

MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

RESOLUTION 12-100

A RESOLUTION APPROVING THE WOLIVER VARIANCE
26 BAY VISTA DRIVE, MILL VALLEY
ASSESSOR'S PARCEL 034-153-17

SECTION I: FINDINGS

- I. WHEREAS the applicant, on behalf of the owner, proposes to remodel an existing entry stairway and deck attached to a 2,711-square foot single-family residence with an attached 575.9-square foot garage. The existing non-conforming, two-story house and garage are located approximately 21 feet from the easterly roadway/utility easement, 7 feet from the southerly side property line, 10 feet from the northerly side property line, and 23.8 feet from the westerly rear property line. While the project entails no addition to the existing single-family residence, the applicant is requesting a Variance to render the existing house and garage conforming. The proposed new entryway and deck would replace existing nonconforming and deteriorating stairs, deck, and planter; the existing stairs are unsafe, the existing deck has no railings, and the planter crosses the property line. The proposed stairs would attain a maximum height of 10.4 feet and have the following setbacks: approximately 2 feet from the southerly side property line and 24.2 feet from the easterly roadway/utility easement. The deck would match the elevation of the existing deck, attain a maximum height of approximately 9.1 feet, and have the following setbacks: 0 feet from the southerly side property line, 28 feet from the westerly rear property line, and approximately 35 feet from the easterly roadway/utility easement. A Variance is required because the existing residence/garage and the new stairway would be located within the 10-foot side yard setback and 25-foot front yard setback required by the applicable zoning district. The deck would be located within the required 10-foot side yard setback. The subject property is located at **26 Bay Vista Drive, Mill Valley** and is further identified as **Assessor's Parcel 034-153-17**.
- II. WHEREAS the Marin County Deputy Zoning Administrator held a duly noticed public hearing January 12, 2012 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, 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 repair and remodel of an existing structure on a developed lot in a residential zone that would result in no site disturbance that would 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:

- 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, according to the California Natural Diversity Database, the subject property does not provide habitat for special-status species of plants or animals.
 - C. The project would not significantly impact the ecotones on the project site (*CWP Policies BIO-2.3 and BIO-2.4*) because the subject property is located far enough from the shoreline to avoid being constrained by ecotones.
 - D. No wetlands or stream conservation areas would be affected by the project (*CWP Policies BIO-3.1 and CWP BIO-4.1*) because there are no wetlands or streams on or adjacent to the subject property.
 - E. The project would not result in significant stormwater 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 proposed drainage system complies with the standards and best management practices required by the Department of Public Works.
 - F. The project would be constructed in conformance with County earthquake standards, as verified during review of the Building Permit application (*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 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-resistant 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*), which will be confirmed during the building permit process.
 - H. The project would meet energy efficient standards for exterior lighting, and would reduce excessive lighting and glare (*CWP Policy DES-1.h*) because exterior up-lighting is not proposed, and standard conditions of project approval require that new lighting be downward directed.
 - 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 will comply with the Marin County Single Family Dwelling Energy Efficiency Ordinance (*CWP Policy EN-1.c*) because the Energy Efficiency Ordinance does not apply to exterior stairways and decking.
- V. WHEREAS the Marin County Deputy Zoning Administrator finds that as conditioned the proposed project is consistent with the Strawberry Community Plan because:
- A. The proposed project involves reconstruction of an existing deck and stairway attached to an existing single-family residence, which is a principally permitted use of the property, which is on a standard size lot for the A2:B2 zoning district.

- B. The proposed project would not adversely impact the surrounding natural environment relative to vegetation, species habitats, and on-site drainage.
- C. The proposed project would not adversely impact the surrounding built environment relative to views from adjacent properties, privacy for the subject and surrounding properties, and building design, mass, and bulk because of the existing and proposed design, scale, and landscaping.
- D. The subject property maintains adequate off-street parking to accommodate the proposed project as verified by the Marin County Department of Public Works and would have no impact on traffic.

VI. 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.**

Development of the subject property is severely constrained by the topography and natural features on the site, creating special physical circumstances that limit the development potential of the property in comparison to other lots in the Strawberry area, which can be more easily developed in conformance with the setback requirements of the governing A2:B2 zoning. The lot is on a steep hillside and has an average slope of 43.6%. There is also a large rock outcrop situated up to 2.5 feet from the rear of the house, severely restricting the building envelop and access around the perimeter of the house. The existing two-story residence is situated on the slope with the garage on the lower level and the main entrance to the house on the second floor. The house is angled on the property such that most of the entry staircase is located outside the 25-foot front yard setback, with 10.25 inches (3.4%) encroaching into the front setback from the roadway/utility easement. Given the configuration of the garage and driveway, this would not impinge on parking or turn around area. The slope of the lot, design of the main living area on the second level, and location of the house within the 10-foot side yard setbacks necessitate the construction of a deck within the side yard setback to access the perimeter of the house.

It appears that the house was constructed without the benefit of a survey verifying the front and side yard setbacks, resulting in the current non-conforming structure. Given the limits of the property discussed above, Variance findings can be made to grant approval for the location of the existing house within the front and side yard setbacks.

