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AUG 29 2023

P4248



COUNTY OF MARIN  
COMMUNITY DEVELOPMENT AGENCY  
PLANNING DIVISION

COMMUNITY DEVELOPMENT AGENCY  
PLANNING DIVISION

PETITION FOR APPEAL

TO: THE MARIN COUNTY Board of Supervisors  
3501 Civic Center Drive (Planning Commission or Board of Supervisors)  
San Rafael, CA 94903-4157

1. The undersigned, E. Brekhus for Sarafian; J.Siedman for R.Friedman\* hereby files an appeal  
(Appellant/Petitioner) \* see Addendum 1 attached for signature

of the decision issued by the Planning Commission on 8/14/2023 and 8/28/2023  
(Director, or Deputy Zoning Administrator, or Planning Commission)

regarding the Project ID P3049

relating to property described and located as follows:

a) Assessor's Parcel Number 1 95-162-49

b) Street Address 21 Onda Del Calle, Stinson Beach \*

2. The basis of this appeal is:

See Attachment "A"

(The pertinent facts and the basis for the appeal shall be provided to the Agency at the time the appeal is filed, but no later than the last date established for the appeal period – usually 10 days following the date of the decision. If more space is needed, please attach additional pages setting forth the bases for appeal.)

Attorney for Stephen & Marisa Sarafian

FROM Elizabeth Brekhus  
(Print Name)  
1000 Drakes Landing Road  
(Address)  
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(City/State/Zip Code)

(Signature)  
(415) 461-1001  
(Telephone)  
elizabethb@brekhus.com  
(Email)

\* See attachment A "21 Calle del Onda"

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Addendum 1

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PETITION FOR APPEAL

TO: THE MARIN COUNTY  
3501 Civic Center Drive  
San Rafael, CA 94903-4157

Board of Supervisor  
(Planning Commission or Board of Supervisors)

1. The undersigned, JACK SIEDMAN, ROBERT FRIEDMAN ON BEHALF OF  
(Appellant/Petitioner)

of the decision issued by the \_\_\_\_\_  
(Director, or Deputy Zoning Administrator, or Planning Commission)

regarding the \_\_\_\_\_

relating to property described and located as follows:

a) Assessor's Parcel Number \_\_\_\_\_

b) Street Address \_\_\_\_\_

2. The basis of this appeal is:

See Attached.

(The pertinent facts and the basis for the appeal shall be provided to the Agency at the time the appeal is filed, but no later than the last date established for the appeal period – usually 10 days following the date of the decision. If more space is needed, please attach additional pages setting forth the bases for appeal.)

FROM JACK SIEDMAN, ATTORNEY  
FOR ROBERT FRIEDMAN  
(Print Name)

[Signature]  
(Signature)

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JSIEDMAN@YAHOO.COM  
(Email)

AUG 29 2023

COUNTY OF MARIN  
COMMUNITY DEVELOPMENT AGENCY  
PLANNING DIVISION

**Re: 21 Calle del Onda, Stinson Beach, Brian Johnson Trust Coastal Permit  
Application (P3049 formerly P1162)**

**A. AO Flood Zone Moratorium**

The development is proposed in an AO Zone which remains in a construction moratorium per the July 28, 2015 Notice of Land Use Regulations from the County of Marin Community Development Agency Planning Division. The most recent FEMA flood map for the area that a large portion of the property is in the AO zone (06041C044E effective 8/15/2017). Any portion of the construction, including a septic system, which would occur in the AO Zone is strictly prohibited by the Local Coastal Program Unit 1, Policy IV-30 as well as County Code Section 22.56130I(L)(2).

