

MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

RESOLUTION 11-104

A RESOLUTION APPROVING THE DUKKERS VARIANCE

156 MONTEZUMA AVENUE ROAD, FOREST KNOLLS

ASSESSOR'S PARCEL 169-252-02

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**SECTION I: FINDINGS**

- I. WHEREAS the applicant, W.W. Kirsh and Associates, has applied on behalf of the owners, Skag Dukkera and Anne McClain, for Variance approval for the legalization of an addition to an existing residence. The unpermitted addition occurs on the upper level of the residence and is approximately 486 square feet in size. The addition results in a new floor area of 1,626 square feet and a floor area ratio of approximately 24% on the 6,901 square foot lot. The addition reaches a maximum height of 25 feet above grade and has the following setbacks: 0 feet from the side (north) property line, 24 feet from the side (south) property line, and 21 feet from the bank of Montezuma Creek. Variance approval is required for encroachment of 15 feet into the required 15-foot side (north) setback. The subject property is located at **156 Montezuma Avenue, Forest Knolls**, and is further identified as **Assessor's Parcel 169-252-02**.
- II. WHEREAS the Marin County Deputy Zoning Administrator held a duly noticed public hearing January 13, 2011 to consider the merits of the project, and hear testimony regarding the project. The Community Development Agency, Planning Division has provided public notice identifying the applicant(s), describing the project and its location, and giving the scheduled date of the public hearing in accordance with California Government Code requirements. This notice has been mailed to all property owners within 300 feet of the subject property and to interested parties and organizations.
- 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 15301, Class 1 because it entails the legalization of additions that result in no site disturbance that negatively impact the environment.
- IV. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the Marin Countywide Plan (CWP) for the following reasons:
  - A. The project is consistent with CWP natural systems policies requiring the enhancement, protection, and management of native habitats and the protection of woodlands, forest, and tree resources (*CWP Policies BIO-1.1 and BIO-1.3*) because the project would legalize additions that occurred to the upper level of an existing residence that did not change the footprint of the residence or result in significant site disturbance.
  - B. The project would not result in impacts to special-status species (*CWP Policies BIO-1.1, BIO-2.1, and BIO-2.2*) because the project would legalize additions that occurred to the upper level of an existing residence. The site is developed and the addition did not increase the footprint of the residence nor result in site disturbance. Therefore, no habitat area was disturbed that may be utilized or occupied by *Aplodontia rufa phaea* (Point

Reyes mountain beaver), *Pleuropogon hooverianus* (North Coast semaphore grass), *Dirca occidentalis* (Western leather wood), *Amorpha californica var. napensis* (Napa false Indigo), and *Frittilaria lanceolata var. tristulls* (Marin checker lily). In addition, the site lacks the physical characteristics to support North Coast semaphore grass or Marin checker lily.

- C. The project would not significantly impact the ecotones on the project site (*CWP Policies BIO-2.3 and BIO-2.4*) because the project would legalize additions that occurred to the upper level of an existing residence that did not change the footprint of the residence or result in significant site disturbance.
- D. The project is consistent with the wetland and stream conservation area policies (*CWP Policies BIO-3.1 and CWP BIO-4.1*) because the parcel is exempted from full compliance with all SCA criteria and standards due to the parcel being entirely encumbered in the SCA, and development outside of the SCA is infeasible. The creek has been realigned, channelized, and concrete lined. The drainage channel is located directly in front of the residence and modifications to the channel are infeasible. Since the creek is compromised and lacks a natural stream channel and riparian vegetation, there is no added benefit that would be received by requiring stream and riparian improvements on the subject property. Further, the project would legalize additions that occurred to the upper level of an existing residence that did not change the footprint of the residence or result in significant site disturbance. In addition, during building permit review, the Department of Public Works will require a drainage plan that shows all runoff from the residence being infiltrated on site.
- E. The project would not result in significant storm water runoff to downstream creeks or soil erosion and discharge of sediments into surface runoff (*CWP Policies WR-2.1, WR-2.2, WR-2.3, and WR-2.4*) because the legalization of the addition requires building permit approval. At the time of building permit application, the Department of Public Works will review the project plans to ensure that the addition complies with code requirements that prevent the discharge of runoff directly to waterways.
- F. The project would be required to apply for a Building Permit application, at which time it will be reviewed and required to conform to County earthquake standards (*CWP Policies EH-2.1, EH-2.3, and CD-2.8*), and the subject property is not constrained by unusual geotechnical problems, such as existing fault traces.
- G. The project design and conditions of approval will ensure adequate fire protection (*CWP Policy EH-4.1*), removal of hazardous vegetation (*CWP Policy EH-4.2*), water for fire suppression (*CWP Policy EH-4.c*), defensible space and compliance with Marin County fire safety standards, construction of fire sprinklers and fire-resistant roofing and building materials (*CWP Policies EH-4.d, EH-4.e, EH-4.f, and EH-4.n*), and clearance of vegetation around the proposed structure (*CWP Policy EH-4.h*).
- H. The project as conditioned would be required to meet energy efficient standards for exterior lighting and the use of downlighting to minimize light and glare (*CWP Policy DES-1.h*).
- I. The project would preserve visual quality and protect scenic quality and views of the natural environment from adverse impacts related to development (*CWP Policy DES-4.1*) because the proposed development would be consistent with the Marin County Single-family Residential Design Guidelines.

