

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. _____

A RESOLUTION DENYING THE GOTTESMAN APPEAL OF THE GOTTESMAN REVOCABLE TRUST ET AL DESIGN REVIEW

111 OAK AVE., Kentfield
ASSESSOR’S PARCEL: 071-152-66

SECTION I: FINDINGS

1. **WHEREAS**, on December 5, 2022, Freddy & Alix Gottesman, on behalf of the owners, Gottesman Revocable Trust Et al and Gottesman Frederick S. /TR/ and Et al, submitted Design Review application to construct a fireplace wall, a pergola, and pool on a site developed with a single-family residence. The property is located at 111 Oak Ave., Kentfield and is further identified as Assessor’s Parcel 071-152-66.

2. **WHEREAS**, on October 16, 2023, the Marin County Planning Division approved the project with conditions including the requirement to eliminate the fireplace wall and pergola from the project.

3. **WHEREAS**, on October 24, 2023, Freddy and Alix Gottesman submitted a timely appeal of the Gottesman Revocable Trust Et al Design Review approval.

4. **WHEREAS**, on January 8, 2024, the Marin County Planning Commission held a duly noticed public hearing to take public testimony and consider the project.

5. **WHEREAS**, the bases of appeal are insufficient to overturn the Planning Division decision, for the reasons discussed below.

A. The appellants assert that the pergola and fireplace wall would be surrounded by very large trees and the trees obstruct the view of the pergola from neighbors on the south and west of the property.

Response:

While there are large trees located to the south, they do not completely obscure the view of where the pergola and fireplace wall are proposed to be constructed, particularly as viewed by the neighbors located to the southwest at 103 and 105 Oak Ave. The proposed development would be located on top of an existing garage that is level with the location of the residence. Views into the yards of 103 and 105 Oak Ave. as well as into the existing residence at 103 Oak Ave. are visible from the area where these improvements are proposed. In addition, the development of structures on top of the garage would loom over the southern side of the property. The garage encroaches into the minimum front yard setback along the property line and as such, any development proposed on top of the garage would be visible over the fence and be in close proximity to the fence and property lines. Per the Marin County Code and Single-Family Design Guidelines (C-1.3), site development shall not interfere with privacy on adjoining lots. Additionally, per the Marin County Code (22.16.030.D.1) and Single-Family Design Guidelines (D-1.5) hillside development should not stand out prominently. By

locating the structures on top of the existing garage within required setbacks, privacy on adjoining lots would be eliminated and the structures would be a prominent visual feature.

- B. The appellants assert that their neighbors have had opportunities to comment on the project and have not objected. They state their neighbor from 103 Oak Ave., Bob DeGraph attended the KPAB and provided public comment in support of the project.

Response:

In order to approve a Design Review decision, the proposed development must be consistent with the Countywide Plan, the Marin County Code (Chapter 22.42, Design Review), and the Single-Family Residential Design Guidelines. As discussed in more detail below due to the excessive height, proximity to property lines and the mass and bulk of the proposed improvements, the proposed pergola and fireplace wall would conflict with the required findings.

- C. The appellants assert that the front of the yard functions as a backyard because it is a flag shaped lot and that KPAB supported the project.

Response:

Since the site is considered a “flag lot”, the front setback is determined by measuring the nearest point of the wall of a structure to the point where the access strip meets the bulk of the lot along a continuous line, establishing a setback line parallel to it (MCC Section 22.20.090.B.1.a). A flag lot is defined as a lot having access from the building site to a public street by means of private right-of-way strip that is owned in fee or by means of an access easement (MCC Section 22.130.L under the definition for “Lot”). Per MCC Section 22.130.Y, Yard is defined as an area between a lot line and a setback, unobstructed and unoccupied from the ground upward, except for projections permitted by this Development Code. A front yard is further defined as an area extending across the full width of the lot between the front lot line and the nearest line of the building. As this is a flag lot, the lot line in question is the front lot line and the area between that lot line and the residence is defined as the front yard. While the site is steeply sloped at the rear of the residence, there are areas on this property, particularly on the side yards, that allow for the development of detached accessory structures without encroaching into the minimum required setbacks or exceeding the maximum allowable height of 16 feet. Those areas also provide more adequate screening and privacy between adjacent neighbors.

