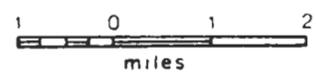


Project Site



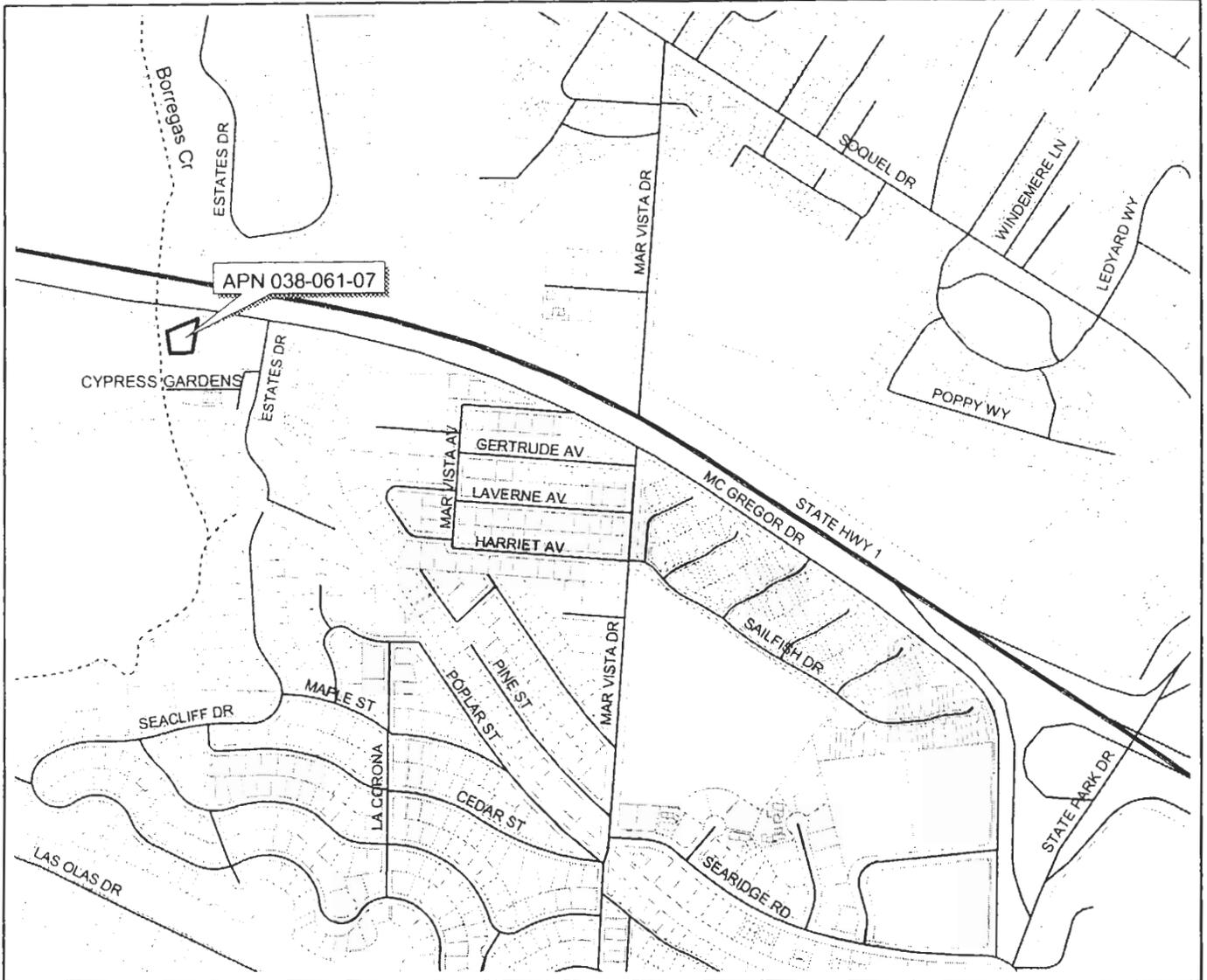
LOCATION MAP



County of Santa Cruz

Sheet 2 of 3  
**CCC Exhibit 1**  
 (page 1 of 2 pages)

