

MARIN COUNTY DEPUTY ZONING ADMINISTRATOR MINUTES
Marin County Civic Center, Room #328 - San Rafael
MEETING – May 1, 2008

Hearing Officer Johanna Patri, AICP
 Jeremy Tejrjian, AICP

Staff Present: Lorene Jackson, Assistant Planner
 Christine Gimmler, Senior Planner

Joyce Evans, Recording Secretary

Convened at 9:05 A.M.
Adjourned at 9:13 A.M.
Reconvened at 9:15 A.M.
Adjourned at 10:26 A.M

May 1, 2008

Marin County Community Development Agency

Alex Hinds, Director

NOTICE OF DECISION

Applicant's Name: David Grega and Richard Hopper

Application (type and number): Use Permit (UP 08-18)

Assessor's Parcel Number: 186-072-01

Project Location: 222 Bayview Drive, San Rafael

For inquiries, please contact: Lorene Jackson, Assistant Planner

Decision Date: May 1, 2008

DETERMINATION: Approved with Conditions

Minutes of the May 1, 2008, Deputy Zoning Administrator's hearing are attached specifying action and applicable conditions 1-10.

Marin County Community Development Agency

Jeremy Tejrjian, AICP
Hearing Officer

C1. USE PERMIT (UP 08-17): DAVID GREGA AND RICHARD HOPPER

A proposal to consider the Grega/Hopper Use Permit to build a 125 square foot addition on the lower level of a detached accessory structure, below the existing garage. The proposed addition would be located 46 feet from the southern front property line along Bay View Drive and 34 feet from the west side property line. The garage and addition would reach a maximum height of 24 feet above grade. Applicant is also requesting Design Review Clearance to construct a wooden 28-square foot arbor that will attain a height of 10.1 feet. The arbor would be located approximately 29 feet from southern front property line, encroaching 1 foot into the 30-foot setback. The subject property is located at **222 Bayview Dr, San Rafael**, and is further identified as **Assessor's Parcel 186-072-01**.

In response to the Hearing Officer, staff acknowledged an additional comment letter in support of the project from a neighbor. Staff explained that the arbor is less than one foot from the front setback and a little over 10 feet tall and will therefore require a Design Review Clearance.

The public testimony portion of the hearing was opened.

Alan Schaevitz, neighbor, spoke in favor of the project.

The public testimony portion of the hearing was closed.

The Hearing Officer approved the project with the following modifications to the resolution:

- SECTION I: FINDINGS, add to the project Description after24 feet above grade: "The garage and addition shall meet the maximum height of 24 feet above grade. The arbor is less than one foot from the front setback and approximately 10 feet tall."
- SECTION I: FINDINGS, add Design Review Findings:
 - A. The proposed project would be consistent with the principally permitted use authorized by the governing zoning district.
 - B. The proposed project would be consistent with the policies and regulations contained in the Marin Countywide Plan, all pertinent specific and community plans, and the Marin County Zoning Code.
 - C. The proposed project would not result in substantial ground disturbance or vegetation removal.
 - D. The proposed project would be compatible with the character of the local community.
- Condition of Approval #1, add: "This Use Permit and Design Review Clearance approval allows the construction of a 125 square foot addition on the lower level of the detached accessory structure below the existing garage. The approved addition shall be located 46 feet from the southern front property line and 34 feet from the western side property line. The garage and addition shall meet the maximum height of 24 feet above grade. The arbor is less than one foot into the front setback and a little over 10 feet tall."

The applicant was present and had no questions for staff.

The Hearing Officer concurred with staff's analysis and approved the Grega/Hopper Use Permit and Design Review Clearance based on the Findings and subject to the Conditions in the Resolution as modified.

The Hearing Officer informed all parties of interest that this action may be appealed to the Marin County Planning Commission within ten (10) working days.

MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

RESOLUTION NO. 08-122

A RESOLUTION APPROVING THE GREGA USE PERMIT AND DESIGN REVIEW CLEARANCE
222 BAYVIEW DRIVE, SAN RAFAEL
ASSESSOR'S PARCEL 186-072-01

