)
A-3-SCO-05-013

FOR TAX PURPOSES ONLY
THE ASSESSOR MAKES NO GUARANTEE AS TO MAP ACCURACY FOR ANY PURPOSE OTHER THAN LIABILITY FOR OTHER TAXES. NOT TO BE APPROVED. ALL RIGHTS RESERVED.

Unincorporated Area
Rev. 8/28/94
Rev. 8/28/92
Rev. 8/18/92
Rev. 10/17/92

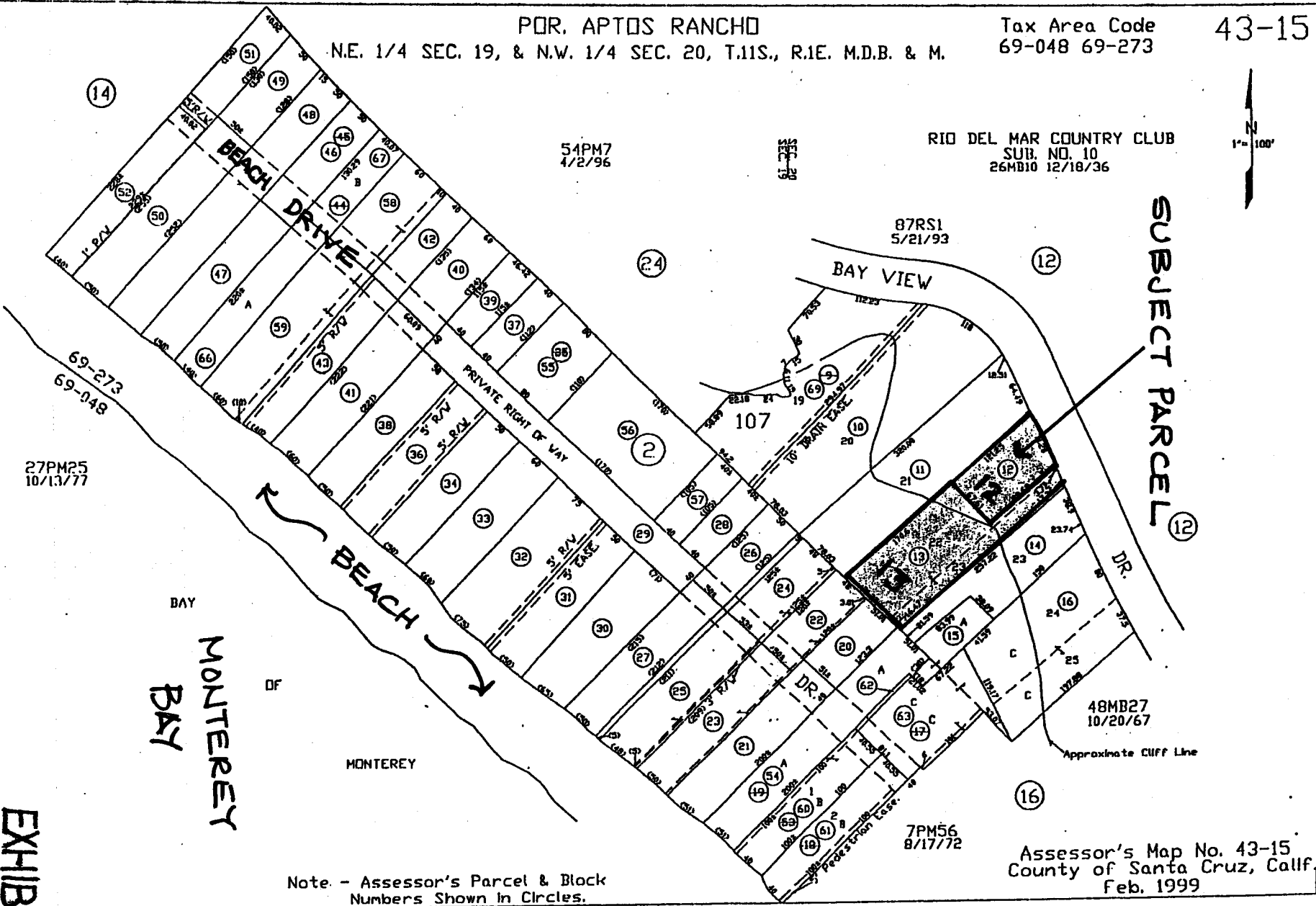
EXHIBIT A2

POR. APTOS RANCHO

N.E. 1/4 SEC. 19, & N.W. 1/4 SEC. 20, T.11S., R.1E. M.D.B. & M.

Tax Area Code
69-048 69-273

43-15



27PM25
10/13/77

54PM7
4/2/96

87RS1
5/21/93

RIO DEL MAR COUNTRY CLUB
SUB. NO. 10
26MB10 12/18/36

SUBJECT PARCEL 12

BAY OF MONTEREY

MONTEREY

48MB27
10/20/67

7PM56
8/17/72

Assessor's Map No. 43-15
County of Santa Cruz, Calif.
Feb. 1999

Note - Assessor's Parcel & Block
Numbers Shown in Circles.