- D. The appellants assert that the structure appears “tall on paper” and the topography of the lot and the presence of the garage make the overall height minimal. They state the height of the pergola and fireplace wall would only be an additional 9 feet on top of the garage, one foot lower than the existing basketball hoop and 10 to 12 feet lower than the residence.

Response:

Pursuant to Development Code Section 22.16.030.I.b, the maximum allowable height for detached accessory structures is 16 feet. The proposed pergola and fireplace wall would exceed the maximum allowable height by several feet. Due to the excessive height of the proposed structures and the siting of the structures in required setbacks, the design of the proposed structures would conflict with the standards for detached accessory structures.

Development Code Section 22.16.030.I indicates that the height requirement may be waived in the event that unusual circumstances resulting from an irregular site characteristic (e.g., location, lot shape/size, topography) where the waiver would not result in a structure that would impinge significantly on sun and light exposure, views, vistas, and privacy of adjacent properties and rights-of-way. The proposed pergola and fireplace wall do not meet the criteria for a waiver because they would impinge on the privacy enjoyed by adjacent properties due to their visibility, proposed height, and proximity.

Further, while the site is steeply sloped at the rear of the residence, there are areas on this property, particularly in the side yards, that allow for the development of detached accessory structures without encroaching into the minimum required setbacks or exceeding the maximum allowable height of 16 feet. The proposed development would be out of character with the surrounding area as there are no comparable over height accessory structures developed on adjacent properties or within the immediate surrounding neighborhood.

6. **WHEREAS**, the project is Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15303, Class 3 of the CEQA Guidelines.

7. **WHEREAS**, the project is consistent with the goals and policies of the Marin Countywide Plan for the following reasons:

- A. The project is consistent with the CWP woodland preservation policy (BIO-1.3) because the project would not entail the irreplaceable removal of a substantial number of mature, native trees.
- B. The project is consistent with the CWP special-status species protection policy (BIO-2.2) because the subject property does not provide habitat for special-status species of plants or animals.
- C. The project is consistent with the CWP natural transition and connection policies (BIO 2.3 and BIO 2.4) because the project would not substantially alter the margins along riparian corridors, wetlands, baylands, or woodlands.
- D. The project is consistent with the CWP stream and wetland conservation policies (BIO-3.1 and CWP BIO-4.1) because the proposed development would not encroach into any Stream Conservation Areas or Wetland Conservation Areas.
- E. The project is consistent with CWP water quality policies and would not result in substantial soil erosion or discharge of sediments or pollutants into surface runoff (WR-1.3, WR-2.2, WR-2.3) because the grading and drainage improvements would comply with the Marin County standards and best management practices required by the Department of Public Works.
- F. The project is consistent with CWP seismic hazard policies (CWP Policies EH-2.1, EH-2.3, and CD-2.8) because it would be constructed in conformance with County earthquake standards, as verified during review of the Building Permit application and the subject property is not constrained by unusual geotechnical problems, such as existing fault traces.

- G. The project is consistent with CWP fire hazard management policies (EH-4.1, EH-4.2, EH-4.5) because it would meet all fire safety requirements, as verified by the local fire protection district during review of the Building Permit application.
 - H. The project is consistent with CWP aesthetic policies and programs (DES-4.1 and DES-4.e) because it would protect scenic quality and views of ridgelines and the natural environment from adverse impacts related to development.
 - I. As conditioned herein and as described in more detail below, the project is consistent with CWP residential design policies and programs (DES-3.b and DES-4c) because it would fit within the context of the neighborhood, minimize the perception of mass and bulk, and comply with the Single-family Residential Design Guidelines.
8. **WHEREAS**, the project is consistent with the goals and policies of the Kentfield/Greenbrae Community Plan for the following reasons:
- A. The project would meet all height and setback standards identified in the Conservation and Development Standards as conditioned herein.
 - B. The project would meet all access and parking standards, as verified by the Department of Public Works during Building Permit review.
 - C. The project would be adequately landscaped in conformance with Community Appearance and Amenities standards.
9. **WHEREAS**, the project is consistent with the mandatory findings for Design Review approval (Marin County Code Section 22.42.060).
- A. The proposed development complies with either the Single-family or Multi-family Residential Design Guidelines, as applicable, the characteristics listed in Chapter 22.16 (Discretionary Development Standards) and 22.32.168 (Tidelands), as well as any applicable standards of the special purpose combining districts provided in Chapter 22.14 of this Development Code.**