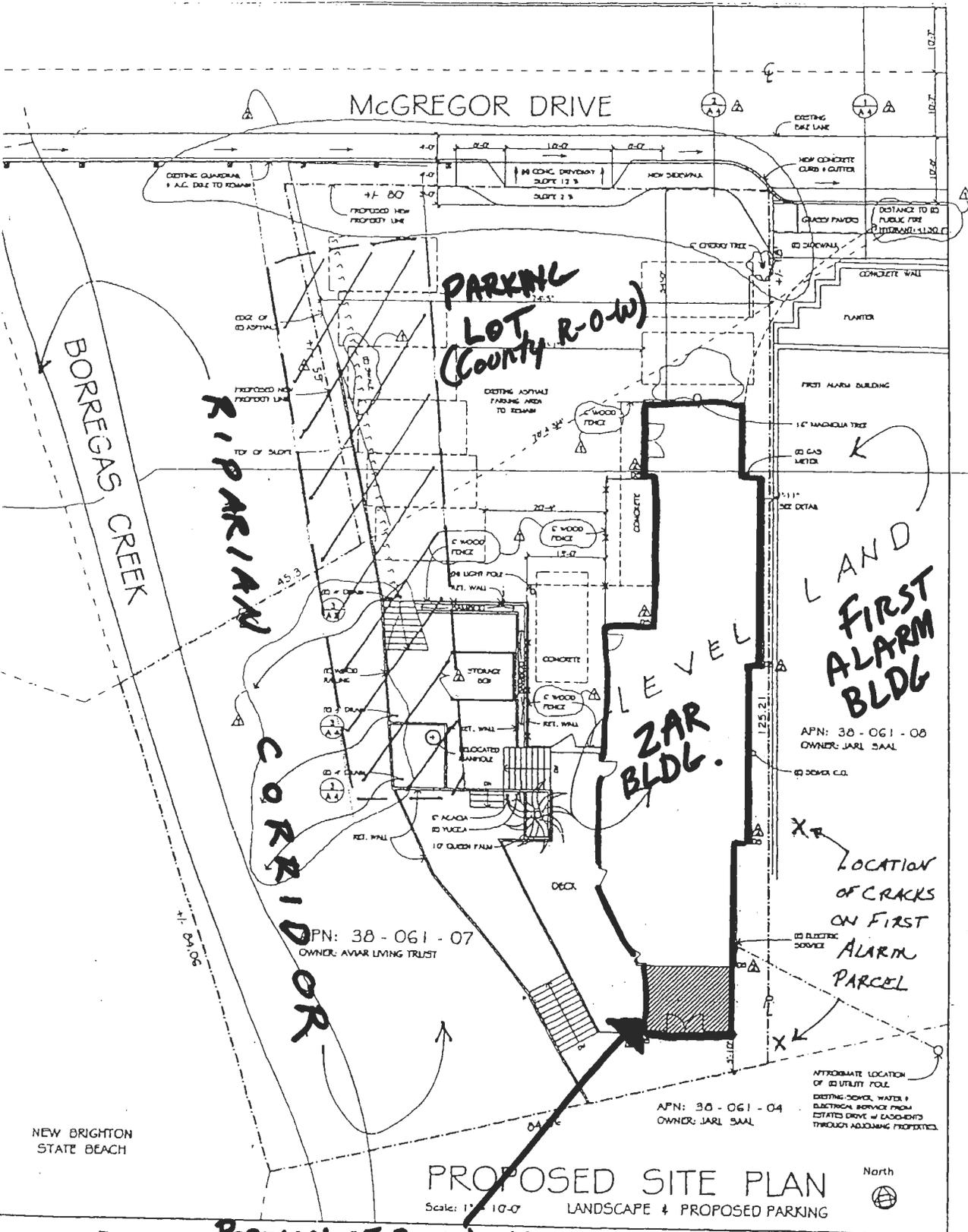
# Location Map



1000 0 1000 2000 Feet

Map created by Santa Cruz County  
Planning Department:  
January 2005

N  
  
**CCC Exhibit 1**  
**(page 2 of 2 pages)**



OWNER:  
AVIAR LIVING TRUST  
P.O. BOX 1282, APTOS, 95003  
PHONE: 831-685-1116  
RANDY ZAR, TRUSTEE  
CELL: 234-8858

PROPOSED  
SITE PLAN & DATA

Existing BUILDING at  
2000-2004 MCGREGOR DRIVE  
APTOS, CA. 95003  
APN: 038-061-07

DEC. 22, 2004  
APR. 25, 2005  
JULY 27, 2005  
OCT. 18, 2005  
REVISIONS

SHEET  
A1a  
OF 8 SHEETS

**PORTION OF BUILDING  
REQ'D TO BE REMOVED PURSUANT  
TO COUNTY'S APPROVAL**

GRADING AREA  
COMPLETED IN 1991

DATA

EXISTING LOT SIZE:	10454 SQ. FT.
PROPOSED ADDITION TO LOT APN# 038-061-07:	2945 SQ. FT.
PROPOSED TOTAL LOT SIZE:	13399 SQ. FT.



# COUNTY OF SANTA CRUZ

## PLANNING DEPARTMENT

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

TOM BURNS, PLANNING DIRECTOR

April 17, 2007

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

Agenda Date: April 25, 2007  
Item #: 8  
Time: After 9 AM  
APN: 038-061-07  
Application: 04-0650

**Subject: A public hearing to consider an appeal of the Zoning Administrator's decision to approve application 04-0650; a proposal to recognize an existing commercial building and to establish a Master Occupancy Program to allow commercial service uses.**

Members of the Commission:

This item is an appeal of the Zoning Administrator's 11/18/05 decision to approve the above listed application. The basis for the appeal, for the most part, was that a geotechnical review of the property was necessary to determine if the property was capable of supporting the proposed uses before the use permit was issued. This appeal was heard before your Commission on 1/11/06, 2/22/06, 3/8/06, 7/26/06, 10/11/06, and 3/28/07. At prior hearings, the item was continued to allow additional time for the preparation of a revised geotechnical investigation to address slope stability issues.

A revised technical report has been received, resulting in a revised project proposal. The item was continued from the 3/28/07 agenda to allow preparation of an appropriate recommendation for the revised project.

### Soils Report and Slope Stability

The applicant submitted a revised geotechnical investigation on 3/6/07 (Exhibit 5C). This report has been reviewed and conceptually accepted by Planning Department staff (Exhibit 5B).

The revised geotechnical investigation concludes that there is significant slope instability on the site. The report includes recommendations to address the site's instability that require the installation of extensive improvements including the following:

- Tie-back retaining wall with 2 foot diameter piers at 10 foot spacing, embedded 12 feet into firm soil underlying the fill placed on the property (total depth of 34 to 37 feet)
- Tie backs installed at an angle to support the piers
- Six foot retaining wall above the tie-back wall
- Additional vegetative or rip-rap stabilization measures at the base of the retaining wall above the riparian corridor

A closed drainage system, which moves surface water off the site and down to the creek, is recommended to minimize water infiltration into the site. The construction of the recommended drainage system is recommended.

system will require a Grading Permit and a Building Permit, as well as a Riparian Exception.

The recommendation of improvements to stabilize the slope on the project site is a positive step forward for the project applicant. The technical information that the Zoning Administrator had included as a condition of approval to be completed prior to Building Permit issuance is now available for the Planning Commission's consideration. While the improvements to stabilize the site will be quite extensive, it is now clear that the site can be stabilized to support the proposed use.

### **Use Permit**

As described above, the primary basis for the appeal has been satisfactorily addressed by the revised geologic report and recommendations. The other issues raised in the appeal letter relate to the Coastal Development Permit, Commercial Development Permit, and Variance findings, and the CEQA exemption. Staff disagrees with the appellant's assertions regarding the findings for the proposed project, especially now in light of the new information regarding the slope stability analysis. However, staff believes that there are two issues regarding the project that have not been resolved. These are discussed below.

### Public Right of Way & Parking

During the initial review of this application, the abandonment and sale of excess McGregor Drive right-of-way to the property owner was in process with the Department of Public Works. As a result, the recommendation of Planning Department staff relied on the assumption that the land would be sold to the property owner and that this land would be designated as parking to meet the Parking Ordinance requirements for the proposed use. If the excess right of way is not sold to the property owner, there is only one parking space that is located entirely outside of the right of way of McGregor Drive to serve the proposed commercial development. For these reasons, the property owner will need to acquire the excess right of way prior to taking any other steps to legalize the existing commercial structure and use.

