



MARIN COUNTY COMMUNITY DEVELOPMENT AGENCY

BRIAN C. CRAWFORD, DIRECTOR

STAFF REPORT TO THE DEPUTY ZONING ADMINISTRATOR KADRIE VARIANCE

Item No:	C-1	Application No:	VR 10-1
Applicant:	Alex N. Kadrie	Owner:	Alex N. and Janeth Berry Kadrie
Property Address:	11 Lillard Lane, Woodacre	Assessor's Parcel:	172-291-39
Hearing Date:	September 17, 2009	Planner:	Kristina Tierney

RECOMMENDATION:

Approve with Conditions

APPEAL PERIOD:

10 working days to the Planning Commission

LAST DATE FOR ACTION:

October 9, 2009

PROJECT DESCRIPTION:

The applicants, Alex and Janeth Kadrie, are requesting variance approval to accommodate an existing deck and outdoor living area that is located in the side yard setback area. The applicants are proposing to remove a portion of the existing deck to maintain a 5 foot setback to the side, eastern property line. Historically, the deck encroached onto the neighboring property, APN 172-291-27, although there is no record for the deck. A Lot Line Adjustment (LL 09-13) was approved on August 19, 2009 to shift the property line so that the deck was wholly on APN 172-291-39. As a result of the Lot Line Adjustment, the deck was 30 inches from the side, eastern property line. The applicants are proposing to remove a portion of the deck in order to create a 5 foot setback. As proposed, the deck would not comply with the 12 foot setback required by the R1:B3 zoning district. Variance approval is required because the proposed addition would be located as close as 5 feet from the side property line. The property is addressed as 11 Lillard Lane, Woodacre, and is further identified as Assessor's Parcel Number 172-291-39.

GENERAL INFORMATION:

Countywide Plan:	SF4 (Single-family, 1-2 units/acre)
Zoning:	R1:B3 (Residential Agricultural District, 20,000 square foot min. lot size)
Lot size:	11,914 square feet
Adjacent Land Uses:	Single-family residential
Vegetation:	Introduced and natural vegetation
Topography and Slope:	Moderate to Steeply sloped
Environmental Hazards:	None identified

ENVIRONMENTAL REVIEW:

The Environmental Coordinator has determined that this project is Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to 15305, Class 5 of the CEQA Guidelines because the project would entail a minor alteration in land use and would not create any new parcels and would not result in any potentially significant impacts to the environment.

PUBLIC NOTICE:

The Community Development Agency has provided public notice identifying the applicant, describing the project and its location, and giving the earliest possible decision date in accord with California Government Code requirements. This notice has been mailed to all property owners within 300 feet of the subject property.

PLAN CONSISTENCY:

The proposed project is generally consistent with the goals and policies of the Marin Countywide Plan, San Geronimo Valley Community Plan, and the Marin County Development Code. Please refer to the plan consistency findings contained in the attached resolution.

PROJECT ANALYSIS:

The granting of a Variance to allow the existing deck would not constitute a granting of special privilege that is inconsistent with the limitations placed upon other properties in the vicinity due to the property's topography and the lot shape. Topographically, the subject property is characterized by a rather steep (approximately 25 percent) slope that descends from Lillard Lane. The primary living area for the house is located on the second story, which is accessed at ground level from the front, along Lillard Lane. Due to the property's downward slope, the deck provides a minimal amount of outdoor living area for primary living area in the house. The side yard setback area is constrained by the chevron shape of that side of the property, which in combination with the topography makes the creation of a conforming outdoor living area extremely difficult.

This deck, until last month, encroached onto the neighbors' property. A Lot Line Adjustment was approved on August 19, 2009 which moved the eastern property line a few feet eastward in some locations, in order for the deck to be completely located on the subject property and provide a minimum 30 inch side yard setback. The applicants are now proposing to cut back a portion of the deck to maintain a minimum 5 foot setback, where a 12 foot setback is required by the R1-B3 zoning district. The 5 foot setback would enable the wood deck to comply with building code requirements for construction that has no fire protection. Given the chevron shape of the northern portion of the property, the slope, location of the primary living area within the residence, and the close proximity of the existing residence to the side property line, the proposed deck modification would provide the owners with an outside living area equivalent to those currently enjoyed by the neighbors with no impact to neighboring properties.

In summary, Variance approval would allow the property owners to maintain a modest amount of their existing outdoor living area in a manner that would be in keeping with the surrounding neighborhood. Findings for a Variance can be made as provided in the attached resolution.