5

Front & Rear Elevations



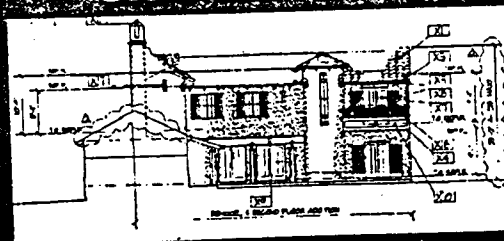
North Elevation (Front on Bay View Dr.)



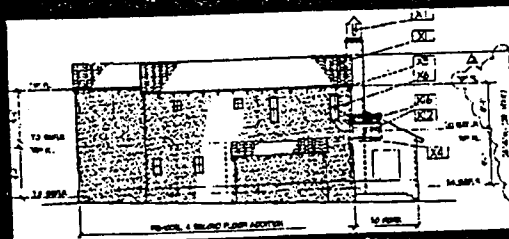
Rear Elevation (view from bluff)

6

Side Elevations

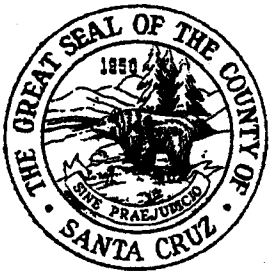


Southeast elevation



Northwest elevation

CCC Exhibit B
(page 1 of 1 pages)
A-3-500-05-01



COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT

701 OCEAN STREET - 4TH FLOOR, SANTA CRUZ, CA 95060
(831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123

TOM BURNS, PLANNING DIRECTOR

January 10, 2005

AGENDA DATE: JANUARY 26, 2005

Planning Commission
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

**SUBJECT: CONTINUATION OF APPEAL OF 03-0430 FROM 12/8/04 PC HEARING
Proposal to change existing application for a remodel and addition to include
the demolition and reconstruction of a garage to cure an encroachment,
requiring a Variance to the required side yard setback.**

Members of the Commission:

On December 8, 2005 your Commission continued the appeal hearing for this application so the applicant could re-design the project to include the demolition of a garage to cure the encroachment from parcel 045-152-12 onto the corridor access portion of parcel 045-152-13.

BACKGROUND

The Zoning Administrator approved Coastal Development permit 03-0430 for the construction of a second story addition to a single-family dwelling on October 1, 2004. The applicant subsequently appealed this approval due to a condition of approval to combine parcels 043-152-12 (parcel 12) and 043-152-13 (parcel 13) to cure the encroachment of a garage and decking from parcel 12 onto the corridor access portion of parcel 13. Your Commission heard this appeal at the December 8, 2004 hearing, and continued the item to January 26, 2005 with direction explore the alternative of demolishing the encroaching portion of the garage and obtaining a Variance to the side yard setback from parcel 13 for the remaining portion.

The applicant and owner chose to pursue demolishing the encroaching garage and applied for a side yard setback Variance. The existing two-car garage will become a one-car garage, with two parking spaces provided for the rear unit on parcel 13.

VARIANCE ISSUES

The demolition and re-construction of the garage as a one car garage requires a Variance to the side yard setback from parcel 13 to reduce the required 5 foot setback to about 1 foot (0 feet to the eaves) to line up with the existing house. Special circumstances exist on parcel 12 due to the

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location and layout of the existing single-family dwelling on site and the presence of the corridor access for parcel 13 along the south-eastern property line. Variance findings are attached (Exhibit 2).

SITE STANDARDS

In staff's previous analysis of the project, the review of the R-1-6 zone district site standards encompassed both parcels 12 and 13 as one lot. To recognize the presence of two lots, staff performed a new site standards analysis including only the front parcel (parcel 12). Due to the presence of the corridor access for parcel 13, the house and the re-constructed garage are non-conforming with regards to the side yard setback, which the side yard setback variance seeks to rectify. The site standards table has been updated to reflect only parcel 12, as follows:

Site Standards (parcel 12)	R-1-6 Zone District Standard	Proposed
Front yard setback	20'	16' to garage (existing non-conforming)
Side yard setbacks	5' & 8'	1' to garage (0' to eaves), 8' to addition
Rear yard setback	15'	20'
Maximum height	28'	26'-4"
Maximum % lot coverage	30%	32.5% (Existing non-conforming)
Maximum % Floor Area Ratio	50%	41.6%

The structures on site will remain non-conforming due to lot coverage. The proposed addition will not alter the existing footprint, with the exception of the removal of the portion of the garage encroaching onto parcel 13.

Despite being partially located within the front yard setback from Bay View Drive, no front yard setback variance has been requested, as no more than 50% of the structural members of the remaining portion of the garage are proposed to be altered per Section 13.10.265 of the County Code. Condition of approval II.B.6 requires building plans to demonstrate the re-construction of the garage will comply with this requirement.

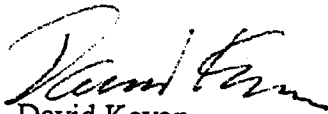
CHANGES TO PREVIOUSLY APPROVED CONDITIONS OF APPROVAL

Due to changes in the scope of the project to demolish the encroaching portion of the garage, the contested Condition of Approval to sign and record and Affidavit to combine parcels is deleted. An operational condition (Condition of Approval IV.B) has been added to state that the buildability of the rear parcel (parcel 13) is not guaranteed should the existing unit be destroyed, as the site is constrained by the presence of a coastal bluff. To maintain access to the unit on parcel 13, an additional Condition of Approval has been added to require removal of all decking over 18 inches in height within the corridor for parcel 13, and the removal or relocation of the hot tub outside this corridor.

