

**MARIN COUNTY PLANNING COMMISSION MINUTES**  
**FEBRUARY 10, 2003**  
**Marin County Civic Center, Room #328 - San Rafael, California**

*Commissioners Present:* Allan Berland  
Ross Herbertson  
Patty Garbarino  
Jo Julin  
Hank Barner  
Steve Thompson

*Commissioners Absent:* Ray Buddie

*Staff Present:* Brian C. Crawford, Deputy Director of Planning Services  
Alicia Giudice, Planner  
Megan Basinger, Assistant Planner  
Alexandra Morales, Planning Commission Secretary  
  
Eric Steger, Department of Public Works

*Minutes Approved on:* ***FEBRUARY 24, 2003***

Convened at 1:05 p.m.  
Adjourned at 5:45 p.m.

Chair Herbertson convened the meeting by asking for a few minutes of silence in remembrance of the astronauts of the Columbia Space Shuttle who perished in the crash of February 2, 2003.

1. ROUTINE TRANSACTIONS:

- a. M/s Julin/Berland, and passed unanimously of those present, to incorporate Staff Report into Minutes. Motion passed 6/0 (Commissioner Buddie not present).
- b. Continuances: None.

2. COMMUNICATIONS

The Commission acknowledged additional correspondence received from Susan R. Lynn and Robert Rodvien, regarding the Fitzgerald Design Review, as well as staff's supplemental memorandum including additional correspondence from Rupert P. Hansen regarding the Thompson Design Review Appeal.

Staff informed the Commission that a reception for outgoing Commissioner Garbarino would be scheduled within the next two weeks.

3. DIRECTOR'S ORAL REPORT

- a. Report on Progress of General Plan Updates

Staff informed the Commission that a presentation on the completion of the Key Trends, Issues, and Strategies Report was scheduled before the Board of Supervisors for February 11, 2002. A similar presentation will be made to the Planning Commission on February 24, 2003.

- b. Update on Board of Supervisors Actions

February 4, 2003: Wild Horse Valley appeal of the Planning Commission's approval of the Schardt Second Unit Use Permit granted.

March 4, 2003: Final Draft Development Code

- c. Report on On-Going Development Projects

Staff informed that the final draft of the Development Code provided at the previous meeting had some errors. A corrected copy would be provided.

4. TIME FOR PUBLIC EXPRESSION ON ITEMS NOT ON TODAY'S AGENDA

None.

## 5. DESIGN REVIEW: ROBERT FITZGERALD

Hearing to consider a Design Review application filed by Robert Fitzgerald proposing to construct a new, 2,508 square-foot, single-family residence with a 545 square foot attached garage on a vacant lot in the Bayside Acres area of San Rafael. The proposed residence would have a maximum height of approximately 25.5 feet above grade. A 12-foot high retaining wall would be located within 3 feet of the southeasterly property line. The retaining wall would face toward the interior of the lot. The property would be accessed by a new driveway connected to the Bayview Drive right of way at the lower portion of the property. The driveway would span over an existing drainage swale by using a modular stack block retaining wall system reaching a height of approximately 12 feet above grade on the downslope side and approximately 3 feet above grade on the upslope side. Pursuant to Marin County Code Section 22.82.025, Design Review is required for the development of this lot because it is substandard in size (less than 50% of that required by the governing R-1:B-4 zoning district regulations). The subject property is located at **50 Bayview Drive, San Rafael**, and is further identified as **Assessor's Parcel 186-132-20**.

Alicia Giudice, project planner, presented the merits of the proposed project, expanding on some of the concerns raised with regards to lot area, setbacks, privacy, structure size, site visibility, drainage, and parking, as set forth in the staff report. She then noted additional correspondence received subsequent to the preparation of the staff report from Susan R. Lynn and Robert Rodvien.

In response to Commissioner Barner, staff stated that at some point there was one single owner for a few of the lots. However, over time ownership has changed. Since 50 Bayview Drive is owned by Mr. Fitzgerald and 42 Bayview is owned by his wife, the lots did not qualify for merger when the County implemented a merger program.

Staff stated, in response to Chair Herbertson, that while the subject lot was the smallest in the area, approximately one third of the lots were legal, non-conforming.

The hearing was opened to public testimony.

Richard Bicardo, property owner, stated that he has been working closely with staff in order to address concerns raised. He clarified that the proposed home would be for his family. He made himself available to answer any questions.

Jo Dunn, concerned neighbor, expressed frustration that the same development standards that were applied to a project he submitted for were not applied to the subject project, particularly when his project raised minimal concerns and was not as prominent as the project in question.