**B. FEMA VE Floodplain Base Flood Elevation**

The development identifies Base Flood Elevation (BFE) of 18'2" (p.6) which is incorrect and does not comply with Marin County Code Title 23.09 requirements. The lowest floor must be elevated at least one foot above the Base Flood Elevation per California Residential Code § R322.2.1(1) or the design flood elevation, whichever is higher. Per California Residential Code § R322.2.1(2), in areas of shallow flooding (AO Zones), buildings and structures shall have the lowest floor (including basement) elevated to a height above the highest adjacent grade of not less than the depth number specified in feet on the FIRM plus 1 foot, or not less than 3 feet if a depth number is not specified. Moreover, current Marin County policy is to require the lowest floor to be three feet above the base flood elevation. The proposed development does not comply with these standards.

**C. California Coastal Act**

The project plans violate California Coastal Act Section 30253 for new development which requires development to: (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard and (b) Assure stability and structure integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter nature landforms along bluffs and cliffs.

There is a documented history of prior flooding at this location, most recently in January 2023 and the development poses a risk to other properties and the public.

Moreover, the initial Geotechnical feasibility study by Murray Engineers Inc. on January 14, 2021, submitted by the applicant, raises the following significant geotechnical

constraints which would remain at a level of moderate to high risk even with mitigation measures taken during construction:

- (1) Strong to Very Violent Ground Shaking During an Earthquake – *moderate to high risk;*
- (2) Liquefaction-Induced Settlement and Lateral Spreading – *moderate to high risk;*
- (3) Tsunamis and Seiches – *high inherent risk;*
- (4) Waves, Flooding, Beach Erosion, & Sea Level Rise – *long term potential for waves and flooding to impact the proposed residence and for erosion of the site to occur.*

The application should have been denied based on the fact that the risks identified have not been addressed or mitigated.

**D. Sea Level Rise Hazards**

The applicant has failed to provide an adequate hazard assessment for the project site including analysis of risks from coastal sea level rise and flooding from Easkoot Creek, including changes to the groundwater level, inundation, flooding, wave run-up, and erosion risks from both the Easkoot Creek side and the ocean side. The Coastal Commission has already commented that the flood maps / profiles provided by the applicant were not adequate and a full geotechnical investigation was required.

**E. Dune and Sandy Habitat Protection**

The current plans are in violation of the Marin Local Coastal Program (LCP) as it shows construction on dunes which are considered Environmentally Sensitive Habitat Areas (ESHA), and development is strictly prohibited in these areas. The Constraints Map (p. 12 of the plans submitted on June 8, 2021) submitted by the applicant fails to adequately identify the extent of ESHA on the property or identify adequate buffers and mitigation measures to protect the ESHA consistent with the LCP. The applicant's consultant, WRA, issued a report stating that the property consists roughly of ".2 acre of sand beach/dune, and 0.16 acre of iceplant mats....The Marin Local Program designates beaches as an environmental sensitive habitat area (ESHA)." The Coastal Commission has specifically reviewed and commented on the WRA study and concluded that the proposed development is located within ESHA. The Planning Commission decision ignores these findings and violates the LCP in approving development that would impact dunes in ESHA.

**F. Shoreline Protection**

The Marin LCP, in addition to the California Coastal Act, prohibits shoreline protection devices for new development. The plans include large concrete retaining walls and Murray Engineering initial geotechnical study finds that the home will likely require rammed piers to reduce the potential for liquefaction-induced ground failure to protect the home and septic system. Both the concrete walls and the deep piers are in violation of the LCP and the Coastal Act, and accordingly the permit application cannot be approved.

**G. Impact on Neighboring Properties**

The prior home on this property was 450 square feet. The current application is brand new construction of nearly 1300 square feet of proposed development. The plans not only do not comport with the traditional smaller cottage / cabin type homes that are in the area and specifically previously on this lot, but this larger scale development also puts the neighboring properties at significant risk of damage. The prior cabin was partially destroyed by flood in the 1982 storms before being completely lost to fire in 1983. The vacant lot typically floods during heavy rains which is understandably why it is in a designated flood zone. Moreover, the CEQA initial study was done only with respect to the septic system in the Eastkoot Flood Plain and does not take into account the shoreline hazards. In addition to the potential septic failure, the combination of the Eastkoot Creek flood plain with the Coastal Flooding dangers creates danger that flooding would wash the development into and destroy existing homes and compromise the safety of residents and members of the general public.