### Existing Building

It was also noted in the appeal that the commercial building and deck were constructed without the benefit of the required permits. A nursery building previously existed on the project site, but it was extensively modified to enclose the outdoor nursery space, and additional building and deck area were constructed at a later date. This information was presented to the Zoning Administrator during the initial review, and the property owner has not provided evidence of the required permits. The existing building will, therefore, be recognized as new construction. As a result, all current codes and standards apply to the proposed commercial building. The appropriate CEQA exemption is Class 3 (New Construction or Conversion of Small Structures) for this project.

However, a portion of the existing structure is located in the vicinity of the sanitary sewer easement. The deck and the rear portion of the existing structure may encroach within this easement and may be located over the sewer line. At the public hearing before the Zoning Administrator, staff recommended removal of the portions of the structure that were added within the rear yard setback. However, the Zoning Administrator approved a variance to allow a further reduced rear yard setback of 5 feet. Due to the potential conflicts created by the construction of permanent features within the sanitary sewer easement, staff continues to recommend removal of the rear section (approximately 160 square feet) of the building. This recommended change results in a rear yard setback of 16 feet for the existing building, where a rear

yard setback of 30 feet would typically be required. The variance findings do not require revisions to support this recommendation.

**Conclusion and Recommendation**

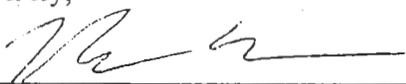
The item before your Commission is an appeal of the Zoning Administrator's action to approve this project on 11/8/05. The primary issues raised in the appeal are related to the stability of the project site and the need for further investigations regarding slope stability. The Zoning Administrator required the geotechnical studies as a condition of the original approval, but had deferred this requirement to the Building Permit stage. As a result of your Commission's review of the appeal, geotechnical investigations have been performed and it has been determined that the slopes on the project site are not stable. However, the technical reports conclude that the slope can be stabilized with the installation of additional improvements. Therefore, the primary basis for the appeal has been addressed.

However, one significant issue remains to be addressed by the property owner before the project can comply with County requirements. In order to ensure that adequate parking is available, the property owner, prior to submitting any further applications for Building or Grading Permits, must acquire the excess McGregor Drive right of way. Staff has revised the Conditions of Approval to require this acquisition before any other application can be filed on the property. Failure to acquire the excess right-of-way will void the approval of this permit.

Based on the revised information submitted, staff analysis, and revised conditions, Planning Department staff recommends that your Commission take the following actions:

- 1) **UPHOLD** the Zoning Administrator's action to approve Application Number 04-0650, and
- 2) **APPROVE** Application Number 04-0650 with revised conditions (Exhibit 5A) and a modified variance approval to allow a rear yard setback of 16 feet.

Sincerely,



Randall Adams  
Project Planner  
Development Review

Reviewed By:   
Mark Deming  
Assistant Director

**CCC Exhibit 3**  
**(page 3 of 14 pages)**

Exhibits:

- 5A. Findings, Revised Conditions and Categorical Exemption (CEQA Determination)
- 5B. Memo prepared by Joe Hanna (County Geologist) & Kent Edler (Civil Engineer), dated 3/7/07.
- 5C. Letter from Marc Ritson, dated 3/5/07 & Supplemental Soils Report (Summary) dated 2/26/07.
- 5D. Letter from Cypress Environmental and Land Use Planning, dated 4/11/07.
- 5E. Letter to the Planning Commission, 3/28/07.
- 5F. Letter to the Planning Commission, 10/11/06, with Exhibits.

## 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 property is zoned C-4 (Commercial Service), a designation which allows commercial uses. The proposed commercial service development is composed of allowed uses within the zone district, consistent with the site's (C-S) Service Commercial General Plan designation.

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

This finding can be made, in that the proposal does not conflict with any existing easement or development restriction such as public access, utility, or open space easements in that the development is sited away from the existing sanitary sewer line which passes through the property.

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, in that the development is consistent with the surrounding commercial development in terms of architectural style; the site is adjacent to other commercial development; the colors shall be muted natural tones and complementary to the site; the development site is not on a prominent ridge, beach, or bluff top.

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 the project site is located between the shoreline and the first public road with public beach access at New Brighton and Seacliff State Beaches. Consequently, the commercial development 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.

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

This finding can be made, in that the structure is sited and designed to be visually compatible, in scale with, and integrated with the character of the surrounding commercial development. Additionally, commercial uses are allowed uses in the C-4 (Commercial Service) zone district of the area, as well as the General Plan and Local Coastal Program land use designation.

## 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 the commercial development is constrained by the riparian corridor, and associated steep slopes, at the west side of the project site.

2. That the granting of the 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 the required 30 foot setback is intended to provide a separation between commercial and residential uses and the majority of the commercial activities (including parking, loading, and unloading) will be located at the front portion of the subject property. The location of the commercial development and use is sufficiently separated from the adjacent residential development to avoid commercial/residential use conflicts.

3. That the granting of such variances 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 the usable area of the subject property is constrained due to the presence of the riparian corridor, and the encroachment of the existing structure into the 30 foot yard setback will allow a similar level of commercial use as found on similarly zoned parcels of the same size.

**CCC Exhibit 3**  
**(page 5 of 14 pages)**

## 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 the project is located in an area designated for commercial uses. Construction will comply with prevailing building technology, the Uniform Building Code, and the County Building ordinance to insure the optimum in safety and the conservation of energy and resources.

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 location of the commercial development and the conditions under which it would be operated or maintained will be consistent with all pertinent County ordinances and the purpose of the C-4 (Commercial Service) zone district in that the primary use of the property will be for commercial service uses and a parking program will be established to prevent parking or traffic impacts to adjacent properties.

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 proposed commercial use is consistent with the use requirements specified for the Service Commercial (C-S) land use designation in the County General Plan.

The proposed commercial development will not adversely impact the light, solar opportunities, air, and/or open space available to other structures or properties, and meets all current site and development standards for the zone district as specified in Policy 8.1.3 (Residential Site and Development Standards Ordinance), in that the commercial development will not adversely shade adjacent properties, and will meet current setbacks *with the exception of the proposed variances* for the zone district that ensure access to light, air, and open space in the neighborhood. *(Amended at ZA 11/18/05)*

The proposed commercial development 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 proposed commercial development will comply with the site standards for the C-4 zone district (including setbacks, lot coverage, floor area ratio, height, and number of stories) and will result in a structure consistent with a design that could be approved on any similarly sized lot in the vicinity. *(Amended at ZA 11/18/05)*

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

**CCC Exhibit 3**  
**(page 6 of 14 pages)**

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 the proposed commercial development is to be recognized in place of an existing prior commercial use. No increase in traffic generation or use of utilities will result from the proposed development.