There are no standards provided in Chapter 22.14 that apply to the project and the development would not occur within a tidelands area. The proposed project is consistent with the Design Guidelines and Discretionary Development Standards because it is designed to avoid adversely affecting natural resources or the character of the local community. The project's consistency with the standards and guidelines most pertinent to the subject property is discussed below.

SITE PREPARATION: Development Standards J.1 through J.6; Design Guidelines A-1.2 through A-1.4

The project is proposed in areas of the site that have already been disturbed and it does not require the removal of any protected or heritage trees. The Building Permit shall be reviewed by the Department of Public Works and shall not have adverse effects in terms of grading or drainage.

BUILDING LOCATION: Development Standards D.1 through D.4; Design Guidelines D-1.6

A portion of the property was previously graded and terraced to create a relatively flat area on the site where the existing residence was constructed. Outdoor lawn areas flank each side of the residence, and an upward sloping hillside remains behind the residence at the rear of the property. An existing detached garage encroaches into the front yard setback and the top at a lower grade than the terraced portion of the property and the top of the garage is level with the terraced area and entrance to the existing residence. Since the existing residence is located at a higher elevation than the garage, it is visible to the adjacent neighbors, particularly those located to the southwest.

The pool is proposed to be constructed in a lawn area to the west of the property. It would encroach into the minimum 10-foot side yard setback; however, it would be shielded by existing vegetation along the western side yard property line. The proposed pergola and fireplace wall would be located within the 25-foot front yard setback on top of the existing garage. The pergola would reach a maximum height of 19 feet, 2 inches above surrounding grade and the fireplace wall would reach a maximum height of 19 feet, 1 inch above surrounding grade. The pergola and fireplace wall would both exceed the allowable maximum height of 16 feet. As such, the structures would be visible to adjacent properties, especially those located to the southwest.

Per Marin County Code (MCC) Section 22.16.030.D.1, structures shall be clustered in the most accessible and least visually prominent way and the prominence of construction shall be screened by existing vegetation, rock outcroppings, or depressions in topography. The area where the pergola and fireplace wall are proposed to be located would be visually prominent and exposed to the southwest and northeast. Due to the visual prominence of the proposed pergola and fireplace wall, the project would conflict with MCC Section 22.16.030.D.4 as there would not be adequate landscaping or buildings shielding the structures to aid in minimizing noise impacts on adjacent neighbors. Therefore, the project would be conditioned to remove the proposed pergola and fireplace wall from the project scope of work to maintain consistency with the requirements of the Marin County Code, and the Single-Family Residential Design Guidelines.

PROJECT DESIGN: Development Standard I.1 and I.2; Design Guideline D-1.7

The proposed pergola and fireplace wall would exceed the maximum allowable height by several feet. While Development Code Section 22.16.030.I indicates that the height requirement may be waived in cases where there are unusual circumstances resulting from an irregular site characteristic (e.g., location, lot shape/size, topography) where the waiver would not result in a structure that would impinge significantly on sun and light exposure, views, vistas, and privacy of adjacent properties and rights-of-way. The proposed project is not consistent with the criteria for a waiver because the proposed structures would impinge upon the privacy of adjacent properties located sited on a lower grade. The combination of the proposed proximity to the southern front and western side yard setbacks and the proposed height would cause the structure to have looming effect over those properties and would increase the visibility of those structures to neighbors and the visibility of neighbors to the property owners when they would inhabit that space.

