

**MARIN COUNTY DEPUTY ZONING ADMINISTRATOR MINUTES**  
**Marin County Civic Center, Room #328 - San Rafael**  
**MEETING – August 14, 2008**

Hearing Officer        Johanna Patri, AICP

Staff Present:         Scott Greeley, Planner and Johanna Patri, Senior Planner  
Christine Gimmler, Senior Planner

Joyce Evans, Recording Secretary

Convened at 9:04 A.M.  
Adjourned at 10:25 A.M

**August 14, 2008**

# Marin County Community Development Agency

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Alex Hinds, Director

## NOTICE OF DECISION

Applicant's Name: Scott Jolley

Application (type and number): Second Unit (SU 08-36), Variance (VR 08-16)  
and Design Review (DC 08-86)

Assessor's Parcel Number: 050-163-02

Project Location: 361 Woodside Avenue, Mill Valley

For inquiries, please contact: Scott Greeley, Planner

Decision Date: August 14, 2008

**DETERMINATION: Denied**

Minutes of the August 14, 2008, Deputy Zoning Administrator's hearing are attached.

Marin County Community Development Agency

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Johanna Patri, AICP  
Hearing Officer

**9:00 A.M. H1. SECOND UNIT (SU 08-36), VARIANCE (VR 08-18), AND DESIGN REVIEW (DC 08-86):  
SCOTT JOLLEY SG**

A proposal to convert the understory of an existing residence into a second unit. 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. A 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. 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. The subject property is located at **361 Woodside Ave, Mill Valley**, and is further identified as **Assessor's Parcel 050-163-02**.

The Hearing Officer noted for the record that all references in the project description in the Deputy Zoning Administrator Agenda to the Jolley Second Unit Application and all reference to the second unit use as the use of the proposed additional habitable floor area is not under consideration in today's hearing. In accordance with State law, in this case, should the Variance be approved, the Second Unit decision would be issued ministerially after approval of the Variance discretionary approval.

Also, for the record, the Hearing Officer eliminated all references in the project description of the staff report for the use of the proposed additional floor area for a second unit, as the use of the floor area for a second unit is not under consideration in this hearing. In addition, under Environmental Review, the language will be modified to read "Denial of the proposed project is not subject to the requirements of the California Environmental Quality Act pursuant to section 15270."

The public testimony portion of the hearing was opened.

Vernon Bradly, spoke on behalf of Scott Jolley, asking for approval of the project for several reasons:

- The applicant only wants to legalize the space;
- The project does not increase the footprint;
- The project will provide a second unit which is encouraged by the County;
- The neighbors have signed off and have no concerns; and
- The current use of the space at the time of purchase had already been made habitable and is currently a play area for children, but contains no kitchen or bathroom.

The public testimony portion of the hearing was closed.

The Hearing Officer explained how the County determines floor area ratio (FAR) by use of the floor area ratio definition contained in the Development Code (Title 22), which was not in place when the current residence was constructed in 1990. In addition, Policy LU1.a(a) of the Tamalpais Area Community Plan, adopted in 1992 after the single-family residence was constructed, also includes unconditioned lower level space that has the potential to be improved to habitable floor area into the floor area ratio computation.

Therefore, by the current definition of floor area ratio, the current residence, without improvements to the understory proposed for habitable space is at 43% and floor area over 30% is considered legal non-conforming. Exceptions to County requirements in this case calls for applying for a floor area ratio Variance because to improve the floor area to habitable space and intensify the use of the property, a floor area ratio Variance approval is required.

Policy LU 1.4 of the Tamalpais Area Community Plan states that the size of all expanded residential development shall be carefully regulated to maintain the character of the neighborhood. The purpose of this provision is to maintain and preserve intensity of development and residential sizes in the community. Preliminary reviews of planning records indicates that no floor area ratio Variance have been granted for properties zoned R-1 in this neighborhood.