RECOMMENDATION:

Staff recommends that the Deputy Zoning Administrator review the administrative record, conduct a public hearing, and adopt the attached resolution approving the Kadrie Variance VR 10-1.

- Attachments:
1. Proposed Resolution recommending approval of the Kadrie Variance
 2. CEQA exemption
 3. Department of Public Works Memo, 7/30/09
 4. Environmental Health Services Memo, 7/21/09
 5. Reduced Plan Sets, marked "Exhibit A"

MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

RESOLUTION 09-XXX

A RESOLUTION APPROVING THE KADRIE VARIANCE
11 LILLARD LANE, WOODACRE
ASSESSOR'S PARCEL 172-291-39

SECTION I: FINDINGS

- I. WHEREAS Alex and Janeth Kadrie submitted a Variance application to allow an existing deck to encroach into the eastern side property line. The existing deck does not comply with the side yard setback standards required by the R1:B3 zoning district and is located a minimum of 30 inches from the eastern side property line. As modified the deck would maintain a minimum 5 foot setback from the eastern side property line. Variance approval is required because the deck would be located as close as 5 feet from the side property line where 12 feet is normally required by the R1:B3 zoning district. The property is addressed as 11 Lillard Lane in Woodacre, and can be further identified as Assessor's Parcel number 172-291-39.
- II. WHEREAS the Marin County Deputy Zoning Administrator held a duly noticed public hearing on September 17, 2009, 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 Categoricaly Exempt from the requirements of the California Environmental Quality Act, per Section 15305, Class 5 because the construction of a minor addition to an existing single family residence would not result in any 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 comply with the SF-4 land use designation (single family residential) and R1:B3 zone district regulations with approval of the proposed Variance to setbacks.
 - 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.
 - E. The project would minimize soil disturbance and maximize retention of natural vegetation.
- V. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the San Geronimo Valley Community Plan because:

- A. The proposed project would retain the residential character that is representative of the San Geronimo Valley community.
 - B. The proposed project would not involve any removal of vegetation and trees.
 - C. The project would not require any grading.
- VI. WHEREAS the Deputy Zoning Administrator finds that the proposed project is consistent with the mandatory findings to approve a Variance (Section 22.54.050 of Marin County Code and Section 65906 of the California Government Code), as specified below:

A. There are special circumstances applicable to the property (e.g. locations, 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.

The steep slope of the lot and the lot shape constitute special circumstances so that strict application of the side yard setback requirements would deny the property owner privileges enjoyed by other property owners in the vicinity. The chevron shape of the side of the lot constrains development on the side of the residence it faces. As a result of the steep slope, this living area is located on the second story of the residence, thus requiring that any directly accessible outdoor living area also to be elevated. The Variance would allow the applicants to maintain a modest amount of outdoor living space adjacent to their living room and kitchen. In addition, the existing deck is already non-conforming with regard to current setback standards, and the proposed Variance would facilitate the side yard setback to be increased from 30 inches to 5 feet. The majority of residences in the area enjoy the ability to create outdoor living space in the side yard and therefore granting the Variance would allow the property owners to enjoy the existing privileges of the neighbors.

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

The granting of the Variance would allow the property owner to maintain their attached deck, a use that is authorized by the governing R1:B3 zoning district.

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.

The proposed alteration to the deck would increase the existing eastern side yard setback and allow the owners to maintain a modest amount of outdoor living area, a use that is consistent with development patterns in the area. The shape and slope of the property make it extremely difficult for the property owners to utilize their side yard on the second story, where the primary living area is located, and many of the neighboring properties currently enjoy such conditions. Were another parcel to face similar topographic and shape limitations, it would receive similar considerations. Therefore, the proposed Variance would not constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity and in the same zoning district.

D. That granting the Variance will not be detrimental to the public interest, health, safety, conveniences, 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 surrounding neighborhood is developed with a mix of single-family homes of various sizes and styles. The proposed deck modifications would be compatible with the character of this area, and increase the eastern side yard setback, giving the neighbors additional privacy. Therefore, the granting of the Variance will not be detrimental to the public interest, health, safety, conveniences, or welfare. Further, the proposed setback would be consistent with building code requirements.

VII. SAN GERONIMO WATERSHED STREAM CONSERVATION AREA MORATORIUM (Board of Supervisors Ordinance 3485)

The proposed project is exempt from the Moratorium on Development in Stream Conservation Areas in the San Geronimo Valley watershed per Interim Urgency Ordinance 3485 because the proposed development would not increase the construction footprint within a Stream Conservation Area (SCA) and would not add more than 500 square feet of development within the SCA.