As mentioned above, the project would be conditioned to eliminate the proposed pergola and fireplace wall from the project scope of work as both structures would exceed the

allowable maximum height above surrounding grade by several feet. Additionally, the project would be conditioned to provide materials, colors, and details for the proposed pool that blend into the surrounding environment unobtrusively to the greatest extent possible.

The proposed pool would not exceed the allowable maximum height of 16 feet above surrounding grade; therefore, it would conform with MCC Section 22.16.030.I.1.b.

MASS AND BULK: Design Guidelines D-1.1 through D-1.5

The proposed pool would reach a maximum height of 2 feet, 6 inches above surrounding grade and be located on a relatively flat portion of the property. Per Single-Family Design Guideline, D-1.5, hillside structures should not stand out prominently when seen from a distance or downhill properties. As mentioned above, the proposed pool would be shielded by landscaping to the west. It would also be shielded by the existing residence to the east, the hillside to the north, and would be setback 36 feet from the southern front property line. Between the low overall height of the structure, the landscaping shielding the structure to the west, and the setback from the southern property line, the pool would not be visually prominent to the adjacent neighbors located at lower elevations.

Single-Family Design Guideline, D-1.5 states that form, mass and profile of hillside structures should visually blend with the hillside setting by taking advantage of existing site features for screening such as tree clusters, depressions in topography, setback hillside plateau areas, and other natural features. The guideline also states that hillside structures should not stand out prominently when seen from a distance or from downhill properties and development should be avoided in highly visible open hillside areas wherever feasible. The proposed pergola and fireplace wall would be visually prominent to adjacent neighbors due to their proposed overall height and proximity to the southern front property line. There is no screening or other natural features that would aid in minimizing the obtrusiveness of the structures and there appear to be other locations on the site that could accommodate the proposed fireplace wall and pergola in keeping with the Single-Family Design Guidelines. As discussed in more detail above, the project would be conditioned to eliminate the proposed pergola and fireplace wall from the project scope of work.

EXTERIOR LIGHTING: Development Standard G; Design Guideline C-1.11

A standard condition of approval will be imposed into this determination to ensure that all the exterior lighting incorporated into the Building Permit are unobtrusive and downward facing.

LANDSCAPING AND VEGETATION REMOVAL: Development Standard F; Design Guideline A-1.1

As mentioned above, no significant tree removal or vegetation removal has been proposed as part of this project.

ACCESS: Development standard C; Design Guidelines A-1.5

No change to access from the road right-of-way is entailed in the scope of the project.

NEIGHBORHOOD COMPATABILITY: Design Guidelines B-1.1, C-1.1 through C-1.3, C-1.7

Per Single-Family Design Guidelines, C-1.3, new hillside residential development shall be sited to as to minimize interference with privacy between adjacent properties. As mentioned above and as conditioned herein, the proposed pool would not be visually prominent to adjacent properties so it would not interfere with the privacy of adjacent neighbors. Therefore, the proposed project as conditioned herein would be consistent with the key design principles of the Single-Family Residential Design Guidelines in that the project maintains adequate space, light, and a sense of openness from surrounding residences in the neighborhood.

B. The proposed development provides architectural design, massing, materials, and scale that are compatible with the site surroundings and the community.

As mentioned above, the project will be conditioned to eliminate the proposed pergola and fireplace wall from the scope of the project. Therefore, the project would be proportional to the mass and bulk of the properties within the surrounding area relative to the lot size with implementation of the special conditions below.

C. The proposed development results in site layout and design that will not eliminate significant sun and light exposure or result in light pollution and glare; will not eliminate primary views and vistas; and will not eliminate privacy enjoyed on adjacent properties.

As conditioned herein, the proposed development will not obstruct light or intrude upon the privacy of the adjacent neighbors.

D. The proposed development will not adversely affect and will enhance where appropriate those rights-of-way, streetscapes, and pathways for circulation passing through, fronting on, or leading to the property.