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, in that the proposed structure is located in a mixed neighborhood containing a variety of architectural styles, and the proposed commercial development is consistent with the land use intensity and density of the neighborhood.

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.

This finding can be made, in that the proposed commercial development will be of an appropriate scale and type of design that will enhance the aesthetic qualities of the surrounding properties and will not reduce or visually impact available open space in the surrounding area.

## Revised Conditions of Approval (4/25/07 PC)

Exhibit A: Project plans, "Existing Building at 2000-2004 McGregor Drive", 8 sheets, dated 7/27/05.

- I. This permit authorizes the construction of a commercial building, and the installation of a parking area and associated improvements per the approved Exhibit "A" for this project; and a variance to reduce the required rear yard setback from 30 feet to about 5 16 feet.

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 Building Permit from the Santa Cruz County Building Official for all structures on the site.
1. Including demolition of the approximately 160 square foot addition that projects out about 11 feet to the rear (south) of the existing building.
- C. Obtain an Encroachment Permit from the Department of Public Works for all off-site work performed in the County road right-of-way.
- D. Obtain final water service approval from the Soquel Creek Water District.
- E. Obtain final sewer service approval from the Santa Cruz County Sanitation District.
- F. Obtain clear title (or long term lease, of a term acceptable to County Planning staff, which includes a parking indenture) for the excess right of way from the County as depicted on Exhibit "A".
1. If the excess right of way can not be acquired (as described above) by the property owner within 6 months from the effective date of this permit, this permit will become null and void. The excess right of way must be acquired before a Building Permit application can be submitted for this project.
- G. ~~No grading which would require a permit is authorized by this permit.~~ Obtain a Grading Permit from the Santa Cruz County Planning Department for the installation of soil stabilization measures on the project site.
- H. A Riparian Exception application shall be submitted by the property owner for any work proposed within the Borregas Gulch riparian corridor, prior to issuance of a Building Permit for this project.

II. Prior to issuance of a Building and/or Grading Permit the applicant/owner shall:

- A. 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. Any changes from the approved Exhibit "A" for this development permit on the plans submitted for the Building Permit must be clearly called out and labeled by standard architectural methods to indicate such changes. Any changes that are not properly called out and labeled will not be authorized by any Building Permit that is issued for the proposed development. 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 final sign plan for the proposed commercial building shall be submitted for staff review and approval. Signage for the proposed commercial building must comply with the current requirements of the County Code. The existing monument sign along the property frontage must be removed and the supporting pole taken down.
  3. Grading, drainage, and erosion control plans, that are prepared, wet-stamped, and signed by a licensed civil engineer. Grading and drainage plans must include estimated earthwork, cross sections through all improvements, existing and proposed cut and fill areas, existing and proposed drainage facilities, and details of devices such as back drains, culverts, energy dissipaters, detention pipes, etc. Verify that the detention facilities are adequate to meet County requirements for release rates.
  4. Engineered improvement plans for all on-site and off-site improvements. All improvements shall be submitted for the review and approval by the Department of Public Works.
  5. A lighting plan for the proposed development. Lighting for the proposed development must comply with the following conditions:
    - a. All site, building, security and landscape lighting shall be directed onto the site and away from adjacent properties. Light sources shall not be visible from adjacent properties. Light sources can be shielded by landscaping, structure, fixture design or other physical means. Building and security lighting shall be integrated into the building design.
    - b. All lighted parking and circulation areas shall utilize low-rise light standards or light fixtures attached to the building. Light standards to a maximum height of 15 feet are allowed.

- c. ~~Area lighting shall be high-pressure sodium vapor, metal halide, fluorescent, or equivalent energy-efficient fixtures. All lighting must be consistent with Title 24, Part 6, California Code of Regulations, Energy Efficiency Standards for Residential and Non-Residential Buildings.~~
  6. All rooftop mechanical and electrical equipment shall be designed to be an integral part of the building design, and shall be screened.
  7. Utility equipment such as electrical and gas meters, electrical panels, junction boxes, and backflow devices shall not be located on exterior wall elevations facing streets unless screened from streets and building entries using architectural screens, walls, fences, and/or plant material.
  8. Details showing compliance with fire department requirements.
  9. The wall at the south side of the structure shall have no opening or windows other than one solid door.
  10. Floor plans, elevations, structural details, and foundation designs prepared and wet stamped by a licensed architect and/or licensed engineer must be provided for the commercial building proposed to be recognized. The proposed commercial structure and surrounding improvements on the project site must comply with all applicable building codes.
  11. Revised site plans, floor plans, and elevations which clearly depict the removal of the approximately 160 square foot addition that projects out about 11 feet to the rear (south) of the existing building.
- B. Submit four copies of the approved Discretionary Permit with the Conditions of Approval attached. The Conditions of Approval shall be recorded prior to submittal, if applicable.
  - C. Meet all requirements of and pay all applicable fees to the Soquel Creek Water District.
  - D. Meet all requirements of and pay all applicable fees to the Santa Cruz County Sanitation District.
  - E. 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.
  - F. Meet all requirements and pay any applicable plan check fee of the Aptos/La Selva Fire Protection District.
  - G. Pay the current fees for Child Care mitigation for ~~910~~ 750 square feet of general

commercial space. Currently, these (Category II) fees are \$0.23 per square foot, but are subject to change.

