



**MARIN COUNTY
COMMUNITY DEVELOPMENT AGENCY**

ALEX HINDS, DIRECTOR

**STAFF REPORT TO THE DEPUTY ZONING ADMINISTRATOR
JOLLEY VARIANCE AND DESIGN REVIEW**

Item No:	H1	Application No:	VR 08-18, DC 08-86
Applicant:	Scott Jolley	Owner:	Scott Jolley
Property Address:	361 Woodside Ave, Mill Valley	Assessor's Parcel:	050-163-02
Hearing Date:	August 14, 2008	Planner:	Scott Greeley

RECOMMENDATION:	Denial
APPEAL PERIOD:	August 28, 2008
LAST DATE FOR ACTION:	August 15, 2008

PROJECT DESCRIPTION:

The owner proposes to develop a 720 square foot addition to the lower level of a 2,398 square foot residence. The total floor area ratio of 3,118 square feet would result in a floor area ratio of 43 percent. The addition would be located in an existing understory area, and therefore would not increase the height or the building footprint of the existing residence. The exterior walls of the addition would have the following minimum setbacks: 22 feet 10 inches from the northerly front property line; 10 feet three inches from the eastern side property line; 19 feet from the western side property line, and; 19 feet 7 inches from the southern rear property line.

Variance is required because the addition would exceed the maximum 30 percent floor area ratio and would not meet the 25-foot front required by the governing R-1 zoning district. The addition would be used as the location for a second unit. Since the subject property does not meet the 7,500 square foot minimum lot size required by the governing zoning district, Design Review Clearance as well as Variance approval is necessary to permit the location of a second unit in the addition.

GENERAL INFORMATION:

Countywide Plan:	SF6 (Single-family Residential, less than 10,000 square feet minimum lot size)
Zoning:	R-1 (Residential, Single-Family, 7,500 square foot minimum lot size)
Community Plan Area:	Tamalpais
Lot size:	7,147 square feet
Adjacent Land Uses:	Single-family Residential
Vegetation:	Suburban grasses and native trees

Topography and Slope: Moderate to steeply sloping
Environmental Hazards: None

ENVIRONMENTAL REVIEW:

Denial of the proposed second unit is not subject to the requirements of the California Environmental Quality Act pursuant to Section 15270.

PUBLIC NOTICE:

The Community Development Agency has provided public notice identifying the applicant, describing the project and its location, and the date of the public hearing. This notice has been mailed to all property owners within 300 feet of the subject property. The Community Development Agency has received no adverse comments from the public regarding this project.

PLAN CONSISTENCY:

The project is subject to policies of the Marin Countywide Plan, the Tamalpais Community Plan, the Marin County Single-family Residential Design Guidelines, and the regulations of the Marin County Code, because it entails the construction of an addition on a residentially developed property. The project is inconsistent with the mandatory findings for Variance approval, as discussed in the attached Resolution.

ANALYSIS:

Background

The existing primary residence was originally applied for in 1988 (Building Permit #49037), with revisions and a new permit applied for in 1989 (Building Permit #44714). The Assessor's Office has record of the house being built in 1990. The total floor area shown on the Building Permit Plans was 1,866 square feet, but the floor plans accurately show the existing residence. However, the current application indicates that the correct floor area for the existing residence is 2,398 square feet. It appears that the floor area calculations indicated on the Building Permit were inaccurate because there is a 532 square foot discrepancy between the floor area calculations shown on the original Building Permit plans and the floor area calculations determined to be accurate in this application. Since the residence was constructed according to the approved design on the Building Permit, staff has determined that the existing residence is legal non-conforming with respect to floor area ratio.

In order to be built, the residence required a large understory due to moderate to steeply downward sloping conditions which affects the property. Marin County Code (MCC), Section 22.130.030, the "Floor Area" definition, includes "understories that can be easily converted to living area, include unconditioned, and unimproved spaces that yield a minimum clear room area of 7 feet by 7 feet and a minimum ceiling height of 7 ½ feet". This definition was set forth in Development Code update, which was adopted in 2003. This definition is based on the Tamalpais Community Plan's definition of floor area, which was adopted in 1992. A portion of the existing, unimproved, underfloor area meets this definition of floor area. Therefore, staff has determined that this unimproved area exists as legal non-conforming floor area. The owner proposes to legalize this floor area and improve it as an addition, which requires

Variance approval. In the absence of a Variance, the owner could continue to use this area for storage, but would not be allowed to improve it as living area.

Development Issues

Staff recommends denying the Variance because there are no special physical circumstances pertaining to the property that justify allowing a 47.49 percent floor area ratio. The only special physical circumstance that can justify granting a floor area ratio Variance is a substandard lot size because no other circumstance is directly related to floor area ratio. The subject property is 7,147 square feet in area, which is 353 square feet under the 7,500 square foot minimum lot area required by the governing R-1 zoning district. In some cases, it may be possible to grant a Variance to allow the development on a substandard lot to have a comparable floor area to development on lots that meet the minimum lot area. Therefore, it may be possible to justify the development of a total of 2,250 square feet of floor area in an R-1 zoning district. The proposed project would considerably exceed what would normally be allowed on a lot in the R-1 zoning district that complies with the minimum lot size. Therefore, the project is inconsistent with the special physical circumstances finding that is required for Variance approval.