The Hearing Officer noted that she has no way of enforcing that this additional floor area will be used as a rental unit or provide affordable housing for the community or remain a second unit and not become part of the existing single-family residence. She concurs with staff's analysis that, in this case, there are no special physical circumstances applicable to the property to approve the 43% floor area ratio (FAR) and therefore must deny the Jolley Variance and Design Review.

The Hearing Officer made the following modifications to the recommended Resolution:

- Page 1, Title: Remove reference to the Second Unit Permit;
- Finding III: Remove "second residence" and replace with "project";
- Finding IV: Correct to read, "Where as the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the CWP SFO land use designation, which is meant as a land use designation allowing 4 - 7 primary residence per acre. However, the proposed project is inconsistent with Policy LU 1.4 of the Tamalpais Area Community Plan, which is incorporated by reference into the CWP and states that the size of all expanded residential development shall be carefully regulated to maintain the character of the neighborhood,"; and
- Finding V, A: Change any reference to 47.49 percent floor area ratio (FAR) to 43.6.

The Hearing Officer concurred with staff's analysis and denied the Jolley Variance and Design Review, based on the Findings and subject to the conditions in the resolution.

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. 08-140

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

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**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 14<sup>th</sup>, 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 project 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 consistent with the Marin Countywide Plan SF6 land use designation, which is meant as a land use designation allowing 4-7 residential units per acre. However, the proposed project is inconsistent with Policy LU 1.4 of the Tamalpais Area Community Plan, which is incorporated by reference into the CWP and states that "the size of all expanded residential development shall be carefully regulated to maintain the character of the neighborhood."
- 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 43.6 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 14<sup>th</sup> day of August, 2008.

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JOHANNA PATRI  
MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

Attest:

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Joyce Evans  
DZA Secretary

9:10 A.M. H2. A. **NEGATIVE DECLARATION OF ENVIRONMENTAL IMPACT:  
SUTTON COASTAL PERMIT (CP 06-31) AND USE PERMIT (UP 09-8)**  
B. **SUTTON COASTAL PERMIT (CP 06-31) AND USE PERMIT (UP 09-8)**

CG

A proposal requesting approval to demolish an existing 1,896 square foot residence that straddles Easkoot Creek (formerly Elwood's Bar and Restaurant) and construct a new 1,649 square foot residence and 748 square foot secondary unit and an associated septic system on the subject property at the corner of Shoreline Highway and Calle del Arroyo in Stinson Beach. As part of the project, all four historic lots comprising Assessor's Parcels 195-162-45 and -46 (formerly 195-162-39) would be merged into one building site. Easkoot Creek is a blue line stream that traverses the northern half of the parcel. Due to the property's size and shape, almost the entire parcel is located within the designated 100-foot wide stream conservation area for this creek. The new residence, secondary unit, and septic system are proposed to be constructed on the southern half of the 14,369 square foot site, with a minimum setback of 50 feet to the top of creek bank. A riparian planting plan is also proposed along the creek. The proposed primary residence would attain a maximum height of 23 feet, 6-inches above grade and the proposed second unit would attain a maximum height of 16-feet, 9-inches above grade. Proposed development would maintain the following setbacks from corresponding property lines: Zero feet from the east front property line along Calle del Onda (at the carport), 6 feet from the southern side property line, 14 feet from the western rear property line along Calle del Resaca, and 2 feet from the nearest portion of the northern side property line (along Calle del Arroyo). The property address is **3715 Shoreline Highway, Stinson Beach, California 94937**, and is further identified as Assessor's Parcels **195-162-45 and -46 (formerly 195-162-39)**.