RECOMMENDATION

Subject to the amended findings and conditions of approval, staff recommends your commission approve application 03-0430 and certify the exemption to the California Environmental Quality Act.

Sincerely,



David Keyon
Project Planner
Development Review

Reviewed By: 

Cathy Graves
Principal Planner
Development Review

Exhibits:

1. Revised project plans, dated 1/4/05
2. Revised Coastal Development and Residential Development Permit Findings, Variance Findings
3. Revised Conditions of Approval
4. Previous Planning Commission Appeal Letter and Zoning Administrator Staff Report from the December 8, 2004 Planning Commission Hearing.

Coastal Development Permit Findings

1. That the project is a use allowed in one of the basic zone districts, other than the Special Use (SU) district, listed in section 13.10.170(d) as consistent with the General Plan and Local Coastal Program LUP designation.

This finding can be made, in that the addition is residential in nature and therefore a principal permitted use within the R-1-6 zone district (subject to approval of a Coastal Development Permit at this location) and consistent with the R-UL (Urban Low Residential) General Plan/Local Coastal Program Land Use designation.

2. That the project does not conflict with any existing easement or development restrictions such as public access, utility, or open space easements.

No easements or special development restrictions (beyond R-1-6 site standards and setbacks from the coastal bluff) apply to this project.

3. That the project is consistent with the design criteria and special use standards and conditions of this chapter pursuant to section 13.20.130 et seq.

This finding can be made. The proposed addition will complement and harmonize with the existing residence and will meet all applicable provisions of Chapter 13.20.130 of the County Code.

4. That the project conforms with the public access, recreation, and visitor-serving policies, standards and maps of the General Plan and Local Coastal Program land use plan, specifically Chapter 2: figure 2.5 and Chapter 7, and, as to any development between and nearest public road and the sea or the shoreline of any body of water located within the coastal zone, such development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act commencing with section 30200.

This finding can be made, in that no public access points exist across the property and a public access point already exists in the neighborhood about 900 feet southeast of the project site at the end of Bayview Drive. Consequently, the single-family dwelling will not interfere with public access to the beach, ocean, or any nearby body of water. Further, the project site is not identified as a priority acquisition site in the County Local Coastal Program. The existing trail down the base of the bluff is only for use of residents of the property, not by the neighborhood at large.

5. That the proposed development is in conformity with the certified local coastal program.

This finding can be made, in that the addition is sited and as conditioned will be visually compatible, in scale with, and integrated with the existing dwelling and the character of the surrounding neighborhood. Additionally, residential uses are allowed uses in the R-1-6 zone district of the area, as well as the General Plan and Local Coastal Program land use designation.

Development Permit Findings

1. That the proposed location of the project and the conditions under which it would be operated or maintained will not be detrimental to the health, safety, or welfare of persons residing or working in the neighborhood or the general public, and will not result in inefficient or wasteful use of energy, and will not be materially injurious to properties or improvements in the vicinity.

This finding can be made, in that addition will be required to meet all applicable building, electrical, plumbing, and energy codes at the time of building permit application to ensure structural safety. The location of the addition will shadow the property to the immediate north, but the extent of the shadow will not be materially injurious as access to light and air will continue to be maintained as the addition is forward of the existing dwelling on the affected property. The reconstruction of the garage within the side yard setback on parcel 12 will improve access to light and air to the southern neighbor, as portion encroaching onto the corridor access portion of parcel 13 will be removed.

2. That the proposed location of the project and the conditions under which it would be operated or maintained will be consistent with all pertinent County ordinances and the purpose of the zone district in which the site is located.

This finding can be made, in that the proposed addition and the reconstruction of the garage meets all site standards of the R-1-6 zone district (see figure 1), with the exception of the southern side yard setback, for which a Variance is requested. The residential use is consistent with the uses allowed in the R-1-6 zone district, and meets all applicable Coastal regulations if all conditions of approval are met.

3. That the proposed use is consistent with all elements of the County General Plan and with any specific plan which has been adopted for the area.

This finding can be made, in that the addition and reconstructed garage conforms to the use and density requirements specified for the Urban Low Residential (R-UL) land use designation in the County General Plan.

The proposed addition will not adversely impact the light, solar opportunities, air, and/or open space available to other structures or properties as all applicable site standards will be met and most of the addition will be located forward of the existing single-family dwelling on the property to the immediate north of the project site, allowing adequate solar exposure to be maintained. Granting a Variance to the side yard setback for the reconstructed garage on parcel 12 will allow improved access to light and air for neighboring properties, as it will cure an existing encroachment, and more than 20 feet exists between the garage and neighboring structures due to the presence of a corridor access for parcel 13 (Policy 8.1.3, Residential Site and Development Standards Ordinance).

As conditioned, the proposed addition will not be improperly proportioned to the parcel size or the character of the neighborhood as specified in General Plan Policy 8.6.1 (Maintaining a Relationship Between Structure and Parcel Sizes), in that the addition will comply with the site

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standards for the R-1-6 zone district (including setbacks, floor area ratio, height, and number of stories) and will not increase the existing non-conforming side yard setback.