Ken Marshall, neighbor across the street, stated that he was not aware that 40 Bayview, the cottage, and the corner lot were two separate lots. He then noted that since ownership of the property changed, cars parked on the street frequently and that an illegal stairway was constructed. Given the roadway alignment and width, on-street parking has exacerbated the hazardous traffic conditions. He stated that while the lot may be legally developable, the County should be cautious. In his opinion, some of the proposed mitigations regarding sight distance and traffic safety did not adequately address the concerns raised.

Rene Sommer, concerned neighbor, expressed concern regarding the provision of adequate street access at all times, particularly for emergency vehicles. Commenting on the existing unsafe traffic conditions related to the steep hairpin turn in close proximity, he expressed concern that construction vehicles could further exacerbate the problem. Therefore, he asked that a building management plan be required to ensure through access at all times. However, his recommendation would be to deny the project as proposed because: the building was too large for the lot; the proposal violates too many setback rules; the design of the home was not in character with the neighborhood; the proposed access driveway in close proximity to the steep, hairpin turn would exacerbate current unsafe traffic conditions; and the possibility of future fencing would obstruct all view across the hairpin curve. Should a project be approved, the house must be reduced in size.

Don Saxby, concerned resident, expressed concern regarding privacy impacts to 42 and 60 Bayview Drive, proposed water line, drainage, and potential negative impacts to adjacent property values. He concluded by submitting photographs showing different views from and into 42 and 60 Bayview Drive in relation to 50 Bayview Drive.

In response to Commissioner Berland, Mr. Saxby stated that when he purchased 42 Bayview Drive he thought that 50 Bayview Drive was not buildable, even though he knew it was a legal lot.

Susan Lynn, concerned neighbor, echoed the concerns raised with regards to privacy, visibility, over development of the property, inadequate setbacks, and inconsistency with neighborhood character. She suggested reorienting and scaling down the proposed home, and restricting construction days/hours to 7:00 a.m. to 3:30 p.m., allowing quiet work between 7:00 a.m. and 8:00 p.m., and prohibiting construction on Saturday, Sunday, or holidays.

Gordon Morris, adjacent neighbor, shared the concerns raised regarding visibility, inconsistency with neighborhood character, privacy intrusion on adjacent properties. He then pointed out the following: 1) map one clearly showed that the proposed development is larger on a smaller lot; 2) Chart 1 shows that none of the adjacent properties' square footage reached 10% of the square footage of their lots; and 3) photo 1 shows that there will be no room to mitigate view impacts. In her opinion, the County has allowed too many variances.

Jay Hallberg, project engineer, commented on the planning and design process stating that every effort has been made to address concerns raised regarding access, visibility, and safety. He then commented on some of the modifications made to the project, including realignment of the driveway, provision of on-site parking, and relocation and lowering of the home.

Bernard A. Garney, concerned neighbor, echoed the concern regarding the existing hazardous road conditions. He also expressed concern that given the pending development of two other lots in the area, it appeared that there will be three additional driveways, including the one in question, off Bayview Drive approximately within 100 feet from each other.

Stan Urban, concerned neighbor, stated that while he agreed that it was legal to develop historic lots, in this case the proposed project would have negative impacts on the drainage of adjacent properties. Therefore, he requested that before waiving any setback requirements, a boundary survey be required.

Francis Dogherty, concerned neighbor, stated that in his opinion, the property was not worth developing because of its size, location, and topographical constraints. He concluded by asking that the discrepancy in lot size between the deed and the plot plan be clarified.

Alan Schaevitz, concerned neighbor, summarized the concerns raised by neighbors in the following manner: 1) the proposed home would be out of character with the neighborhood because although it was comparable in size, the subject lot was much smaller than average, thereby resulting in greater lot coverage area; 2) since no restrictions have been included regarding street parking, unsafe traffic conditions could be exacerbated if the residents decide to park on the street; and 3) under the City of San Rafael's development standards, the subject lot would be declared unbuildable.

Mr. Ricardo addressed some of the issues raised in the following manner:

- While he had no control regarding current street parking problems at this time, the problem would be solved when the property is developed because adequate off-street parking would be provided.
- A construction management plan is acceptable.
- Visibility concerns have been addressed by lowering the home by four feet.
- Drainage concerns could be addressed by purchasing a second water meter closer to Mr. Saxby's property.
- Recordation of a deed restriction prohibiting solid fencing was acceptable.

- Privacy concerns will be addressed by adding landscape screening.
- While the lot is in close proximity to a hairpin turn, sight distance was adequate.

The hearing was closed to public testimony.

In response to Commissioner Julin, staff stated that as long as the lot meets minimum standards, it could not be declared unbuildable. In this case, the Single Holding Form process determined that the lot was buildable. Staff also stated, in response to Commissioner Garbarino, that based on the information contained in the deed restriction, the lot was legally created. However, it was noted that errors were not uncommon when calculating lot size, especially when the original calculations were made in 1941.