The Hearing Officer noted for the record that any references to primary or secondary in the project description shall be removed from the project description, and replaced with:

- "The applicant is requesting approval to demolish an existing 1,896 square foot residence that straddles Easkoot Creek (formerly Elwood's Bar and Restaurant) and construct a new 1,649 square foot residence and new 748 square foot second residence and an associated septic system on the subject property at the corner of Shoreline Highway and Calle del Arroyo in Stinson.Beach. As part of the project, all four historic lots comprising Assessor's Parcels 195-162-45 and -46 (formerly 195-162-39) would be merged into one building site. Easkoot Creek is a blue line stream that traverses the northern half of the parcel. Due to the property's size and shape, almost the entire parcel is located within the designated 100-foot wide stream conservation area for this creek. The new residences and septic system are proposed to be constructed on the southern half of the 14,369 square foot site, with a minimum setback of 50 feet to the top of creek bank. A riparian planting plan is also proposed along the creek. The proposed 1,649 residence would attain a maximum height of 23 feet, 6-inches above grade and the proposed 748 square foot residence would attain a maximum height of 16-feet, 9-inches above grade. Proposed development would maintain the following setbacks from corresponding property lines: Zero feet from the east front property line along Calle del Onda (at the carport), 6 feet from the southern side property line, 14 feet from the western rear property line along Calle del Resaca, and 2 feet from the nearest portion of the northern side property line (along Calle del Arroyo). "



The reason for the modification in the project description is that in accordance with Marin County Interim Development Code, Title 221 for the Coastal Zone, Section 22.57.1131, within the C-H-1 zoning district, with Use Permit approval, two-family, or multiple dwellings are allowed and the standards, such as on-site parking requirements are different than those for a primary and a "second unit" on a residential-zoned lot.

In response to the Hearing Officer, staff acknowledged receipt of an e-mail letter in support of the project from a neighbor at 11 Calle De Occident. She noted for the record that she was informed by our Code Enforcement staff that this project would resolve a previous code enforcement case regarding work done by a previous owner.

The Hearing officer clarified that staff's recommendation should be adoption of two Resolutions:

- Adopt the attached Negative Declaration of Environmental impact; and
- Adopt the attached Resolution, conditionally approving the project. She also clarified that the last date for action on the merits of the project is 60 days from the adoption of the Negative Declaration.

In response to the Hearing Officer, Dave Nicholson, Department of Public Works stated that the parking was evaluated as a primary and a second unit, resulting in two primary parking spaces for the residence and one for the second unit. However, two primary residences will require two parking spaces each. Currently there are two spaces and guest parking adjacent to the larger residence. However, two on-site parking spaces will be needed for the smaller residence. The guest spaces may be along the frontage road, but can not be marked as private parking because they are located in a public right-of-way.

The public testimony portion of the hearing was opened.

Jamie and Lynette Sutton, owners, Peter Pfau, architect, and Ali Sutton spoke in favor of the project regarding:

- The history of the project and why the Suttons wanted to build a family compound;
- The attempts to build an environmentally sound project, meeting all the requirements with the agencies involved;
- The proposal to merge all four historic lots into one building site;
- Keeping the FAR to 17 percent, which is less than neighboring properties;
- Measures taken to address the drainage issue;
- Modifications made by the architect in response to the neighbors regarding the size, bulk and views from the neighbors prospective;
- An agreement made with the Zell's regarding the five foot setback from a mutual property line; and
- The breakaway design elements for the fences and stairs as per FEMA standards.

In response to the Hearing Officer, Dave Nicholson, Department of Public Works, summarized the FEMA requirements, explaining that the property is located in an A Zone, not a V Zone, and therefore can meet the FEMA requirements without breakaway walls.

The Hearing Officer noted that a new FEMA requirement states that prior to framing inspections, a FEMA certificate must be prepared. County codes are based on FEMA requirements and must be met. The Hearing Officer explained that the applicants reference to the County's requirement for a 20-foot setback from the creek is the minimum required under Title 24. However, Countywide Plan policies call for a set back of 100 feet from top of bank, unless the site is located entirely within the 100-foot stream conservation area.

In response to the Hearing Officer, staff stated that a previous version of the plan showed the carport extending all the way to the south side property line. However, the applicant is proposing to increase this setback to a minimum of 5 feet.