A specific plan has not been adopted for this portion of Apts.

4. That the proposed use will not overload utilities and will not generate more than the acceptable level of traffic on the streets in the vicinity.

This finding can be made, in that adequate utility services exist for an addition of the size proposed and the trips generated by the one additional bedroom will be minimal and easily absorbed into the existing street system.

5. That the proposed project will complement and harmonize with the existing and proposed land uses in the vicinity and will be compatible with the physical design aspects, land use intensities, and dwelling unit densities of the neighborhood.

This finding can be made upon implementation conditions of approval II.5 and II.6, which will make the addition in scale with and architecturally compatible with the existing dwelling, and therefore compatible with the architectural character of the surrounding neighborhood. No increase in residential density is proposed.

6. The proposed development project is consistent with the Design Standards and Guidelines (sections 13.11.070 through 13.11.076), and any other applicable requirements of this chapter.

The proposed addition does not require Design Review under Chapter 13.11. See Coastal Development Permit Finding 3 for specific design review findings under Chapter 13.20.130 of the County Code.

Variance Findings

1. That because of special circumstances applicable to the property, including size, shape, topography, location, and surrounding existing structures, the strict application of the Zoning Ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.

This finding can be made, in that a special circumstance exists relating to the layout of the parcel. Specifically, the presence of corridor access for parcel 13 constrains development on parcel 12 by limiting the location of a re-constructed garage due to the courtyard layout and the width of the lot. The proposed re-construction will cure an encroachment onto parcel 13 (previously approved by a building permit in 1985 with inaccurate plans), and will result the garage returning to its pre-1985 configuration, aligning with the existing single-family dwelling to the rear. Strict application of the zoning ordinance would require the demolition of the entire garage, denying the property owners a modest one car garage absent significant alterations to the footprint of the existing single-family dwelling due to non-conforming lot coverage (with the exception of the proposed reduction to the garage, no changes to the existing footprint are proposed).

2. That the granting of such variance will be in harmony with the general intent and purpose of zoning objectives and will not be materially detrimental to public health, safety or welfare or injurious to property or improvements in the vicinity.

This finding can be made, in that reduction in the side yard setback to allow the retention of a one car garage will meet the objectives R-1-6 zone district site standards in that access to light and air will be maintained for neighboring properties. The subject side setback is from a corridor access to parcel 13, an area that will be undeveloped and will act as an additional setback from adjacent structures. Furthermore, the demolition and reconstruction will cure an existing encroachment over the property line, further advancing the objectives of the zone district. The location of the garage will allow adequate visibility of vehicles entering and exiting the driveways onto Bay View Drive, complying with County requirements for adequate sight distance for structures within setbacks.

3. That the granting of such variance shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such is situated.

This finding can be made, in that granting the side yard setback variance will allow the retention of a one car garage adjacent to the corridor access portion of a flag lot. The existing structure on parcel 12 already exceeds the maximum 30% lot coverage for the R-1-6 zone district, so the complete demolition and reconstruction of a new one-car garage in a conforming location would not be possible absent a variance to lot coverage. As all neighboring properties have at least one-car garages (most two cars or more), allowing the retention of a one car garage will not constitute the granting of a special privilege.

Conditions of Approval

Exhibit A: Project plans, six sheets, sheets 1 through 5 drawn by Cove Britton and dated March 1/4/05, sheet 6 drawn by Matthew D. Ward and dated February 25, 2004.

- I. This permit authorizes the construction of a second story addition to an existing single-family dwelling, the interior remodel of the first floor, and the demolition of half the existing garage in order to cure a structural encroachment, and the re-construction of the garage as a one-car garage. Prior to exercising any rights granted by this permit including, without limitation, any construction or site disturbance, the applicant/owner shall:
 - A. Sign, date, and return to the Planning Department one copy of the approval to indicate acceptance and agreement with the conditions thereof.
 - B. Obtain a Demolition Permit and Building Permit from the Santa Cruz County Building Official.
 - C. Obtain an Encroachment Permit from the Department of Public Works for all off-site work performed in the County road right-of-way for the proposed driveway.

- II. Prior to issuance of a Building Permit the applicant/owner shall:
 - A. Submit proof that these conditions have been recorded in the official records of the County of Santa Cruz (Office of the County Recorder).
 - B. Submit Final Architectural Plans for review and approval by the Planning Department. The final plans shall be in substantial compliance with the plans marked Exhibit "A" on file with the Planning Department. The final plans shall include the following additional information:
 1. Identify finish of exterior materials and color of roof covering for Planning Department approval. Any color boards must be in 8.5" x 11" format.
 2. A drainage plan showing existing and proposed area drainage (location of ravines, drainage courses and pathways of off-site drainage), device construction details, including retaining wall back drains, culverts, storm drains, energy dissipators, etc., and the total amount of new impervious surface.
 3. An erosion control plan which indicates the disposition of any proposed excavated material and notes showing how exposed areas will be maintained during the rainy season (straw/mulch, etc.).
 4. Details showing compliance with fire department requirements.
 5. Submit revised elevations for approval by the Planning Department showing:

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- a. Changes to the roof pitch of the addition to match the existing dwelling.

- 5. Plans shall show removal of all decking over 18 inches in height within the corridor access and setbacks of parcel 13, and either the removal or re-location of the hot tub outside the corridor access of parcel 13.