SECTION I: FINDINGS

- I. WHEREAS David Grega has submitted a Use Permit application to construct a 125 square foot addition on the lower level of a detached accessory structure, below the existing garage. The proposed addition would be located 46 feet from the southern front property line along Bay View Drive and 34 feet from the west side property line. The garage and addition would reach a maximum height of 24 feet above grade. Applicant is also requesting Design Review Clearance to construct a wooden 28-square foot arbor that will attain a height of 10.1 feet. The arbor would be located approximately 29 feet from southern front property line, encroaching 1 foot into the 30-foot setback. **The subject property is located at 222 Bayview Drive, San Rafael, and is further identified as Assessor's Parcel 186-072-01.**
- II. WHEREAS the Marin County Deputy Zoning Administrator held a duly-noticed public hearing May 1, 2008, to consider the merits of the project and hear testimony in favor of and in opposition to the project.
- III. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is Categorically Exempt from the requirements of the California Environmental Quality Act, per Section 15303, Class 3 of the CEQA Guidelines because it entails minor modification to an accessory structure on a residentially developed property that would not result in potentially significant impacts to the environment.
- IV. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the Marin Countywide Plan for the following reasons:
 - A. The project would be consistent with the SF3 (Single-family Residential, one unit per one to five acre density) land use designation;
 - B. The project would comply with Marin County standards for flood control, geotechnical engineering, and seismic safety, and include improvements to protect lives and property from hazard;
 - C. The project would comply with governing development standards related to roadway construction, parking, grading, drainage, flood control and utility improvements as verified by the Department of Public Works;
 - D. The project would not cause significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation, or other services; and
 - E. The project would minimize soil disturbance and maximize the retention of natural vegetation.

V. WHEREAS the Marin County Deputy Zoning Administrator finds that the Mandatory Findings for a Use Permit per Section 22.48.040 of the Marin County Development Code can be made as described below.

A. The proposed use is allowed, as a conditional use, within the subject zoning district and complies with all of the applicable provisions of this Chapter.

The existing garage is a principally permitted accessory use within the governing R-1:B-4 zoning district. Pursuant to Marin County Development Code Section 22.20.060(F.2), a detached accessory structure in this zoning district may exceed the 15 foot height limit with Use Permit approval, provided the structure does not exceed a 30% maximum floor area ratio (FAR). The project will result in a FAR of 4.8%.

B. The proposed use is consistent with the Countywide Plan and applicable Community Plans.

Please see Section IV above.

C. The approval of the Use Permit for the proposed use is in compliance with the California Environmental Quality Act (CEQA).

Please see Section III above.

D. The design, location, size, and operating characteristics of the proposed use are compatible with the existing and future land uses in the vicinity.

The proposed project will not raise the roofline of the existing garage and will result in a structure of a height, mass, and bulk proportionately appropriate to the site. The project will not substantially enlarge the existing development footprint on the property or exceed the required floor area ratio for the governing zoning district.

E. The proposed use would not impair the architectural integrity and character of the zoning district in which it is to be located.

The exterior walls of the office will match the wood shingles of the existing garage, which is architecturally compatible with the single-family residence on the property and consistent with the residential character of the neighborhood.

F. Granting the Use Permit will not be detrimental to the public interest, health, safety, convenience, or welfare of the County, or injurious to the property or improvements in the vicinity and zoning district in which the real property is located.

The proposed project will be required to meet Uniform Building Code standards and, therefore, would be constructed in a manner that would be structurally safe, and would preclude potential injury to improvements on the subject property and neighboring properties. Furthermore, the project will not require any tree removal, nor obstruct any adjacent neighbor's views, air, light, or privacy.

VI. Whereas, the Marin County Deputy Zoning Administrator finds that the Mandatory Findings for a Design Review Clearance per Section 22.42.020(B) of the Marin County Development Code can

be made. The proposed arbor is minor and incidental to the existing use on the property and within the intent and objectives for Design Review, based on the following criteria:

- E. The proposed project would be consistent with the principally permitted use authorized by the governing zoning district.
- F. The proposed project would be consistent with the policies and regulations contained in the Marin Countywide Plan, all pertinent specific and community plans, and the Marin County Zoning Code.
- G. The proposed project would not result in substantial ground disturbance or vegetation removal.
- H. The proposed project would be compatible with the character of the local community.

SECTION II: CONDITIONS OF PROJECT APPROVAL

NOW, THEREFORE, BE IT RESOLVED that the Marin County Deputy Zoning Administrator hereby approves the Grega and Hopper Use Permit (UP 08-18) subject to the following conditions:

Marin County Community Development Agency, Planning Division

1. Pursuant to Chapter 22.48 (Use Permits) of the Marin County Development Code, the Grega and Hopper Use Permit allows the construction of a 125 square foot addition on the lower level of a detached accessory structure, below the existing garage. The approved addition shall be located 46 feet from the southern front property line and 34 feet from the western side property line. The garage and addition would reach a maximum height of 24 feet above grade. The subject property is located at 222 Bayview Drive, San Rafael, and is further identified as Assessor's Parcel 186-072-01.
2. Plans submitted for building permits shall substantially conform to plans identified as Exhibit "A"; 222 Bayview Drive, San Rafael, prepared by Douglas Osmont Architect, received February 28, 2008, and on file in the Marin County Community Development Agency, Planning Division.
3. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall revise the site plan or other first sheet of the office and job site copies of the Building Permit plans to list these conditions of approval as notes.
4. The exterior building materials and colors shall match those of the existing residence. All flashing, metalwork, and trim shall be treated or painted an appropriately subdued, non-reflective color.
5. All utility connections and extensions serving the project shall be installed underground.
6. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall revise the plans to depict the location and type of all exterior lighting for review and approval of the Director. Exterior lighting shall be permitted for safety purposes only, must consist of low wattage fixtures, and must be directed downward and/or shielded so as not to cast glare on nearby properties.
7. Except for such non-noise generating activities, including but not limited to, painting, sanding, and sweeping, construction activity is only permitted between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday, and 9:00 a.m. and 4:00 p.m. on Saturday. No construction shall be permitted on Sundays or the following holidays (New Year's Day, Martin Luther King Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving, Christmas). If the holiday falls on a weekend, the prohibition on noise-generating construction

activities shall apply to the ensuing weekday during which the holiday is observed. At the applicant's request, the Community Development Agency staff may administratively authorize minor modifications to these hours of construction.

8. The applicant shall be responsible for ensuring that all construction vehicles, equipment, and materials are stored on-site and off the street so that pedestrians and vehicles can pass safely at all times.
9. Any changes or additions to the project shall be submitted to the Community Development Agency in writing for review and approval before the contemplated modifications may be initiated.
10. The applicant/owner hereby agrees to defend, indemnify, and hold harmless the County of Marin and its agents, officers, attorneys, or employees from any claim, action, or proceeding, against the County or its agents, officers, attorneys, or employees, to attack, set aside, void, or annul approval, for which action is brought within the applicable statute of limitations.

SECTION III: VESTING, PERMIT DURATION, AND APPEAL RIGHTS

NOW, THEREFORE BE IT FURTHER RESOLVED that the applicant must vest this Use Permit and Design Review Clearance approval by complying with all conditions of approval, obtaining Building Permits for the approved work, and substantially completing approved work before May 1, 2010, or all rights granted in this approval shall lapse unless the applicant applies for an extension at least 30 days before the expiration date above and the Community Development Director approves it. An extension of up to four years may be granted for cause pursuant to Section 22.56.050 of the Marin County Code. Upon completion of the requirements to vest this application, the Use Permit shall remain valid in perpetuity as long as all the terms of this permit are maintained.

NOW, THEREFORE BE IT FURTHER RESOLVED that this decision is final unless appealed to the Planning Commission. A Petition for Appeal and a \$600.00 filing fee must be submitted in the Community Development Agency - Planning Division, Room 308, Civic Center, San Rafael, no later than **4:00 p.m. on May 15, 2008.**

SECTION IV: ACTION

PASSED AND ADOPTED at a regular meeting of the Deputy Zoning Administrator of the County of Marin, State of California, on the 1st day of May 2008.

JEREMY TEJIRIAN
MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

Attest:

Joyce Evans
DZA Secretary

C2. USE PERMIT (UP 08-10) AND DESIGN REVIEW (DR 08-32): ROSENBERG (METRO PCS)

The owner is requesting approval to allow installation and operation of a Metro PCS wireless telecommunications facility on the property at 100 Phillip Terrace, Novato. The project includes the co-location of two 56-inch long panel antennas mounted at a height of 40 feet on an existing 42-foot tall lattice tower which currently supports ham radio equipment. Also proposed is the installation of two associated equipment cabinets enclosed within a 150-square foot equipment area sited adjacent to the existing tower. As part of the project, an existing wooden ham radio pole located on the eastern portion of the property would be removed. The subject property is located at **100 Phillip Terrace, Novato**, and is further identified as **Assessor's Parcel 157-091-45**.

In response to the Hearing Officer, staff stated that no additional correspondence had been received since the issuance of the staff report.

The public testimony portion of the hearing was opened.