The project site is located on private property. Therefore, the project would not encroach onto adjoining private properties, public lands, public easements, trails, and rights-of-way. Additionally, the project will not encroach into the recorded scenic easement located on the subject property.

E. The proposed development will provide appropriate separation between buildings, retain healthy native vegetation and other natural features, and be adequately landscaped consistent with fire safety requirements.

The project would maintain adequate separation between buildings for the purposes of fire protections. No vegetation removal, tree removal, or new landscaping is proposed as part of this project. While grading is proposed to submerge the proposed pool, the pool would be located on a portion of the site that was previously disturbed.

SECTION II: ACTION

NOW THEREFORE, BE IT RESOLVED that the project described in condition of approval 1 is authorized by the Marin County Planning Commission and is subject to the conditions of project approval.

This decision certifies the proposed project's conformance with the requirements of the Marin County Development Code and in no way affects the requirements of any other County, State, Federal, or local agency that regulates development. In addition to a Building Permit, additional permits and/or approvals may be required from the Department of Public Works, the appropriate Fire Protection Agency, the Environmental Health Services Division, water and sewer providers, Federal and State agencies.

SECTION III: CONDITIONS OF PROJECT APPROVAL

NOW, THEREFORE, BE IT RESOLVED that the Marin County Planning Commission hereby approves the Gottesman Revocable Trust Et al Design Review subject to the conditions listed below.

CDA-Planning Division

1. This Design Review authorizes the construction of a new pool on a developed lot in Kentfield. The approved development shall not increase the existing floor area ratio of 41 percent on the 10,000 square foot lot. The approved pool shall reach a maximum height of 2 feet, 6 inches above surrounding grade and the exterior walls shall have the following setbacks: 36 feet from the southern front property line; 8 feet from the western side property line; over 100 feet from the eastern side property line; and 34 feet from the northern rear property line. Various site improvements are also entailed in the approved development, including a new 4-foot-high retaining wall and new paving.
2. Plans submitted for a Building Permit shall substantially conform to plans identified as Exhibit A, entitled “,” consisting of 27 sheets prepared by Designer Nick Romanenko on behalf of Constructo, received in final form on July 21, 2023, and on file with the Marin County Community Development Agency, except as modified by the conditions listed herein.

BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall modify the project to conform to the following requirements:

- a. The plans submitted for the building permit shall demonstrate that the pergola and fireplace wall have been eliminated from the top of the detached accessory structure (garage).
 - b. Provide correct project information in the project data table including the correct zoning district, setbacks, total (actual) lot area, total floor area (FAR), and maximum height of new development.
 - c. Provide an accurate scale on each page of the plan set.
 - d. Provide materials, colors, and details for the approved pool that are subdued and blend with the surrounding environment.
3. The project shall conform to the Planning Division's "Uniformly Applied Conditions 2023" with respect to all of the standard conditions of approval and the following special conditions: 2, 3.

SECTION IV: VESTING

NOW THEREFORE, BE IT RESOLVED that unless conditions of approval establish a different time limit or an extension to vest has been granted, any permit or entitlement not vested within three years of the date of the approval shall expire and become void. The permit shall not be deemed vested until the permit holder has actually obtained any required Building Permit or other construction permit and has substantially completed improvements in accordance with the approved permits or has actually commenced the allowed use on the subject property, in compliance with the conditions of approval.

SECTION V: APPEAL RIGHTS

NOW, THEREFORE, BE IT RESOLVED that this decision is final unless appealed to the Marin County Board of Supervisors. A Petition for Appeal and the required fee must be submitted in the Community Development Agency, Planning Division, Room 308, Civic Center, San Rafael, no later than eight business days from the date of this decision.

SECTION VI: VOTE

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin held on this 8th day of January 2024 by the following vote:

AYES: COMMISSIONERS

NOES:

ABSENT:

Margot Biehle, CHAIR
MARIN COUNTY PLANNING COMMISSION

Attest:

Sindy Palencia
Planning Commission Recording Secretary