- H. Pay the current Aptos Transportation Improvement Area (TIA) fees for Roadside and Transportation improvements. Currently, these fees can be calculated as follows, but are subject to change:
1. The development is subject to Aptos Transportation Improvement (TIA) fees at a rate of \$400 per daily trip-end generated by the proposed use with a credit of 1.8 trips ends from the prior nursery use. The Department of Public Works Road Engineering staff will determine the appropriate number of trip ends for the type of proposed use, or will require a traffic report to establish the number of trip ends. The total TIA fee is to be split evenly between transportation improvement fees and roadside improvement fees.
  - I. Provide required off-street parking for a minimum of 9 cars. 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. A minimum of one parking space for each 300 square feet of commercial service building area is required.
  - J. 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.
  - K. For any parking lot drain inlets, complete and file a silt and grease trap maintenance agreement with the Department of Public Works. The final plans shall specify the location of an EPA approved silt and grease trap on site, through which storm runoff must pass. The trap shall be inspected to determine if it needs cleaning or repair prior to October 15 of each year, at minimum intervals of one year. A brief annual report shall be prepared by the trap inspector at the conclusion of each inspection and submitted to the Drainage Section of the Department of Public Works within 5 days of the inspection. The report shall specify any repairs that have been done or that are needed to allow the trap to function adequately.
  - L. ~~A soils report for the project site including the former right of way area which includes a slope stability analysis shall be submitted to the County for review and acceptance.~~ All recommendations of the approved geotechnical report shall be incorporated into the project design. A wet stamped and signed plan review and acceptance letter from the project geotechnical engineer shall be provided which clearly states that the project design conforms to the recommendations of the approved geotechnical report.
- 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 new utilities to serve the proposed development shall be installed underground.
  - 1. Pad-mounted transformers (as part of the underground electrical service distribution system) shall not be located in the front setback or area visible from public view, unless they are completely screened by walls and/or thick landscaping, and shall not obstruct views of traffic from tenant spaces or driveways, or views to monument signs. Underground vaults may be located in the front setback area for aesthetic purposes.
- C. Back flow devices and other landscape irrigation valves shall not be located in the front setback or area visible from public view, unless they are completely screened by walls and/or thick landscaping, and shall not obstruct views of traffic from tenant spaces or driveways, or views to monument signs.
- D. All inspections required by the building permit shall be completed to the satisfaction of the County Building Official.
- E. 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.
- F. All recommendations of the approved geotechnical report shall be followed through the construction of the project. A wet stamped and signed final review and acceptance letter from the project geotechnical engineer shall be provided which clearly states that the project was constructed per the recommendations of the approved geotechnical report.

IV. Operational Conditions

- A. **Master Occupancy Program:** Given the location of the project with respect to existing residential and commercial uses, only the uses listed below may be processed at Level 1 (Change of Occupancy), based on the parking available on site:

All of the uses listed in the in the current C-4 (Service Commercial) use charts with the parking restrictions listed below.

**CCC Exhibit 3**  
**(page 12 of 14 pages)**

A Level 1 Initial Occupancy review is required for the commercial service uses proposed in each of the three units in the commercial building.

**The following additional restrictions apply to all uses:**

Parking is restricted to only 2 parking spaces for each of the three commercial units (including service vehicles and/or employee parking) and 1 parking space available for each unit for customers and deliveries. This results in a total of 3 parking spaces for each of the three commercial units, which is a total of 9 parking spaces which must all be provided on the project site.

Parking or storage of vehicles associated with the commercial service uses off of the subject property is not allowed. All parking of vehicles associated with the commercial services uses authorized by this permit must occur on the project site and may not occur on surrounding streets or parcels. No trailers are allowed to be stored or parked on the project site.

Businesses occupying any of the three commercial units must comply with the parking requirements as established by this Master Occupancy Program.

No use of equipment that can generate noise beyond the project site and/or no deliveries can occur beyond the hours of 7 AM to 6 PM.

Retail or office uses that are not ancillary to an approved commercial service use are prohibited.

All noise generated by or associated with the allowed commercial service uses may not exceed 65db at the property boundary.

Outdoor storage is limited to screened areas surrounding the storage box shown on Exhibit A of this permit. All outdoor storage must be screened from public view.

- B. 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.
- C. This permit will become null and void reviewed if any lease agreement with the County of Santa Cruz of the excess right of way held by the County of Santa Cruz is terminated.
- V. As a condition of this development approval, the holder of this development approval ("Development Approval Holder"), is required to defend, indemnify, and hold harmless the COUNTY, its officers, employees, and agents, from and against any claim (including

attorneys' fees), against the COUNTY, its officers, employees, and agents to attack, set aside, void, or annul this development approval of the COUNTY or any subsequent amendment of this development approval which is requested by the Development Approval Holder.

- A. COUNTY shall promptly notify the Development Approval Holder of any claim, action, or proceeding against which the COUNTY seeks to be defended, indemnified, or held harmless. COUNTY shall cooperate fully in such defense. If COUNTY fails to notify the Development Approval Holder within sixty (60) days of any such claim, action, or proceeding, or fails to cooperate fully in the defense thereof, the Development Approval Holder shall not thereafter be responsible to defend, indemnify, or hold harmless the COUNTY if such failure to notify or cooperate was significantly prejudicial to the Development Approval Holder.
- B. Nothing contained herein shall prohibit the COUNTY from participating in the defense of any claim, action, or proceeding if both of the following occur:
  - 1. COUNTY bears its own attorney's fees and costs; and
  - 2. COUNTY defends the action in good faith.
- C. Settlement. The Development Approval Holder shall not be required to pay or perform any settlement unless such Development Approval Holder has approved the settlement. When representing the County, the Development Approval Holder shall not enter into any stipulation or settlement modifying or affecting the interpretation or validity of any of the terms or conditions of the development approval without the prior written consent of the County.
- D. Successors Bound. "Development Approval Holder" shall include the applicant and the successor(s) in interest, transferee(s), and assign(s) of the applicant.

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Minor variations to this permit which do not affect the overall concept or density may be approved by the Planning Director at the request of the applicant or staff in accordance with Chapter 18.10 of the County Code.

**CCC Exhibit 3**  
**(page 14 of 14 pages)**

Black Text Prepared by County Staff Time Line  
Red Text Applicants Response and Additions

Zar/McGregor - Grading, Violation and Permit History

APN 038-061-06 One property before parcel was split to create existing Zar and First Alarm properties.

1960-61 Sewer Line: Sewer line installed (October 1960 date on plans for sewer line installation) According to research of the Santa Cruz Public Works records and subsurface investigation by the project geotechnical engineer, the sewer line is an 8 inch diameter line buried 23 feet deep at parking lot running parallel with slope. There is no known failure occurrence of the 8 inch line.

County  
→

1962 Building Permit(s) #: 1594 & 1474 issued to Eva Bernard for relocating a building to be used as a real estate office. This structure was located on what is now the First Alarm property and is not associated with the existing construction on the Zar property.