Cheryl Strugnell, Greg Hodges, Rick Miyoshi, Sylvia Miyoshi, and Carrie Ann Colton, neighbors, spoke regarding the following concerns:

- The number of antenna's installed and visible on the location;
- County previously granting a one year Use Permit that was not reviewed for five years;
- Installing without notification to the neighbors, ham radio poles for commercial wireless facility co-location;
- Lack of outreach to all of the neighbors by the applicant;
- Permanent dismantling of the existing ham radio pole, fencing and electrical boxes;
- Possible loss of property values;
- Inconsistencies with the Blackpoint Community Plan, which does not mention cell towers;
- Assurance that street and road repairs used for installation of any facility will be done after installation; and
- Alternative site locations were not adequately addressed and the neighbors did not have an opportunity to review the Alternative Site Analysis.

In response to the Hearing Officer, John Ownes, Metro/PCS spoke regarding the three applications considered for the site and why they chose the site in question after reviewing the alternative sites analysis. The alternative with the fewest impacts is the current proposal to co-locate on the existing 40 foot ham tower, which would minimize the visual impacts and the number of antennas on the site. He described how Metro/PCS did their community outreach by asking the neighbors what their major concerns were and acting on their ideas. The Rosenberg access road will be used for the three day build.

Jennifer Estes, president of Peacock Associates, spoke stating that an alternative analysis was conducted but a better site was not found. All communications will be moved to the west side of the property and the wooden ham radio pole would be removed.

In response to the Hearing Officer, Kenneth Rosenberg, applicant, stated that there are three ham radio operators in his family and the Manzanita site is next to his house. He gave a brief history of the development of ham radio and mobile phone sites built on his property since 1965. He explained the importance of ham radios in Marin County for emergencies. The second ham radio pole is linked to the Hamilton facility for the emergency link.

Greg Hodges expressed concerns that someone can erect a 42 foot ham radio tower with only a building permit, and then propose it as a co-location site for commercial use.

Jennifer Estes responded that Peacock Associates was not aware that a lattice tower had been built until after construction. Several of the neighbors stated that it was better to co-locate on the existing Sprint/Nextel pole on the Rosenberg property even if it required a height increase.

John Owens, Metro/PCS state that two antennas will be removed from the 40 foot lattice tower and it would look identical to the way it looks today.

Cheryl Strugnell, neighbor, responded that Peacock and Associates did an excellent job on community outreach to find a solution.

The Hearing Officer noted for the administrative record that ham radio towers are subject to Building Permit approval only and do not require public noticing. However, she can impose a Condition of Approval requiring removal of the existing ham radio pole.

Carrie Ann Colton, neighbor, stated that the alternative site analysis was completed before the ham radio tower was built.

Greg Hodges would like to see all the facilities on one pole because two poles will give the applicant more opportunity to expand.

The public testimony portion of the hearing was closed.

Staff explained that a co-location application usually requires only Design Review. However, because the pole was erected as a ham radio tower, a full Use Permit and Design Review was required. The alternative site analysis was completed and is in the file for review.

The Hearing Officer stated that her opinion is that staff has addressed the project as currently proposed. The pole and previously proposed location on Manzanita was not desirable and was denied. There are three options to be considered:

- Should this facility exist at all on the property;
- Should the facility be co-located on the ham radio tower, with restrictions on further expansion;
- Should it be co-located on the existing telecommunications facility?

In response to the Hearing Officer, staff stated that the original Metro PCS proposal went to the Planning Commission where it was approved, and was appealed to the Board of Supervisors where it was denied.

The Hearing Officer feels that there are enough policy issues and neighborhood concerns regarding location of the facility, the process, and opportunity for the neighboring property owners to review the alternative sites analysis to refer the item to the Planning Commission.

The Hearing Officer made the following recommendations to staff:

- Hold a community meeting with the neighbors to determine if there is a consensus as to the best or most accepted location for the Metro PCS telecommunications facility;
- Check with County Counsel to determine if the County has the right to limit the number of ham radio towers permitted on a single property;
- Put in place a new Condition of Approval that before issuance of a Building Permit for the new facility, the existing tower on Manzanita must be removed;
- Add to the project description the road that will be used for the construction for this facility;
- Distribute the Alternative Sites Analysis to community members and neighboring property owners;
- Incorporate a Condition of Approval to monitor the health of the existing oak trees and to assure that they are not damaged during construction;
- Include an arborist report to assure the health of the trees and long term maintenance during construction, and note the trees that need to be replaced; and
- Note any landscaping needed to screen the structures and fencing and provide a landscape plan.

The Hearing Officer referred the Rosenberg (Metro PCS) Use Permit and Design Review to the Planning Commission for a date uncertain.

In response to the hearing Office, John Ownens, representing Metro PCS concurred with all of the hearing Officers recommendations and to the continuance to the Planning Commission at a future date to be determined.