With respect to the second unit, the Second Unit Permit is a ministerial permit and the project qualifies for a Design Review Clearance determination because it would not increase the footprint of the existing residence. Second Unit Permit findings are not included in the attached Resolution because final action on the second unit will not be taken until after the appeal period of the final decision on the Variance and Design Review Clearance applications has been completed.

RECOMMENDATION:

Staff recommends that the Deputy Zoning Administrator review the administrative record, conduct a public hearing, and deny the Jolley Variance Design Review Clearance based on the findings in the recommended Resolution.

Attachments:

1. Recommended Resolution denying the project
2. Location Map
3. Assessor's Parcel Maps
4. Project Plans
5. Tamalpais CSD comments, received 4-25-08
6. Tamalpais DRB comments, received 4-16-08
7. DPW comments, received 4-11-08
8. Southern Marin Fire Protection District comments, received 4-12-08
9. MMWD comments, received 4-15-08

MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

RESOLUTION NO. 08-____

A RESOLUTION DENYING THE SCOTT JOLLEY SECOND UNIT PERMIT, VARIANCE, AND DESIGN REVIEW
361 WOODSIDE AVE, MILL VALLEY
ASSESSOR'S PARCEL 050-163-02

SECTION I: FINDINGS

- I. WHEREAS, the owner proposes to develop a 720 square foot addition to the lower level of a 2,398 square foot residence. The total floor area ratio of 3,118 square feet would result in a floor area ratio of 43 percent. The addition would be located in an existing understory area, and therefore would not increase the height or the building footprint of the existing residence. The exterior walls of the addition would have the following minimum setbacks: 22 feet 10 inches from the northerly front property line; 10 feet three inches from the eastern side property line; 19 feet from the western side property line, and; 44 feet from the southern rear property line. **The subject property is located at 361 Woodside Ave, Mill Valley, and is further identified as Assessor's Parcel 050-163-02.**
- II. WHEREAS, the Marin County Deputy Zoning Administrator held a duly-noticed public hearing on August 14th, 2008, to consider the merits of the project and hear testimony in favor of and in opposition to the project.
- III. WHEREAS, denial of the proposed second residence is not subject to the requirements of the California Environmental Quality Act pursuant to Section 15270.
- IV. WHEREAS, the Marin County Deputy Zoning Administrator finds that the proposed project is inconsistent with the Marin Countywide Plan and the County Code due to it exceeding County policy and regulations with regards to development standards for the SF6 General Plan designation and the R-1 zoning district of the Marin County Development Code.
- V. WHEREAS, the Marin County Deputy Zoning Administrator finds that the proposed project is not consistent with all of the mandatory findings to approve a Variance (Marin County Code Section 22.54.050).
 - A. **There are special circumstances applicable to the property (e.g. location, shape, size, surroundings, or topography), so that the strict application of this Development Code denies the property owner privileges enjoyed by other property owners in the vicinity and under identical zoning districts.**

Staff recommends denying the Variance because there are no special physical circumstances pertaining to the property that justify allowing a 47.49 percent floor area ratio. The only special physical circumstance that can justify granting a floor area ratio Variance is a substandard lot size because no other circumstance is directly related to floor area ratio. The subject property is 7,147 square feet in area, which is 353 square feet under the 7,500 square foot minimum lot area required by the governing R-1 zoning district. In some cases, it may be possible to grant a Variance to allow the development on a substandard lot to have a comparable floor

area to development on lots that meet the minimum lot area. Therefore, it may be possible to justify the development of a total of 2,250 square feet of floor area in an R-1 zoning district. The proposed project would considerably exceed what would normally be allowed on a lot in the R-1 zoning district that complies with the minimum lot size. Therefore, the project is inconsistent with this finding.

B. That granting the Variance does not allow a use or activity, which is not otherwise expressly authorized by the regulations governing the subject property.

Granting the Variance would not alter the single-family residential use of the subject property. Therefore, the proposed project is consistent with this finding.

C. That granting the Variance does not result in special privileges inconsistent with the limitations upon other properties in the vicinity and zoning district in which the real property is located.

Since there is no special physical circumstance pertaining to the subject property that supports increasing the floor area ratio above 30 percent, granting the Variance would also grant a special privilege to the subject property. Therefore, the project is inconsistent with this finding.

D. That granting the Variance 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 would have no noticeable adverse effects to the character of the surrounding community, because it would occur entirely within the existing residence's understory and will result in no increase in the building's footprint, height, or involve any new physical disturbance to the site. Therefore, the proposed project is consistent with this finding.

VI. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the mandatory findings to approve a Design Review Clearance (Marin County Code Section 22.42.020B), because it would occur entirely within the existing residence's understory and will result in no increase in the building's footprint, height, or involve any new physical disturbance to the site. However, the addition cannot be approved because it is inconsistent with the Mandatory findings for Variance approval.

SECTION II: ACTION

NOW, THEREFORE, BE IT RESOLVED that the Marin County Deputy Zoning Administrator hereby denies the Jolley Variance and Design Review Clearance.

SECTION III: APPEAL RIGHTS

NOW, THEREFORE BE IT RESOLVED that this decision is final unless appealed to the Marin County Planning Commission. A Petition for Appeal and a \$600 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 August 28th, 2008.

SECTION IV: ACTION

ADOPTED at a regular meeting of the Deputy Zoning Administrator of the County of Marin, State of California, on the 14th day of August, 2008.

JOHANNA PATRI
MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

Attest:

Joyce Evans
DZA Secretary