- 6. The building plans shall demonstrate that no more than 50% of the structural members of the remaining portion of the garage within the front yard setback are altered. Any alteration greater than 50% shall require a Variance under County Code Section 13.10.265.

- C. Meet all requirements of and pay Zone 6 drainage fees to the County Department of Public Works, Drainage. Drainage fees will be assessed on the net increase in impervious area.

- D. Obtain an Environmental Health Clearance for this project from the County Department of Environmental Health Services.

- E. Meet all requirements and pay any applicable plan check fee of the Aptos/La Selva Fire Protection District.

- F. Pay the current fees for Parks and Child Care mitigation for two bedrooms. Currently, these fees are, respectively, \$1,000 and \$109 per bedroom (note: fees are due to increase at the end of August 2004).

- G. Pay the current fees for Roadside and Transportation improvements for two bedrooms. Currently, these fees are, respectively, \$667 and \$667 per bedroom (note: fees are due to increase at the end of August 2004).

- H. Provide required off-street parking for five cars (three for the unit on parcel 12 and two for the unit on parcel 13). Parking spaces must be 8.5 feet wide by 18 feet long and must be located entirely outside vehicular rights-of way. Parking must be clearly designated on the plot plan.

- I. Submit a written statement signed by an authorized representative of the school district in which the project is located confirming payment in full of all applicable developer fees and other requirements lawfully imposed by the school district.

- III. All construction shall be performed according to the approved plans for the Building Permit. Prior to final building inspection, the applicant/owner must meet the following conditions:
 - A. All site improvements shown on the final approved Building Permit plans shall be installed.

 - B. All inspections required by the building permit shall be completed to the

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satisfaction of the County Building Official.

- C. Pursuant to Sections 16.40.040 and 16.42.100 of the County Code, if at any time during site preparation, excavation, or other ground disturbance associated with this development, any artifact or other evidence of an historic archaeological resource or a Native American cultural site is discovered, the responsible persons shall immediately cease and desist from all further site excavation and notify the Sheriff-Coroner if the discovery contains human remains, or the Planning Director if the discovery contains no human remains. The procedures established in Sections 16.40.040 and 16.42.100, shall be observed.

IV. Operational Conditions

- A. In the event that future County inspections of the subject property disclose noncompliance with any Conditions of this approval or any violation of the County Code, the owner shall pay to the County the full cost of such County inspections, including any follow-up inspections and/or necessary enforcement actions, up to and including permit revocation.
- B. The recognition of the existence of two parcels (parcels 043-152-12 and 043-152-13) on site does not guarantee the buildability of parcel 13 if the existing unit is destroyed or removed.

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EXHIBIT 4



COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT

701 OCEAN STREET - 4TH FLOOR, SANTA CRUZ, CA 95060
(831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123

TOM BURNS, PLANNING DIRECTOR

October 28, 2004

AGENDA DATE: DECEMBER 8, 2004

Planning Commission
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

SUBJECT: APPEAL OF COASTAL DEVELOPMENT PERMIT 03-0430
Coastal Development Permit for the construction of a second story addition of 900 square feet and a first floor addition of 88 square feet.

Members of the Commission:

The purpose of this letter is to address the appeal of the Conditions of Approval for Coastal Development Permit 03-0430 by the applicant and to address issues brought up in an attempted appeal by a neighbor to the California Coastal Commission. The appeal letter from the Applicant is included as Attachment 3 and the letter from the neighbor is included as Attachment 4.

BACKGROUND

The Zoning Administrator approved Coastal Development permit 03-0430 for the construction of a second story addition to a single-family dwelling at the October 1, 2004 public hearing with amendments to the recommended conditions of approval. Mr. Austin Comstock, the attorney representing the property owners, filed an appeal on October 5, 2004 contesting condition of approval I.D. to record an Affidavit to Combine Parcels 043-152-12 and -13.

In addition to the above-mentioned appeal, a neighbor on Cliff Drive, Mr. Les McCargo, attempted to file an appeal of the approval to the California Coastal Commission. The primary issues brought up in this appeal were impacts to neighbor's ocean views brought about by the addition and coastal access via a stairway on the property. The Coastal Commission did not accept the appeal as the project had already been appealed to the Planning Commission.

Existing conditions

The subject property is divided into two parcels; APN's 043-152-12 and 13 (parcels 12 and 13). Parcel 13 is a flag lot with a one bedroom single-family dwelling (formerly a guesthouse) on the bluff edge (624 Bay View Drive). Parcel 12 fronts Bay View Drive and contains an existing 1,715 square foot one-story single-family dwelling with an attached two-car garage that encroaches onto parcel 13 (622 Bay View Drive).

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PARCEL MERGER/ NON-CONFORMING STRUCTURE ISSUES

The applicant specifically objects to Condition of Approval I.D., which reads "sign, date, and record an Affidavit to Combine Parcels for APN's 043-152-12 and 043-152-13, and return a copy of the Affidavit to the Planning Department."