- J. The project would comply with the Marin County Single Family Dwelling Energy Efficiency Ordinance (*CWP Policy EN-1.c*) because the Energy Efficiency Ordinance requirements would be implemented during the Building Permit review process to ensure that the project minimizes energy use.

V. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with 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.**

The subject property is 6,901 square feet in size, 35% of the required 20,000 square foot minimum lot size. The property is severely constrained by an irregular shape and Montezuma Creek. Majority of the lot is within the SCA and the rear of the property is steeply sloping and heavily vegetated. Therefore the only location where work can occur is on the upper level. The addition results in a home size that is consistent with others within the vicinity, and it is significantly less than the maximum of 4,000 square feet of floor area that is normally allowed for the R1:B3 zoning district.

- 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.**

The Variance is for a second-story addition to a single-family residence, which is principally permitted in the 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 Variance is for the approval of an addition of 486 square feet, which results in a residence with a total floor area of 1,626 square feet and a floor area ratio of 24%. The additions result in a residence that is similar in size to the majority of the other homes in the vicinity, and is less than the maximum allowed in the R1:B3 district (maximum of 4,000 square feet of floor area, maximum FAR of 30%). The addition reaches a height that is less than the 30 foot maximum height limit and is screened from development by existing vegetation. Therefore, Variance approval does not result in special privileges that are inconsistent with the limitations upon other properties in the vicinity.

- 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 project has been reviewed by Environmental Health Services and the Department of Public Works. The conditions of approval require that the applicant remove all work outside of the property lines, to remove a portion of the "office" wall (or record a deed restriction) so that the room is open, and to comply with all requirements of the Marin County Fire Department. The portion of the roof eave that is located over the side (north)

property line will need to be removed, and the propane tank relocated so that it is located entirely within the lot. Prior to issuance of a building permit, the project would be required to revise plans to show all required items and a final inspection would be required to verify their completion. With these conditions of approval the project would not be a detriment to the public interest, health, safety, convenience, or welfare of the County or the properties and improvements in the vicinity.

- VI. WHEREAS the Marin County Deputy Zoning Administrator hereby approves the Variance subject to the conditions of approval listed below. This approval authorizes the unpermitted addition to an existing residence. The unpermitted addition occurs on the upper level of the residence and is approximately 486 square feet in size. The addition results in a new floor area of 1,626 square feet and a floor area ratio of approximately 24% on the 6,901 square foot lot. The addition reaches a maximum height of 25 feet above grade and has the following setbacks: 0 feet from the side (north) property line, 24 feet from the side (south) property line, and 21 feet from the bank of Montezuma Creek.

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. A Building Permit and additional permits and/or approval may be required from the Department of Public Works, the appropriate Fire Protection Agency, the Environmental Health Services Division, and the water and sewer providers.

## **SECTION II: CONDITIONS OF APPROVAL**

### Community Development Agency – Planning Division

1. Plans submitted for a Building Permit shall substantially conform to plans identified as "Exhibit A," entitled, "Dukkers Residence Addition," consisting of 8 sheets prepared by W.W. Kirsch and Associates, dated July 8, 2010 and received August 18, 2010, with revisions received October 28, 2010, 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 submit a complete set of revised plans for review and approval by the Community Development Agency staff depicting the following changes. Once approved, the plans shall be incorporated into the approved project file as "Exhibit A-1" and shall supersede "Exhibit A."

- a. The floor plans shall show the lower bedroom as being "open," with no privacy.
  - b. The site plan shall show all development being entirely within the property lines. The site plan shall show the portion of western roof eave that is over the western property line to be removed, and the relocation of the existing propane tank.
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 Variance 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 front and side yards, the

distance of the building from the nearest property line at the closest point, and any required distance from the following environmentally sensitive site features: top of stream bank.

4. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall revise the plans to show all development within the property line and any existing work outside of the northern property line shall be removed.
5. Exterior lighting shall be located and/or shielded so as not to cast glare on nearby properties.
6. 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.
7. 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.
8. 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.
9. 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.

