

MARIN COUNTY

COMMUNITY DEVELOPMENT AGENCY

**STAFF REPORT TO THE MARIN COUNTY
DEPUTY ZONING ADMINISTRATOR
BAR-OR (HOPPE) COASTAL PERMIT AND DESIGN REVIEW EXTENSION**

**RECOMMENDATION: Approve with conditions
HEARING DATE: December 15, 2011**

Application No(s):	EX12-6	Applicant(s):	Bruce Burman
Project ID:	11-0342		
Agenda Item:	2	Owner(s):	Gal Bar-Or and Cheryl Hoppe
Last Date for Action:	January 9, 2011	Assessor's Parcel No(s):	119-182-26
		Property Address:	54 Viento Way, Point Reyes Station
		Project Planner:	Scott Greeley (415) 499-7043 sgreeley@co.marlin.ca.us
		Signature:	

Countywide Plan Designation: C-SF4 (Coastal, Residential, Single-family, 1-2 units per acre)
Community Plan Area: Point Reyes Station
Zoning: C-R-A:B-3 (Coastal, Residential-Agricultural, 20,000 square foot minimum lot size)
CEQA: A mitigated negative declaration was approved for the project.

PROJECT DESCRIPTION:

On November 12, 2009 the Marin County Deputy Zoning Administrator, with Resolution 09-145, approved Coastal Permit (CP 10-5) and Design Review (DR 10-15) for the main residence and the second, affordable, residence on Lot 4 of the Bar-Or Subdivision. The applicant is requesting an extension of the expiration date of the Coastal Permit and Design Review to allow additional time to vest the project.

Both of the proposed residences would attain a maximum height of 17 feet, 6 inches above grade and would be 1,455 square feet in size. The inclusionary housing unit will have 3 bedrooms and will maintain a front (west) setback of over 50 feet, a side yard setback of 19 feet and will have light beige siding, with dark grey accent siding, and dark brown doors and windows. The main residence will have 2 bedrooms, and will maintain a front (west) setback of

approximately 40 feet, and a side (south) setback of 19 feet, and will have medium grey siding, with dark grey accent siding, and dark brown doors and windows. Also included in the development is a new mound septic system. The location of all proposed development is within the building envelope reviewed and approved in the Bar-Or Subdivision.

BACKGROUND AND ANALYSIS:

Lot size: 74,613 square feet
Adjacent Land Uses: Single-family Residential and open space
Vegetation: Native and introduced landscaping materials
Topography and Slope: Gently sloping
Environmental Hazards: N/A

The project site is located in a rural residential portion of Point Reyes Station, with residential uses and open spaces nearby. The project site is identified as Lot 4 and is one of five subdivided lots of what is known as the Bar-Or Subdivision.

The Bar-Or Subdivision and Mitigated Negative Declaration of Environmental Impact was approved by the Deputy Zoning Administrator on December 14, 2006 (Resolution 06-186). The project involved applications for a five lot Subdivision (SD 06-1), Coastal Permit (CP 06-10), Lot Line Adjustment (LL 06-7), and a Use Permit (UP 07-16). The subdivision was proposed on a Tentative Map, rather than a Vesting Tentative Map, and no remainder parcel was identified.

The project's Lot Line Adjustment transferred approximately 4,356 square feet (0.10 acres) from Assessor's Parcel 119-140-38 (a lot that was adjacent to the proposed subdivision) to Assessor's Parcel 119-182-02, resulting in an adjusted lot area of 5.41 acres from Assessor's Parcel 119-182-02. The Bar-Or property, which included the additional area from the Lot Line Adjustment and the area demarcated by Assessor's Parcel 119-182-02 was divided into five separate residential lots.

As a departure from standard practice, the County allowed the property owner to forego dedicating a lot within the subdivision for affordable housing and to meet the affordable housing requirement by constructing an additional single family residence on one of the lots that would also be developed with a market rate single family residence. This alternative means of complying with the affordable housing requirement was made possible by a code provision that existed at the time of the subdivision which allowed the construction of an additional single family residence on a lot zoned for only one residence with Use Permit approval if the additional residence would be deed restricted as an affordable unit.