Creation of two separate lots

The subject property was originally one lot created by the Rio del Mar Country Club subdivision in 1936 (on file with the County Recorder's Office in Map 26, Page 10). According to Assessor's records, the existing single-family dwelling on parcel 12 was constructed in 1939 and the rear guesthouse constructed in 1941. In 1967, parcel 12 was created as a separate parcel by a Grant Deed from Santa Cruz Land Title Company to Muriel T. Schuetz, and two new Assessor's Parcel Numbers were assigned (043-151-76 and 043-151-77, later changed to 043-152-12 and 043-151-13).

Planning staff approved a Residential Development Permit and Variance (4597-U) in 1973 to allow the construction of a living room to the former guesthouse, now a single-family dwelling on parcel 13 separate from the dwelling on parcel 12. In the findings for this permit, the Planner stated, "although used in conjunction with a larger single-family dwelling, this house is on a separate lot." Both properties remained under common ownership. In the opinion of County Counsel, granting a development permit for the addition on parcel 13 effectively recognized that parcel as a separate, legal lot.

Building permit granted for garage encroachment

In 1985, the property owner received approval for the construction of an addition to a garage attached to the dwelling on parcel 12 (the main dwelling). The plans submitted for this permit represent parcels 12 and 13 as one lot, and identify the single-family dwelling on parcel 13 as a "guesthouse." The addition resulted in a two-car garage that straddles the property line between parcels 12 and 13, effectively blocking the corridor access to parcel 13. The County would not have approved the garage addition if the plans had been correct in showing the garage encroaching on another, separate parcel, absent approval of a Variance for the elimination of the required side yard setback.

Addition to a significantly non-conforming structure

Under the current configuration of two lots, the main dwelling on parcel 12 is a "significantly non-conforming dwelling" under the County Code as the attached garage encroaches over the property line onto parcel 13. To allow the construction of the proposed addition, specific findings are required for an addition to a significantly non-conforming structure in Section 13.10.265(j) of the County Code (Attachment 5). Three of these findings cannot be made, as follows:

Finding 1: That the existing structure and the conditions under which it would be operated and maintained is not detrimental to the health, safety or welfare of persons residing or working in the vicinity or the general public, or be materially injurious to

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properties or improvements in the vicinity.

Finding 2: That the retention of the existing structure will not impede the achievement of the goals and objectives of the County General Plan, or of any Specific Plan which has been adopted for the area.

Finding 3: That the retention of the existing structure will complement and harmonize with the existing and proposed land uses in the vicinity and will be compatible with the physical design aspects the neighborhood.

The first finding cannot be made, as the garage, deck, and hot tub encroach over the property line and block access for fire trucks and emergency equipment to the dwelling on parcel 13. The impediment of access potentially compromises the health and safety of residents.

Finding 2 cannot be made, as the location of the attached garage, decking, and hot tub fails to comply with General Plan Policies 8.2.4 and 8.2.5 (Attachment 6) regarding site and circulation design. General Plan Policy 8.2.4 states that parcels should be encouraged to be combined to allow for an efficient layout of building envelopes and infrastructure (including driveways and parking), while General Plan Policy 8.2.5 encourages circulation design that is "safe, convenient, readily understandable, and coordinated with development on surrounding properties." The location of the garage, decking, and hot tub impedes vehicular circulation to the dwelling on parcel 13, and are therefore not coordinated with the development on the rear parcel.

Finding 3 cannot be made, as retaining the garage, decking, and hot tub at their present locations conflict with requirements for access to the rear dwelling, and therefore cannot be considered to be complementary to the existing land uses in the vicinity (the rear unit) and is not compatible with the physical design aspects of the neighborhood. If the plans for the original building permit for the garage addition had reflected the presence of two separate lots, the Planning Department would not have granted approval even though both were under common ownership, absent approval of a variance.

To rectify the existing non-conforming situation, the applicant has the following options:

- 1) Combine parcels 12 and 13 as recommended per the approved conditions. OR
- 2) Demolish the portion of the garage, decking, and hot tub that encroaches over the property line and obtain a Variance for the remaining portion of the garage within front yard and side yard setbacks if these setbacks cannot be maintained.
- 3) Completely demolish the garage, encroaching decking, and hot tub, and re-construct the garage in a location that conforms to all setbacks and site standards.

Option 2 requires a Coastal Development Permit for the demolition of the garage (or portion thereof) and decking in addition to the Variance. Option 3 requires a Coastal Development Permit for the demolition of the garage and decking and for the construction of a new garage at a conforming location.

NEIGHBORS CONCERNS

Neighbors present at the October 1, 2004 Zoning Administrator hearing cited numerous concerns about the proposed addition. Their primary concerns were preserving the architectural integrity of the existing residence, impacts to private views and sunlight, and coastal access.

Architectural Integrity

Staff evaluated the project for compliance with Sections 13.11 (the County's Design Review Ordinance) and 13.20.130 (Coastal Zone Design Criteria) of the County Code and determined the addition to be compatible with the neighborhood. Recommended changes to the design were intended to harmonize the proposed addition with the existing dwelling, not to address compatibility with surrounding structures. The neighborhood contains an eclectic mix of architectural styles, and most homes in the vicinity have two story elements, if not full second stories.

The existing residence is not a historic resource, as it does not meet the criteria set forth in Section 16.42.080(c) of the County Code (Historic Resource designation criteria). Construction of the garage and modifications to the rear of the dwelling have already compromised the original architectural character of the dwelling.