10. 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.
11. BEFORE FINAL INSPECTION, the applicant shall have a licensed land surveyor or civil engineer with proper certification conduct a survey of the side (north) property lines and install property line survey hubs with connecting colored line in locations that can be readily used by the Building and Safety Inspection staff to verify that the residence and propane tank are located entirely within the subject property. If new survey hubs are installed, the project land surveyor or civil engineer must submit written confirmation that the staking of property lines has been properly completed and submit a written (stamped) confirmation to the Planning Division. The requirement for new survey markers may be waived if proper survey markers already exist at the site and can be used to definitely measure building setbacks. It is recommended that the surveyor or civil engineer set the required setback and/or property lines with clearly marked stakes or colored line. Please refer to the "Building Inspection Procedures" document available at the Marin County Planning Department and on-line at [http://www.co.marin.ca.us/depts/CD/Forms/Building\\_Inspection\\_Procedures.pdf](http://www.co.marin.ca.us/depts/CD/Forms/Building_Inspection_Procedures.pdf) for additional details regarding this requirement.

#### Code Enforcement

12. Within 30 days of this decision, the applicant must submit a Building Permit application to legalize the addition. Requests for an extension to this timeline must be submitted in writing to the Community Development Agency staff and may be granted for good cause, such as delays beyond the applicant's control.
13. Within 60 days of this decision, a Building Permit for all approved work must be obtained. Requests for an extension to this timeline must be submitted in writing to the Community Development Agency staff and may be granted for good cause, such as delays beyond the applicant's control.
14. Within 120 days of this decision, the applicant must complete the approved construction and receive approval of a final inspection by the Building and Safety Division. Requests for an extension to this timeline must be submitted in writing to the Community Development Agency staff and may be granted for good cause, such as delays beyond the applicant's control.

#### Marin County Community Development Agency – Environmental Health Services Division

15. Plans submitted for Building Permit approval shall show the office as an "open" room, or a deed restriction shall be recorded that follows the template provided by Environmental Health Services.

#### Marin County Department of Public Works - Land Use and Water Resources Division

##### PRIOR TO ISSUANCE OF A BUILDING PERMIT:

16. Provide a preliminary geotechnical report for the site.
17. Provide a site plan that shows existing contour and grades.

18. The watercourse flowing through the property is an altered reach of Montezuma Creek. Revise the Site Plan to label the drainage/watercourse as "Montezuma Creek".
19. Provide a drainage plan for roof and site surface runoff with respect to the new addition. Drainage facilities shall not drain directly into Montezuma Creek. All drainage management facilities shall terminate a minimum of 20-ft from the watercourse and be designed such that surface water is infiltrated into the ground (design shall meet the soils/geotechnical engineer's approval).
20. Provide a note on the plans stating that the Design Engineer and/or Architect shall certify to the County in writing prior to final inspection that all grading and drainage was completed in accordance to approved plans and field direction. Also state that the driveway, parking, and all other site improvements shall be inspected by a DPW engineer prior to final inspection.
21. The plans shall be reviewed and approved by Registered Civil Engineer with soils engineering expertise or a Registered Geotechnical Engineer. Certification shall be either by the engineer's stamp and signature on the plans, or by stamp and signed letter.

#### Marin County Fire Department

22. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall provide confirmation to the Planning Division that the Fire Marshal has approved the Vegetation Management/Defensible Space Plan and that the project complies with all applicable fire safety requirements.
23. BEFORE FINAL INSPECTION, the applicant shall provide confirmation from the Fire Marshal that all requirements of the Marin County Fire Department have been met.

#### **SECTION III: VESTING AND APPEAL RIGHTS**

NOW THEREFORE, BE IT RESOLVED that the applicant must vest this approval by obtaining a Building Permit for the approved work and approval of a final inspection by the Building and Safety Division within the time limits specified in the conditions of approval. Requests for an extension to the time limits specified therein may be granted administratively by the Community Development Agency staff, in consultation with the Code Enforcement Section, for good cause, such as delays beyond the applicant's control. In no event may such extensions be granted beyond two years from the effective date of this approval. Time extensions to vest the approval beyond two years and up to a maximum of four years may only be granted upon the filing of an extension application with required fees pursuant to Section 22.44.050.B and/or Section 22.56.050.B.3 of the Marin County Code.

The Building Permit approval expires if the building or work authorized is not commenced within one year from the issuance of such permit. A Building Permit is valid for two years during which construction is required to be completed. All permits shall expire by limitation and become null and void if the building or work authorized by such permit is not completed within two years from the date of such permit. Please be advised that if your Building Permit lapses after the vesting date stipulated in the Planning permit (and no extensions have been granted), the Building Permit and planning approvals may become null and void. Should you have difficulty meeting the deadline for completing the work pursuant to a Building Permit, the applicant may apply for an extension at least 10 days before the expiration of the Planning permit.

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

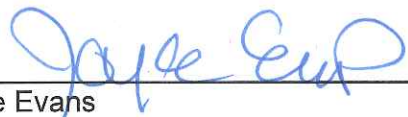
Community Development Agency - Planning Division, Room 308, Civic Center, San Rafael, no later than 4:00 p.m. on January 28, 2011.

**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 13<sup>th</sup> day of January 2011.

  
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JOHANNA PATRI, AICP  
MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

Attest:

  
\_\_\_\_\_  
Joyce Evans  
DZA Secretary