Jim Zell, Scott Tye, (Stinson Beach Village Association,) Ed Schmidt, (Stinson Beach County Water District,) Tony Lewis, Bruce Wachtell, Michael Mitchell, Crispin Livak, Leland Kugelgen, Gordon Bennett, (Sierra Club,) and Donny Melendy spoke regarding concerns with:

- Loss of views and privacy impacts to neighboring properties;
- The community desire to have just one home on the property;
- Need for a precise drainage and storm water action plan;
- Need for a review of the septic system that may not be adequate for two residences;
- The Code Enforcement action on the property;
- The need for another review by the Water District for the two residences;
- Requirement for a 100-foot setback from the stream bank;
- Winter flooding;
- The requirements of Marin County Code Section 22.98.090 (g) related to flood hazard;
- Septic capacity of 150 gallons a day;
- Guest parking on a public street;
- Setting a precedent in the community; and
- Zoning of the property.

In response to the Hearing Officer questions about a modified drainage plan for the two residences, staff explained that minor revisions were made to the plans and the revised plans were referenced in the Initial Study. Staff further addressed the issue by stating there is a Condition of Approval that says before the County issues any building permits, the applicant has to comply with the Stinson Beach County Water Districts requirements. Staff transmitted the most recent plans to the Water District in December 2007, and minor comments were received regarding the setback of the deck footings, but no questions or concerns were raised regarding the design of the septic system at that time. Conditions of Approval also address the drainage and storm water plan. Michel Jeremias, Department of Public Works staff, concurs with staff's analysis.

In response to the Hearing Officer, Ed Schmidt, General Manager Stinson Beach County Water District stated that they measure habitable space from the outside wall to outside wall for square footage. The approved septic system is limited to 150 gallons per day and a second residence may require a second water meter. Mr. Schmidt noted that the Stinson Beach Water District reviewed the project as a single-family residence composed of two structures and he would have to review the project based on the District's code for two residences.

The public testimony portion of the hearing was closed.

In response to the Hearing Officer, staff stated that the CH1 zoning does not require specific yard setbacks through the County permit process. However, the County can determine appropriate setbacks. Indicated that the property is subject to the same level of flooding hazards as surrounding properties according to FEMA Flood Insurance maps.

The Hearing Officer noted that when composing a development, complying with County requirements calls for more than simply avoiding the issues. It calls for designing a project that conforms to the policies, guidelines and findings set forth in Marin County's regulatory framework and to do the best possible project balancing competing forces.

In a situation like this, there are tensions in balancing competing objectives. A project needs to advance one objective without interfering with other objectives. However, the project sponsor should maximize the protection of the sensitive environmental resources of the site. In this case, this has occurred and the project does the right thing by the environment. The project aligns with County policies as they relate to stream protection. All encumbrances over the creek will be removed and the creek setting will be enhanced. She acknowledged that the C-H-1 zoning is archaic and a residential development may have the least impact of the site.

She noted that some technical information still needs to be gathered and the Stinson Beach Water District has not made a clear determination regarding the adequacy of the septic system for the proposed development. Although no substantial technical evidence of fact or fair argument has been presented that the proposed project will have a significant impact on the environment, there are development issues that have not been worked out, therefore this hearing will be continued to a date to be determined with the applicant and staff.

The Hearing Officer directed staff to review the following issues:

1. The code requirements for one residence verses two residences;
2. Consider whether improvements such as decks and fencing should be permitted within the 50-foot SCA and whether an easement or non-development agreement over the SCA area would be appropriate;
3. Consult with the Department of Public Works and Stinson Beach Water District about the need for a more complete drainage plan;
4. Consider a possible change of address for the property because the access is not taken from State Route One (Shoreline Highway) proposed; and
5. Allow time for the Stinson Beach Water District to re-review the requirements for on-site sewage disposal for two residences.

In addition, the Hearing Officer indicated she would like to visit the adjacent properties to view the story poles as seen by the neighbors and determine whether the yard setbacks are appropriate.

The Hearing Officer continued the item to the hearing of September 11, 2008.