Impacts to private views and sunlight

Loss of access to ocean views and sunlight for neighboring residences was also a concern expressed by neighbors. Though Section 13.11.072 of the County Code encourages development that minimizes impacts to private views, it does not require the County to protect private views. The second story will be perpendicular to Bay View Drive, preserving more private views than a second story addition that is parallel to Bay View Drive. Shadows from the proposed addition will only affect the neighboring property to the northwest, with the largest shadows cast during the early morning hours. Access to sunlight will be maintained to properties on the opposite side of Bay View Drive, as all setbacks will be met.

Coastal Access

A stairway down the bluff to Beach Drive exists on parcel 13, which neighbors' claim is a public access point due to prescriptive rights. However, access is blocked by a locked gate and is only permitted for use by neighbors and friends of the owner through a gentleman's agreement, not the neighborhood as a whole. Public prescriptive rights over these parcels have not been legally established. The construction of a minor addition to an existing single-family dwelling does not constitute a nexus to require the development of a public access point.

The addition will not be visible from the beach as it will be located about 100 feet from the edge of the coastal bluff.

RECOMMENDATION

Based on staff's research and analysis, staff recommends the following course of action:

- A. DENY the appeal of 03-0430 based on the findings for the construction of an addition to a significantly non-conforming dwelling in Section 13.10.265(j) of the County Code and continue to require both parcels to be combined as outlined in Condition of Approval I.D.

Sincerely,



David Keyon
Project Planner
Development Review

Reviewed By: _____



Cathy Graves
Principal Planner
Development Review

Attachments:

1. Findings for approval of additions to significantly non-conforming structures.
2. Staff Report to the Zoning Administrator for the 10/1/04 hearing.
3. Letter of Appeal from Austin Comstock, dated October 5, 2004
4. Attempted letter of appeal from Les McCargo to the California Coastal Commission, dated October 12, 2004.
5. Section 13.10.265 of the County Code (Nonconforming Structures)
6. General Plan Policies 8.2.4 and 8.2.5

Addition to Significantly Non-conforming Structure Findings

1. That the existing structure and the conditions under which it would be operated and maintained is not detrimental to the health, safety or welfare of persons residing or working in the vicinity or the general public, or be materially injurious to properties or improvements in the vicinity.

This finding cannot be made unless the parcels are combined, as the garage, deck, and hot tub encroach over the property line and block access for fire trucks and emergency equipment to the dwelling on parcel 13. The impediment of access potentially compromises the health and safety of residents of the house on parcel 13.

2. That the retention of the existing structure will not impede the achievement of the goals and objectives of the County General Plan, or of any Specific Plan which has been adopted for the area.

This finding cannot be made unless the parcels are combined, as retention of the existing attached garage, decks, and hot tub fails to comply with General Plan Policies 8.2.4 and 8.2.5 (Attachment 6) regarding site and circulation design. General Plan Policy 8.2.4 encourages parcels to be combined to allow for an efficient layout of building envelopes and infrastructure (including driveways and parking), while General Plan Policy 8.2.5 encourages circulation design that is "safe, convenient, readily understandable, and coordinated with development on surrounding properties." The location of the garage, decking, and hot tub is not coordinated with development on the rear parcel, as they impede vehicular access to the rear dwelling.

3. That the retention of the existing structure will complement and harmonize with the existing and proposed land uses in the vicinity and will be compatible with the physical design aspects of the neighborhood.

This finding cannot be made unless the parcels are combined, as the retention of the existing attached garage, decks, and hot tub conflicts with requirements for access to the rear dwelling. Due to this impediment to access, the existing structures are not complementary to the existing land uses in the vicinity and are not compatible with the physical design aspects of the neighborhood (specifically the existing unit on parcel 13). If the plans for the original building permit for the garage had reflected the presence of two separate lots, the Planning Department would not have granted approval even though both were under common ownership, absent approval of a variance.

Application # 03-0430
APN's 043-152-12 and 043-152-13
Owner: Elmer and Barbara McNece

4. That the proposed project will not increase the nonconforming dimensions of the structure unless a Variance Approval is obtained.

This finding can be made, in that the proposed second story addition will not increase any of the existing non-conforming portions of the structure. The addition will meet all applicable site standards of the R-1-6 zone district, including Floor Area Ratio and lot coverage.

CALIFORNIA COASTAL COMMISSION
725 Front Street Suite 300
Santa Cruz, CA 95060

March 14, 2005

Att: Dan Carl
Re Local Permit #:03-0430 622 & 624 Bay View Drive, Aptos, CA
Commission appeal #A-3-SCO-05-013

We still are interested in seeing that the Coastal Commission gives close attention to the proposed development on Bay View Drive. We are still interested in the appeal of the development as currently planned. The existing development on Parcel 13 has non-conforming structures, and now seeking variances to accommodate further development. The current proposal only addresses the two-car garage that is built over the access to the rear parcel. The side yard variance and reconstruction of the garage still leaves an encroachment into the setback. The five car parking spaces proposed are to be within a non-conforming front yard setback. Even with the garage reconstruction the remaining structures will remain non-conforming due to lot coverage.

We see the proposed two-story addition and front yard parking as a visual intrusion to the surrounding area. The project will not "complement and harmonize" and meet the provisions of Chapter 13.20.130 Coastal Development criteria.