**H. Denying the Permit Does Not Result in a Constitutional Takings**

First, there has been no showing of any substantial investment commensurate with reasonable investment-backed expectations for the site. *McAllister v. California Coastal Commission* (2008) 169 Cal.App. 4<sup>th</sup> 912, 940. Prior to the original submission by applicant in 2016 of the proposed development, the owners received the July 28, 2015, Notice that development was strictly prohibited in the AO floodplain which further confirms that the owners have been fully aware that re-development of their lot was prohibited. Any expense they have spent was not in reliance on the right to develop.

Second, there has been no physical invasion of the property by the government, nor has the applicant established that the denial of the permit "would deny them *all* economically beneficial or productive use of their land. *Linstrom v. California Coastal Commission* (2019) 40 Cal.App.5<sup>th</sup> 73, 106. Restricting the owner to only resource dependent use of the lot would not be inconsistent with the use during the last almost forty years.

**I. The Project was approved without an Approved Septic System**

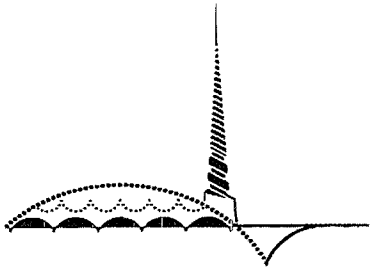
The applicant applied for a septic system permit and variance, but the permit expired. Despite this, the County Planning Commission approved the project without a valid septic system. IP §22.70.070 requires the applicant to show the project conforms to Marin County Local Coastal Program. §22.64.160(A) provide an application utilizing a private sewage disposal system should only be approved if the system is approved by the environmental health service division of the community development agency or other authorities and complies with all requirements for individual septic disposal system by the regional water quality control board. Because the septic system is not approved the required finding cannot be made. The septic system is integral to the project, the Mitigated Negative Declaration, and the takings analysis.

**J. The Planning Commission Denied the Project at the hearing on July 31, 2023, and did not have authority to reconsider or approve the project on August 14, 2023, or approve the project piecemeal and revisit the project on August 28, 2023.**

The project could not be reconsidered after the Planning Commission denied it on July 31, 2023. The piecemeal consideration of the project on August 14, 2023, and August 28, 2023, violates the denial and the procedures for project approval adopted by Marin County and State Law.

**K. Project did not comply with CEQA**

Planning Commission did not require a full CEQA review of the project, instead relying on the mitigated negative declaration done by the Stinson Beach Water and Sewer District for the septic system, which review was old and stale and for an expired permit. The Commission should have required a full CEQA review given the project location on the environmentally sensitive beach and dunes.



COMMUNITY DEVELOPMENT AGENCY  
**Planning Department**  
3501 Civic Center Drive  
San Rafael, CA 94903  
415-473-6269 T 415-473-7880 F  
marincounty.org/depts/cd/divisions/planning

# Receipt

August 29, 2023

**Applicant:** ELIZABETH BREKHUS    **Project:** Johnson Trust CP APPEAL BOS    **Parcel:** 195-162-49

**PROJECT# P4248**

**Payment #62727**      **Payment Amt:** \$ 1,408.00      **Payment Method:** CHECK      **Pay Date:** 8/29/23      **Recpt. By:** mreed

| Line Items                                  | Fee Amount  | Charge Date | Payer Name        | Amount Paid |
|---|-------------|-------------|-------------------|-------------|
| Appeal - Appeal to the Board of Supervisors | \$ 1,408.00 | 8/29/23     | ELIZABETH BREKHUS | \$ 1,408.00 |

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**Grand Total Payments:**      **\$ 1,408.00**

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