SECTION II: CONDITIONS OF PROJECT APPROVAL

NOW, THEREFORE, BE IT RESOLVED that the Marin County Deputy Zoning Administrator hereby approves the Kadrie Variance subject to the following conditions:

Community Development Agency – Planning Division

STANDARD CONDITIONS

1. Plans submitted for a Building Permit shall substantially conform to plans identified as “Exhibit A,” and received July 14, 2009, and on file with the Marin County Community Development Agency, except as modified by the conditions listed herein.
2. 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 VR 10-1 conditions of approval as notes.
3. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall mark or call out the approved building setbacks on the Building Permit plans indicating the minimum side yard, the distance of the building from the nearest property line at the closest point.
4. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall submit verification to the Planning Department that LL 09-13 has vested by recording a Record of Survey, plat map, or diagram with revised legal descriptions.
5. If archaeological, historic, or prehistoric resources are discovered during construction, construction activities shall cease, and the Community Development Agency staff shall be notified so that the extent and location of discovered materials may be recorded by a qualified archaeologist, and disposition of artifacts may occur in compliance with State and Federal law. A registered archeologist, chosen by the County and paid for by the applicant, shall assess the site and shall submit a written report to the Community Development Agency staff advancing appropriate mitigations to protect the resources discovered. No work at the site may recommence

without approval of the Community Development Agency staff. All future development of the site must be consistent with findings and recommendations of the archaeological report as approved by the Community Development Agency staff. If the report identifies significant resources, amendment of the permit may be required to implement mitigations to protect resources. Additionally, the identification and subsequent disturbance of an Indian midden requires the issuance of an excavation permit by the Department of Public Works in compliance with Chapter 5.32 (Excavating Indian Middens) of the County Code.

6. All construction activities shall comply with the following standards:
 - a. Construction activity is only permitted between the hours of **7:00 a.m. and 6:00 p.m., Monday through Friday**, and **9:00 a.m. and 5:00 p.m. on Saturday**.. No construction shall be permitted on Sundays and the following holidays (New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day). Loud noise-generating construction-related equipment (e.g., backhoes, generators, jackhammers) can be maintained, operated, or serviced at the construction site from 8:00 a.m. to 5:00 p.m. Monday through Friday only. Minor jobs (e.g., painting, hand sanding, sweeping) with minimal or no noise impacts on the surrounding properties are exempted from the limitations on construction activity. At the applicant's request, the Community Development Agency staff may administratively authorize minor modifications to these hours of construction.
 - b. It shall be the responsibility of the applicant to ensure that all construction materials and equipment are stored on-site (or secured at an approved off-site location) and that all contractor vehicles are parked in such a manner as to permit safe passage for vehicular, pedestrian, and bicycle traffic at all times.
 - c. All utility connections and extensions (including but not limited to electric, communication, and cable television lines) serving the development shall be undergrounded from the nearest overhead pole from the property, where feasible as determined by the Community Development Agency staff.
7. 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 an approval of this application, for which action is brought within the applicable statute of limitations.
8. 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. Construction involving modifications that do not substantially comply with the approval, as determined by the Community Development Agency staff, may be required to be halted until proper authorization for the modifications are obtained by the applicant.
9. BEFORE BUILDING FINAL, the applicant shall have a licensed land surveyor or civil engineer with proper certification conduct a survey of the side property lines and install property line markers that can be readily verified by the Building and Safety Inspection staff to verify deck setbacks and submit a written (stamped) confirmation to the Planning Division confirming that the staking of the property lines has been properly completed. In addition, it is recommended that the required setback lines be clearly marked. The requirement for new survey markers may be waived if proper survey markers already exist at the site and can be used by the Building and

Safety Inspection staff to definitely measure building setbacks. Alternatively, the applicant may submit a written (stamped) confirmation from a licensed land surveyor or qualified civil engineer confirming the property line markers and the building setbacks to the side property lines based on the approved setbacks as shown on the Building Permit plans.

10. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall record a Waiver of Public Liability holding the County of Marin, other governmental agencies, and the public harmless because of loss experienced by geologic actions.

SECTION III: VESTING AND APPEAL RIGHTS

NOW, THEREFORE BE IT FURTHER RESOLVED that the applicant must vest this approval by obtaining a Building Permit for the approved work and substantially completing all approved work by March 17, 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 Zoning Administrator 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.

NOW, THEREFORE BE IT FURTHER 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 October 1, 2009.**

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 17th day of September, 2009.

JEREMY TEJIRIAN
MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

Attest:

Joyce Evans
Deputy Zoning Administrator Secretary