At the December 8, 2005 there was testimony by the neighbors on Bay View Drive that there was extended use by the neighbors of the existing trail down to the base of the bluff. This has been characterized as limited to residents of the property. The Coastal Commission needs to do a survey of the residents on Bay View Drive, to determine if in fact there is a finding that a prescriptive public easement has been established. The access was dismissed with a statement that there is a public access 900 feet southeast of the project. But this access is not available from Bay View Drive. The neighbors would need to go over to Cliff Drive and then return to Sea View Drive to access the stairs to the base of the bluff.

The project would have been better planned with the combining of parcels 12 & 13. And using the additional lot size coverage to make a reasonable one story addition, with less visual impact on the surrounding neighbors. The front yard car parking and the visual intrusion of the two-story addition are degrading to the street and not keeping with the intent of coastal developments.

It is still important that the lot be left in its current building status or restricts other development to be without the abuse of variances and excess lot coverage, only to accommodate the proposed two-story development.

Sincerely,


Les & Alice McCargo

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COASTAL COMMISSION
CENTRAL COAST AREA **CCC Exhibit** D
(page 1 of 6 pages)

A-3-SCO-05-013

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MAR 07 2005

March 1, 2005

CALIFORNIA COASTAL COMMISSION
725 Front Street Suite 300
Santa Cruz, CA 95060

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Att: Dan Carl

Re Local Permit# :03-0430 622 & 624 Bay View Drive, Aptos
Commission appeal #A-3-SCO-05-013

Thank you for the information on the pending two story development. We have a house at 622 Cliff Drive, Aptos but for other reasons we have been spending more time at the Sacramento address.

We see the proposed two story addition as a visual intrusion and with the changing scope as a moving target as to what is going to be the end result. The site already has been built with non-conforming structures and the current proposal only addresses the two car garage that is built over the access to the rear parcel. The side yard variance and reconstruction of the garage still leaves an encroachment into the setback. The five car parking spaces proposed are to be within a non-conforming front yard setback. Even with the garage reconstruction the remaining structures will remain non-conforming due to lot coverage. With the front setback parking and the two story addition, the project will not "complement and harmonize" and meet the provisions of Chapter 13.20.130 Coastal Development criteria.

At the December 8, 2005 there was testimony by the neighbors on Bay View Drive that there was extended use by the neighbors of the existing trail down to the base of the bluff. This has been characterized as limited to residents of the property, but if a survey of the residents on Bay View Drive were made, there may well have been a prescriptive public easement established. This condition was dismissed with a statement that there is a public access 900 feet southeast of the project. But this access is not available from Bay View Drive. The neighbors would need to go over to Cliff Drive and then return to Sea View Drive to access the stairs to the base of the bluff.

The project would have been better planned with the combining of parcels 12 & 13. And using the additional lot size coverage to make a reasonable one story addition, with less visual impact on the surrounding neighbors. The front yard car parking and the visual intrusion of the two-story addition is degrading to the street and not keeping with the intent of the coastal development.

Sincerely,


Les & Alice McCargo

CCC Exhibit D
(page 2 of 6 pages)

A-3-SCO-05-013

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060-4508
VOICE (831) 427-4863 FAX (831) 427-4877



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: *Les McCargo*
Mailing Address: *622 Cliff Drive*
City: *Aptos, CA*

Zip Code: *95009*

*2/17/05. Mr. McCargo called to inform new phone address of: 15 Marglow Circle Sal. 95831
Phone: (831) 662-1892
(916) 421-3390*

SECTION II. Decision Being Appealed

1. Name of local/port government:
County of Santa Cruz Planning Dept - Zoning Administrator

2. Brief description of development being appealed:
Remodel & Construct Two Story addition.

3. Development's location (street address, assessor's parcel no., cross street, etc.):
622 & 624 Bayview Drive, Aptos APN 049-152-12 & 13

4. Description of decision being appealed (check one.):
 Approval; no special conditions
 Approval with special conditions: *Special Conditions only to design details*
 Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:
APPEAL NO: A-3-SC0-05-013
DATE FILED: 2/28/05
DISTRICT: Central Coast

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OCT 12 2004

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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision: Oct 1, 2004

7. Local government's file number (if any): 03-0430 (**)

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Cove Britton

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1)

(2)

(3)

(4)

CCC Exhibit D
(page 4 of 6 pages)
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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

Agenda included 2 parcels, but project Architect stated that was only one parcel (APN 043-152-12) and used the lot size to justify a two story structure instead of a one story that would have less impact on ocean views by neighbors and allow the minimum space parking off street.

There are some existing non conforming structures existing on the property which the zoning Administrator indicated that would have to be removed or altered because they were built over or too close to the lot line.

The zoning Administrator after a brief recess, made the unilateral decision that the two lots were now one lot. But did not address the issue that now the two story structure had ample space to be a single story with no visual intrusion on the neighbors. The conditions were limited to roof pitch, arch windows etc.

There was also testimony that the local public used a stairway & trail to the beach thru this property.

The number of users and period of time would indicate there is a public prescriptive easement that was ignored except with the response "that may be a legal issue -

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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Lee McCarry
Signature of Appellant(s) or Authorized Agent

Date: Oct 4, 2004

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby
authorize _____
to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____