Applicant  
→

6/1962 Grant Deed State: Conveyance for purpose of freeway and adjacent frontage rd. Recorded Deed Book 1456 page 516 States that the property shall abut upon and have access to said frontage road. **Exhibit A**

1963 Grading: Initial grading of subject property and adjacent parcel (possibly in conjunction with freeway construction or the construction of McGregor Drive) prior to 1963 as determined from aerial photographs. Most of the grading occurred around the parking area. Sewer manholes likely buried during this time.

1965 Grading: Some additional grading near McGregor Drive between 1963 and 1965 evident in aerial photographs.

6/13/67 Building Permit(s)#: 3732 & 4617 to erect a garden sales area 5 feet from property line, install 1 hour fire wall on an existing structure which is closer than 5 feet to the property line, and install plastic over existing lath house and walkway. These buildings were built on the current Zar property for an existing nursery use (Aptos Gardens). Nurseries were an allowed use in the zone district with no use permit required. APN 038-061-06 was divided into APNs 038-061-07 & 08 prior to this date by deed. Although the BP was issued on APN 038-061-06, the property line referred to is the boundary between parcels -07 & -08. *All Framing was constructed with clear heart redwood, which remains there today. (Conhart is better quality material then present day framing material) Photographs of the existing framing were previously submitted to planning Commission*

(APN 038-061-07 Subject property (after division from larger parcel))

9/12/67 Assessor Records: 926 square feet of office and greenhouse and 887 square feet of covered area. There is 405 square feet of office, 521 square feet of greenhouse and 887 square feet of covered area indicated on appraiser drawing. *All Framing constructed with clear heart redwood, which remains there today.*

1/9/73 Assessor Records: 1,189 square feet of office and greenhouse and 887 square feet of covered area. Increase of 261 square feet of greenhouse, identified in 1973 appraisal.

2/22/1988 First Alarm building soils report completed.

1989 Grading: Small amount of grading between buildings and Borregas Creek between 1965 and 1989. Erosion of fill evident in later aerial photographs. *(Could have been in preparation of the First Alarm Building)*

10/17/1989 Earthquake No known Damage to Structure or Slope. No County Yellow Tag.

10/10/95 Code Compliance: Re-roofing permit held up due to environmental violation. Byard operating Napa Springs Water Company from existing structure.

10/16/95 Code Compliance: Staff conducted a site inspection and verified environmental violations; partial foundation upgrade and/or replacement and deck. Also, identified the addition completed in 1972, with no permit on file. Staff agreed to approve a re-roof permit to protect the structure, with a hold to be placed on the permit until all environmental violations are resolved. (Randy Zar contacted County to visit the McGregor site, to observe the failed retaining wall. Randy talked with Jack Nelson. In addition, several other County staff visited the site, at the same time. The property owners were told that it was a training visit. Included in the site visit were Jack Nelson, Dave Laughlin, Debra Locatelli and Ruth Owen. A Red tag was issued and subsequently recorded.

11/1/95 Building Permit #: 111076 issued for re-roofing on existing single-family dwelling/commercial building. This was an over the counter permit that required no routing. The roof had already been replaced before the permit was issued. Debra Locatelli, after reviewing tax records, told the property owners to get the Re-roof Permit to legalize the completed roofing work.

5/15/96 Assessor Records: Randy Zar purchases interest in property.

6/25/96 Discretionary Permit: Application 96-0396 made by the Department of Public Works for a Riparian Exception to uncover existing sewer manhole buried on the property. Jeff Mill from Santa Cruz County Public Works had been visiting the property quite often prior to this permit being issued. He was looking for the manhole that he stated had been buried and therefore "lost" for over 20 years. After talking with Randy Zar and learning that he was a contractor trained in excavation, Mill and the Public Works Department made an agreement with the company, J.R. Zar Contracting, to locate and raise the manhole and grade a new access route to it. A copy of this contract was presented to the Planning Commission.

7/1/96 Discretionary Permit: Riparian Exception 96-0396 issued with approximately 50 cubic yards of grading and 3 foot high retaining walls authorized to construct an access road and to uncover and raise the existing sanitary sewer manhole. (Plans were drawn and permit filed by Jeff Mill, Civil Engineer, for County of Santa Cruz Public Works. Plans show grading requirements and building as it is today. J.R. Zar Contracting was hired by the Public Works Department to carryout all excavation and re-grading work for the project under the supervision of Public Works. A signed Public Works contract, liability insurance with Santa Cruz County as additional insured, documentation of Zar's workman's compensation insurance policy, and a sub-consultant contract for soils engineering with Reynolds Associates Geotechnical & Civil Engineers were provided to Public Works as per contract. County of Santa Cruz Public works provided parts for the manhole raising and daily supervision.

1/24/97 Property owners receive a formal letter from County of Santa Cruz General Services Dept. changing address from 14992 McGregor Drive to: 2000(store) and 2004 (residence) McGregor Drive. This shows another County agency was aware of the residential use of the property. Exhibit C

1996-1997 Grading: In order to access the sanitary sewer manhole, more than 50 cubic yards of earth were required to be removed and replaced. Additional fill material may have been placed in the parking lot area during this time. Several retaining walls constructed as well. Since the grading work for the Public Works project was at the edge of riparian habitat, the agency needed a Riparian Exception Permit. County Planning approved Riparian Exception 96-0396 in 7/1/96, which specified excavation of 50 cubic yards. However, this quantity of grading conflicted with that shown on the project plans, prepared by Public Works, and with that in the contract between Public Works and J.R. Zar Construction, both of which specified, "find and raise manhole as necessary". Geotechnical work conducted in 2006 determined the actual location of the manhole was 11 feet from the expected location shown on the 1996 project plans. This one issue alone accounted for substantially greater excavation than the anticipated 50 yards. In addition, all grading work was inspected and monitored daily by staff of County Public Works.

1990-1991 First Alarm building being built. During construction Rain Forest Exotics (Tropical Birds) was in business at the McGregor Property.

12/27/91 Building Permit #: 101649 issued for relocating a gas meter for a bird aviary. The Former Greenhouse lath house portion of the structure had been enclosed and heated for Tropical Birds and storefront without benefit of building permit. The County of Santa Cruz Planning Dept. issued this permit with this knowledge. The Building Permit states the meter relocation is for bird aviary and the site was inspected. Planning did not issue a red tag or any form of violation notice, but rather finalized the permit.