The Use Permit approval was granted to allow one of the newly created Lots (Lots 1, 4, or 5) to be developed with two residences, one of which would be restricted to an affordable rental unit to meet the County's affordable housing requirements. Implementation of an affordable housing agreement between the property owner and the County was made part of the conditions of approval (see Condition of Approval 7c of the approved project). Condition of approval 8e also required that *"The Final Map shall include language designating either Lot 1, Lot 4, or Lot 5 of the subdivision for development of required affordable housing with specific reference to the Inclusionary Housing Agreement to be recorded concurrently with the Final Map."*

In order to conform the vesting period for the Coastal Permit, Design Review, and Use Permit to the 3-year vesting period stipulated by the Subdivision Map Act for the Tentative Map, the

Deputy Zoning Administrator established a vesting period of three years from the date of the decision, which ended on December 14, 2009.

After the Lot Line Adjustment was perfected in conformance with the conditions of project approval, the Final Map was recorded on June 7, 2007 and is available in the Recorder's Office in Recorded Maps Book 2007-0142. Lot 4 was referenced on the Final Map for addressing the affordable housing requirement. The affordable housing agreement was recorded along with the Final Map and states that the applicant would be allowed to sell no more than 2 of the lots before needing to construct the affordable unit. The owner has since sold 2 lots, Lots 1 and 5 (Assessor's Parcel Numbers 119-182-23 and -27). The county holds a lien on the remaining lots disallowing their sale until the affordable unit has been provided. Therefore, the Bar-Or Subdivision, Coastal Permit, and Lot Line Adjustment were vested in full on June 7, 2007, however the Use Permit allowing the construction of the affordable unit has not been vested and expired on December 14, 2009.

The recorded housing agreement stipulates the size of the inclusionary housing unit and rental terms and covenants, and also stipulates that the affordable unit would be constructed and final inspection would be granted no later than two years from the date of recordation of the Final Map. The affordable unit for the Bar-Or subdivision was required to have been provided by June 7, 2009.

Two of the lots created by the Bar-Or subdivision have been sold since the original approval, but the County is not allowing the sale of any of the remaining three lots until the affordable housing requirements have been satisfied. No permits or projects for any of the remaining Bar-Or/Hoppe owned lots from the Bar-Or Subdivision were proposed until July 2009 with Coastal Permit 10-15 and Design Review 10-15. On November 12, 2009 the Marin County Deputy Zoning Administrator, with Resolution 09-145, approved Coastal Permit (CP 10-5) and Design Review (DR 10-15) for the main residence and the second, affordable, residence on Lot 4 of the Bar-Or Subdivision. To date, no building permits or other discretionary permits have been issued or sought for any of the Bar-Or Subdivision properties, and the Coastal Permit and Design Review for the development on Lot 4 of the Bar Or subdivision will expire unless an extension is granted. Rather than providing the affordable housing as was agreed, the property owner has filed a lawsuit against the county seeking to modify the affordable housing agreement.

Pursuant to Resolution 09-145 which approved the Bar-Or Subdivision and Sections 22.56.120I, 22.82.130I, and 22.88.050I of the Interim Zoning Code, the applicant needed to submit an application at least 30 days before the November 12, 2011 expiration date to extend the vesting date. Pursuant to Chapter 22.56.120I of the Interim Development Code, such a request needs to be reconsidered by the Deputy Zoning Administrator. The Deputy Zoning Administrator has the authority to extend the expiration date an additional four years from the original date of expiration.

On October 11, 2011, Mr. Burman, on behalf of the owners, submitted an application requesting a 2-year extension to October 12, 2013 be granted for the Coastal Permit and Design Review for the two residences on the subject lot.