- 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 granting of this Variance would not allow or authorize a use or activity that is not otherwise expressly authorized by the governing A2:B2 zoning district regulations because it involves an entrance and deck to an existing non-conforming single-family residence, a permitted use.

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

Approving the application would not constitute granting of a special privilege because the natural features and topography of the subject lot results in constraints that most other properties in this area of Mill Valley do not face. The purpose of the development standards for the A2:B2 zoning district is to minimize adverse effects to the surrounding area that would otherwise result from inappropriate development. The project design would ensure that the development would be consistent with the Single-family Residential Design Guidelines and compatible with the suburban character of the local community. Existing and proposed landscaping provides adequate screening and separation from adjoining properties, as well as enhances the appearance of the proposed project. Pursuant to California Government Code Section 65906, the conditions of approval would assure that the Variance would not permit development that would be inconsistent with the limitations placed on other properties in the surrounding area.

- 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 will eliminate encroachment of the existing deck onto the adjacent property. The proposed development would be of comparable height and scale of the existing structure and would not have detrimental effects with respect to light, air, privacy, and views to surrounding properties. The addition has been designed to architecturally improve the existing structure and to be consistent with the character of the surrounding neighborhood. Existing landscaping will continue to protect privacy between neighbors. The stairway and deck would meet all applicable development standards for the subject property, with the exception of the side and front yard setbacks. The Strawberry Design Review Board has reviewed and recommended approval of the proposed project. Neighboring property owners have been notified and raised no objection to the project.

- VII. WHEREAS the Marin County Deputy Zoning Administrator hereby approves the Variance subject to the conditions of approval listed below. This approval authorizes the remodel of an existing entry stairway and deck attached to a 2,711-square foot single-family residence with an attached 575.9-square foot garage. The existing two-story house and garage are approved to be located approximately 21 feet from the easterly roadway/utility easement, 7 feet from the southerly side property line, 10 feet from the northerly side property line, and 23.8 feet from the westerly rear property line. The new stairs are approved to attain a maximum height of 10.4 feet and have the following setbacks: approximately 2 feet from the southerly side property line and 24.2 feet from the easterly roadway/utility easement. The new deck is approved to match the elevation of the existing deck, attain a maximum height of approximately 9.1 feet, and have the following setbacks: 0 feet from the southerly side property line, 28 feet from the westerly rear property line, and approximately 35 feet from the easterly roadway/utility easement.

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

CONDITIONS OF APPROVAL

Community Development Agency – Planning Division

STANDARD CONDITIONS

1. Plans submitted for a Building Permit shall substantially conform to plans identified as **Exhibit A**, entitled, "Woliver Residence" consisting of six sheets prepared by James Coy and Associates and two sheets prepared by Stephen J. Flatland, received November 15, 2011, with revisions dated November 14, 2011, 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 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 plans shall be revised so that no portion of the project, including railings, extends beyond the property line. A note shall be added on the plans indicating the entire project, including grading, construction, and structures shall be within the subject property line.
 - b. The applicant shall mark or call-out the approved building setbacks on the Building Permit plans indicating the minimum southerly side and easterly front yard, the distance of the building from the nearest property line at the closest point.
 3. Approved exterior building materials and colors shall substantially conform to the color/materials sample board which is identified as **Exhibit B**, prepared by James Coy Architect, received November 15 and on file with the Marin County Community Development Agency including:
 - a. Stair and deck – Bluestone, Natural Cleft
 - b. Railing – Cable railing system
 - c. Trellis – Green wall, open wire grid
- All flashing, metal work, and trim shall be treated or painted an appropriately subdued, non-reflective color.
4. Exterior lighting shall be located and/or shielded so as not to cast glare on nearby properties, and shall substantially conform to the lighting sheet in Exhibit B.
 5. 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.
 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. 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.
9. BEFORE FINAL INSPECTION, the applicant shall submit a Statement of Completion with photos, signed by the architect or certified or licensed landscape design professional, verifying that all landscaping and an automatic drip irrigation system has been installed in accordance with the approved landscape plan
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.

SPECIAL CONDITIONS:

11. BEFORE FOUNDATION INSPECTION, the applicant shall have a licensed land surveyor or civil engineer with proper certification conduct a survey of the southerly side and easterly front 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 building setbacks prior to approval of the foundation inspection. 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. The building setback verification can also be satisfied by having a licensed land surveyor or civil engineer with proper certification conduct a survey of the southerly side and easterly front property lines and the installed project foundation forms. The surveyor or engineer would then verify that the proposed project foundation complies with the approved setback distances from adjacent property lines as shown on the approved building permit plans and submit written (stamped) confirmation to the Planning Division. 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%20Inspection%20Procedures.pdf) for additional details regarding this requirement.

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 substantially completing the improvements in accordance with the approved permits by **January 12, 2014**; or all rights granted in this approval shall lapse unless the applicant applies for an extension at least 10 days before the expiration date above and the Community Development Agency staff approves it. An extension of up to four years may be granted for cause pursuant to Section 22.56.050.B.3of 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 **12:00 p.m. on January 27, 2014**.

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 12th day of January, 2012.



BEN BERTO, PRINCIPAL PLANNER
MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

Attest:



Joyce Evans
DZA Secretary