6/12/92 Letter from Soquel water district determination that the water service was a pre-existing service line prior to 1964. Water line service comes from Estates Drive through First Alarm Property. Jarl Saal tried to stop water service entering the McGregor site through his property. Previously submitted to planning Commission.

8/11/92 Easement Agreement between Jarl Saal and William O'Neil for existing sewer and water line that runs through Mr Saals First Alarm parcel. It shows that the existing lines were to stay and service the McGregor Site. Recorded Vol.5086 Page 672-676

1/29/93 Code Compliance: Complaint received. Construction of 2,044 square foot commercial building and a 400 square foot deck without permits. The building existed and had not been cleaned up yet. The existing building had Original Electrical Meter located at rear of the building, water and sewer lines at center of building and the gas meter in the front of building. They still remain that way today. **Exhibit B 1993 picture**

7/14/93 Code Compliance: Brent Byard (lessee) (Lease Purchase option) states that an application will be made for a produce stand. The trucks will be moved when space opens in Aptos Warehouse (approx 2 weeks). The structure did not appear to be habitable but the tenant stated that it had been habitable in the past.

10/26/93 Code Compliance: Complaint received. Substantial development in riparian corridor including parking lot built on fill material, retaining walls, and deck. There was only a fence and no retaining wall. Deck was not repaired until late 1994.

11/22/93 Assessor Records: Byard's purchase property.

11/29/93 Grading: Department of Fish and Game concerned regarding 11 truckloads of dirt and debris that were dumped into riparian corridor. (Fish and Game visited the site but no citation was issued)

11/30/93 Code Compliance: Site visit identified extensive fill with asphalt and concrete debris on slope between existing building and Borregas Creek. Correction notice issued requiring a Grading Permit and Riparian Exception application by 12/30/93, further grading was also prohibited. Reber Construction was widening McGregor Drive, for new bike lanes. Mr. Byards large water trucks were stuck on the property close to the hillside as shown in aerial photos taken in 1993. Reber construction helped pull out the trucks and fix damage where trucks were stuck. Reber Construction was grinding asphalt while widening McGregor Dr and may of used some of the removed asphalt as a base rock to help stabilize mud area when pulling out semi trucks. **Exhibit B**

10/94 Grading: Phone call from complainant regarding additional grading and a retaining wall under construction within the riparian corridor. Randy Zar and Brent Byard constructed 3' to 5' retaining wall in the front portion of property now known as parking lot, made of railroad ties. Randy Zar contacted County of Santa Cruz area resource planner, Jack Nelson, when the wall failed. Randy Zar initiated this County inspection.

12/16/94 Fire Alarm Plans for 2000 McGregor were drawn and Fire Alarm system installed by First Alarm and submitted to Aptos La Selva Beach Fire District. Previously submitted to planning Commission

6/95 Code Compliance: Phone calls from complainant stating that structure was converted to residential uses. County was previously aware the Mr. Byard lived in the rear of property. Re-roof Permit, dated 11/1/95 states that it was a Re-roof Permit for "a single-family dwelling with storefront".

11/14/96 Building Permit #: 1 1 1076 (for re-roofing) voided for lack of compliance - permit expired. *We were doing the work as noted above on line item 1996 - 1997 Grading. We were never informed that this permit had expired. The roof was completed prior to obtaining roof permit dated 11/1/95*

*3/22/97 Project Completion Party Picture. Previously submitted to planning Commission*

6/12/97 Discretionary Permit: Riparian Exception 96-0396 finalized. Department of Public works project to raise manhole complete. *The Red Tag was expunged on 12/2/97 Official Records 1997-0057548. This red tag included the deck, foundation work and all environmental violations as specified in 10/16/95 line item. These expungements are attached as Exhibit D*

*7/21/97 Letter from County of Santa Cruz Assessors office NOTICE OF PROPOSED ESCAPED ASSESSMENT: Notice of adjusted valuation on the subject parcel, The assessed value of the property almost doubled right after the County Project was complete and red tag expunged. During this period Assessors Land use Code 122 Store w / Living Unit*

1997-1998 Code Compliance: Deli/grocery store operating without permits. *Plans for the Deli were submitted on 6-6-97 with a Health Permit application to Santa Cruz County Environmental Health Service. Plans were reviewed on 6-12-97. Owners intended to follow-up with an application to County Planning but a red tag was issued prior to that occurring. Deli closed in early June 1998. A wholesale flower distributor took its place.*

*1/16/98 Letter from County of Santa Cruz Planning Dept. Stating that the Expungement has been recorded And No further action is required by you. Exhibit E*

11/30/98 Code Compliance: Complaint received. Conversion of existing building to a single family dwelling without permits. *Santa Cruz County had already been aware that Brent Byard lived on this property as noted on the above line item 11/1/95 re-roof permit ("Re-Roof Single Family Dwelling with Storefront").*

11/28/00 Code Compliance: Complaint received. Tenant has placed a single-wide mobile home trailer on the property. 12' x 32' modular mobile trailer. *The former owner, Brent Byard, placed the mobile home on the property. It was subsequently removed.*

11/21/01 Code Compliance: Site inspection. Trailer on property. Byard stated that he refurbishes the trailers on site and then sells them. There were no utility connections to the trailer at the time of the inspection. *(Brent Byard)*

2/27/01 Code Compliance: Complaint received. Conversion of structure to multiple residential units. The former owner, Brent Byard, converted the rear portion of the existing building to four dwelling units. *When the sole interest of the property was purchased by Aviar Trust the current owner, all dwelling units were removed. Expungement Recorded Dated 11/14/05 2005-0079702 Exhibit F*

3/13/01 Code Compliance: Site inspection. Evidence of construction to convert to multiple units. Interior inspection refused. Trailer on site connected to utilities. *Refer to notation under the preceding line item.*

11/21/01 Code Compliance: Site inspection. Zar and Byard present. Interior inspection identified 4 complete residential units plus two additional rooms with bathrooms. *Refer to notation under the line item for 2/27/01.*

9/25/03 Code Compliance: Site inspection. Small addition to enclose a concrete patio at the rear of the existing structure (approx. 8 x 10-12 feet). An inflatable dough boy pool was also installed on the project site. *Addition was removed and Expunged on 11/14/05 Document Record 2005-0079704. The doughboy pool was installed by one of Brent Byard's tenant who was a Section 8 housing tenant Disabled Vietnam Vet. Santa Cruz County Housing Authority inspected the unit, determined it was adequate and paid the rent to Brent Byard. This agency did not inform Mr. Byard that he also needed approvals from County Planning for the units. Exhibit G*

6/4/04 Code Compliance: Complaint received. Interior work without a permit. Complaint determined to not be valid. Work was only interior remodeling and cleanup which did not require a permit.