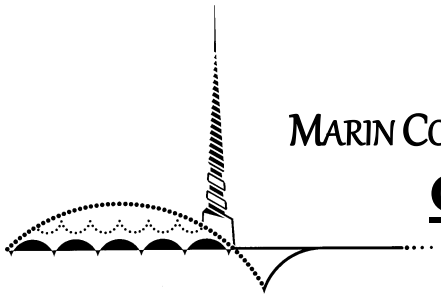
Staff does not support the property owner's request to extend the Coastal Permit and Design Review granted to construct the two residences on the subject property because the owner has had five years and ample opportunity to pursue the development and has not complied with the affordable housing conditions of the Bar-Or Subdivision, Coastal Permit, and Use Permit. Adoption of this recommendation would mean that the owner cannot sell any of the remaining

three lots without first meeting the affordable housing requirements of the subdivision. As part of the negotiations regarding the suit brought against the County, a possible solution has been explored that would entail buying and dedicating for affordable housing an existing residence on a lot nearby. If this solution is found acceptable to the County, it would not necessarily entail any development that would require a Coastal Permit. However, in order to potentially build the affordable unit on the subject property, the owner would need to apply for a new Coastal Permit and Design Review.

RECOMMENDATION:

Staff recommends that the Deputy Zoning Administrator review the administrative record, conduct a public hearing, and adopt the attached resolution denying the Bar-Or (Hoppe) Extension of Coastal Permit 10-5, Design Review 10-15, and Use Permit 07-16.

- Attachments:**
1. *Recommended Resolution approving the in part the Bar-Or Extension of Coastal Permit 10-05, Design Review 10-15, and Use Permit 07-16*
 2. *Assessor's Parcel Map*
 3. *DZA Resolution 06-185 and 06-186*
 4. *Affordable rental housing agreement*
 5. *DZA Resolution 09-145*
 6. *Bar-Or Subdivision, Final Map*
 7. *Application request, dated September 28, 2011*



MARIN COUNTY

Community Development Agency

BRIAN C. CRAWFORD, DIRECTOR

MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

RESOLUTION NO. 11-
A RESOLUTION DENYING THE BAR-OR (HOPPE) COASTAL PERMIT, DESIGN REVIEW,
EXTENSION
54 VIENTO WAY, POINT REYES STATION
ASSESSOR'S PARCEL 119-182-26

SECTION I: FINDINGS

- I. WHEREAS, Bruce Berman, on behalf of Gal Bar-Or, is seeking extension of the expiration date for Coastal Permit 10-5 and Design Review 10-15, which permitted the construction of two single-family residences on a vacant 1.71 acre parcel, created as Lot 4 of the Bar-Or Subdivision, approved December 14, 2006. One of the previously approved residences was intended to meet the affordable housing requirements of the Bar-Or subdivision. Both of the previously approved residences would attain a maximum height of 17 feet, 6 inches above grade and will be 1,455 square feet in size. The inclusionary housing unit would have 3 bedrooms and would have a front (west) setback of over 50 feet, a side yard setback of 19 feet and would have light beige siding, with dark grey accent siding, and dark brown doors and windows. The main residence would have 2 bedrooms, and would maintain a front (west) setback of approximately 40 feet, and a side (south) setback of 19 feet, and would have medium grey siding, with dark grey accent siding, and dark brown doors and windows. Also included in the development is a new mound septic system. The location of all proposed development is within the building envelope reviewed and approved in the Bar-Or Subdivision. **The subject property is located at 54 Viento Way in Point Reyes Station, and is further identified as Assessor's Parcel 119-182-26.**
- II. WHEREAS the Marin County Deputy Zoning Administrator held a duly-noticed public hearing December 15, 2011, 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 will not result in any significant environmental impacts per the Negative Declaration adopted by the Deputy Zoning Administrator with Resolution 06-185.
- IV. WHEREAS the Marin County Deputy Zoning Administrator finds that the property owners have had adequate time and failed to comply with the affordable housing conditions of the Bar-Or Subdivision, Coastal Permit, and Use Permit approved in 2006 and therefore denies the Coastal Permit and Design Review extension for the development on the subject property.

SECTION III: ACTION AND APPEAL RIGHTS

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 **December 22, 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 15th day of December 2011.

BEN BERTO
MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

Attest:

Joyce Evans
DZA Secretary