8/24/04 Code Compliance: Court judgment. Superior Court Judge Robert Atack ruled that all residential uses must cease and tenants must vacate by 9/30/04. Settlement agreement generated for commercial uses to obtain all required development and building permits.

11/15/04 Assessor Records: Byard transfers all remaining interest in property to Zar family. *Aviar Living Trust (Zar family) purchased the property from Brent Byard using an appraised value of \$500,000. Jarl Saal also offered to buy the property for \$500,000 but Aviar Trust declined to sell to him.*

12/22/04 Discretionary Permit: Intake for Coastal and Commercial Development Permit application 04-0650. Application lacked required number of plans. Plans and fees submitted later for a formal application date of 1/3/05.

2/1/05 Discretionary Permit: Application incomplete. Additional information/clarification required on plans and to satisfy Department of Public Works Drainage and Road Engineering requirements.

5/27/05 Discretionary Permit: Application incomplete. Additional information/clarification required on plans and to satisfy Department of Public Works Drainage and Road Engineering requirements. *Settlement Agreement included an acknowledgement that Aviar's Trust permit application should also include a parking located on the adjoining right-of-way area of McGregor Drive. The subject right-of-way area is an excess area of right-of-way that extends beyond the travel lanes of McGregor Drive and is not used for public traffic.*

**5/23/05** *Jarl Saals Attorney Robert Johnson writes County of Santa Cruz Planning Dept Real Property to try and stop the County from selling or leasing the County right-of-way, which is in front of the 2000 McGregor property. (See attached letter). This excess right-of-way area separates the Aviar/Zar property for the travel part of McGregor Drive. If sold or leased to Mr. Saal or another person other than Zar, the 2000 McGregor Property would be land locked and the deed restriction on Line item 6/1962 deed to state would be violated* **Exhibit H**

8/25/05 Discretionary Permit: Application complete.

10/7/05 Discretionary Permit: Zoning Administrator hearing. Item continued to 11/18/05.

**11/14/05** *Recorded Expungement 2005-0079703 Development activities in a riparian corridor have been resolved by a court agreement. ( County received false information and believed more grading had taken place, when fact this was not true.)* **Exhibit I**

11/18/05 Discretionary Permit: Zoning Administrator hearing. Coastal and Commercial Development Permit application 04-0650 approved with revised findings and conditions, including the requirement of a geotechnical (soils) report with a slope stability analysis prior to the issuance of a Building Permit. *The original staff report did not require a geotechnical report because it did not include any grading. The previous grading was done to locate and raise the manhole in 1996 was a completed County Public Works project done with the assistance of Reynolds and Associates Geotechnical Engineers. False testimony by an attorney representing Jarl Saal was given at this hearing stating that thousands of yards of fill were placed after the County work was completed and signed off in 1997. Nevertheless, the Zoning Administrator was convinced that approval of the project should be conditioned upon completion of a new geotechnical report.*

*Subsequent research, including geotechnical investigations conducted by Terra Firma Engineering in 2006 have proved that "thousands of yards of fill" were NOT placed on the site after sign-off of the Public Works project in 1997. The soils report prepared in the summer 2006 to address the concerns of the Planning Commission shows that all of the work was done at one time and was done correctly according to the specifications of Reynolds Engineering.*

12/2/05 Discretionary Permit: Coastal and Commercial Development Permit 04-0650 appealed by attorney representing neighboring property owner Jarl Saal. *The appellant and his attorney have made several unsubstantiated allegations regarding the current project including the project should have undergone CEQA Environmental Review and a lack of fair and impartial hearing at the Zoning Administrator level. Planning staff has rejected these and all other reasons for the Saal appeal in staff report recommendations to the Planning Commission. However, Planning staff continues to recommend Planning Commission retain oversight of the project as a means to require additional geotechnical investigation of the site. The legal authority for determining the grounds of an appeal are unjustified but keeping the project under the jurisdiction of the appeal body (the Planning Commission) has never been explained to Aviar/Zar and appears a dubious action.*

12/05 Discretionary Permit: Applicant's representative contacts geotechnical engineers to evaluate site. Issues of slope instability are identified. This information is conveyed to County geologist by telephone. Further review of project site by County geologist identifies slope instability and extensive grading work within riparian corridor. *The County geologist spent very little time at the site and only did a visual evaluation with no testing, even though the County owns one of the project properties. As discussed above, the previous project at the top of the slope on the Aviar/Zar parcel and the County excess right-of-way area was a County project, which was supervised by County Public Works staff. The Riparian Exception Permit for this project was signed-off by the County Planning in June 1977. The sign-off document was presented to the Planning Commissions on two separate occasions. The project geotechnical engineer (Reynolds) also signed-off soils work on the project in 1997. This documentation has also been presented to the Commission.*

1/11/06 Discretionary Permit: Planning Commission hearing. Recommendation to remand back to Zoning Administrator to consider new information regarding slope instability and the location of the sanitary sewer line relative to the existing building. Commission determines that they must hear the appeal and continues the item to 2/22/06 for a full report.

1/13/06 Discretionary Permit: Site inspection with County geologist and civil engineer. Retaining walls appear to be failing on project site and soil slumps appear to exist on the slope between the walls and Borregas Creek. *No Failure of retaining wall in parking area.*

**8/25/06** Soils Report 2000 McGregor Drive. Soils Report Prepared by Marc Ritson of Terra Firma Engineering and Science. Concludes that the work performed by J.R. Zar Contracting and Supervised by Santa Cruz County in 1996-97 was done properly as directed by the plans and the project geotechnical engineer to locate the manhole and raise as necessary. Soils compaction was evaluated by Terra Firma in 2006 and determined to be consistent with that required by Reynolds Associates Geotechnical & Civil Engineers. (The engineer for the 1966-97 project). The retaining wall, built as part of the 1996-97 project, has maintained its integrity for 10 years.