Commissioner Barner asked for clarification regarding setback requirements. Staff explained that while setbacks were automatically waived under the current zoning district based on substandard lot size, required setbacks were encouraged where possible. In this case, required setbacks would leave room for a very small home. Commissioner Barner stated that since setbacks were less problematic on large lots, setbacks were a key issue for the protection of neighborhood character on smaller lots. Therefore, he asked whether the Commission had the authority to apply setback requirements. Staff responded that notwithstanding the language in the Zoning Ordinance with regards substandard lots, the Commission always had the authority to apply whatever development standards were deemed appropriate.

Eric Steger, Department of Public Works, responded to Commissioner Barner's questions in the following manner:

- The road was a county-maintained road, and it was approximately 18 feet wide where the proposed driveway would intersect. Road width ranged between 16 feet and 20 feet.
- The minimum roadway width for two passing cars was 18 feet with a four-foot shoulder on each side; there were no shoulders on this road. Therefore, "No Parking" could be established and enforced along the roadway.

In response to Commissioner Thompson, staff explained that given the length of the driveway, retaining walls ranged between 1 and 12 feet in height, but were not continuous. Commissioner Thompson noted that the driveway had been ingeniously aligned so that retaining walls were not continuous. He then asked that the actual number of stories be reconsidered.

Commissioner Julin stated that since the proposed development needed encroachment into the setbacks, it could be construed that the proposal would result in over development of the property. Given the constraints of the property, she questioned whether over development should be allowed. She suggested that a constraints analysis be conducted and provided in order for the Commission to make an informed decision.

Commissioner Thompson had no problem with the location of the garage on the western side, but agreed that the southeast corner of the building could have been located to provide a greater setback.

Commissioner Barner found the structure inappropriate for the site, particularly in terms of size. He then expressed the following concerns: 1) the fact that the site was heavily wooded, even with the removal of two eucalyptus trees, cedar shake exterior siding was not the most appropriate material with regards to fire safety; 2) discrepancy with regards the actual size of the lot; and 3) not all required Design Review findings can be made, particularly VI(A) and (D). Should the project be approved as proposed, he suggested that: a fuel management program be required; sight distance compliance be clarified; and deed restrictions required for fencing and street parking.

Commissioner Berland stated that before making a decision, it was necessary to know whether the lot was a legal lot of record. If the lot was not a legal lot of record, then it might be considered to be not buildable.

Commissioner Garbarino expressed concern regarding the uncertainty of the legality of the lot and fair application of development standards should the lot actually be buildable lot. She was satisfied with the proposed drainage improvements, since they had been reviewed and approved by Department of Public Works. She also agreed that deed restrictions for fencing and parking should be required, as well as construction and fuel management plans.

Chair Herbertson concurred with the comments and suggestions made by his fellow Commissioners.

The Commission and staff discussed possible dates to continue this matter, agreeing that the first date available would be March 24, 2003, which was past the last date for action. Therefore, the property owner's consent was requested, and the applicant agreed to, continue this matter to March 24, 2003.

M/s Garbarino/Berland, and passed unanimously of those present, to continue this matter to the hearing of March 24, 2003, as agreed to by the property owner. Motion passed 6/0 (Commissioner Buddie not present).

6. DESIGN REVIEW APPEAL: THOMPSON (HANSEN)

Hearing to consider the Hansen Appeal of the Community Development Agency's approval of the Thompson Design Review proposing to allow construction of a new, two-story, 5,107 square foot single-family residence, a 228 square foot basement, and a 939 square foot attached three-car garage located on a 25,474 square foot lot in Sleepy Hollow. The structure will attain a maximum height of 27.5 feet above grade. Also included in the approval is an 8,800 cubic foot storm water detention pond. The subject property is located at **25 Martling Road, San Anselmo**, and is further identified as **Assessor's Parcel 176-041-01**.

Megan Basinger, project planner, presented the merits of the proposed project, the basis of the appeal, and responses to the issues raised in the appeal as set forth in the staff report. Staff concluded by noting additional correspondence received from Rupert Hansen.

In response to Commissioner Julin, Eric Steger of Public Works stated that grading for the detention pond was begun without appropriate permits. Commissioner Julin asked for a plan depicting the footprint of the house that was demolished.

Commissioner Thompson stated that it appeared that drainage problems existed in the area, and that the detention pond was deemed a solution.

Staff stated, in response to Commissioner Barner, that one of the demolition permit requirements was to ensure adequate removal and disposal of hazardous materials.

Commissioner Barner asked for more information regarding the detention pond, and questioned whether it was appropriate to grant a CEQA Exemption given the proposed changes to existing drainage conditions. Public Works staff clarified that the detention pond was a standard requirement, which would not significantly change current drainage patterns.

The hearing was opened to public testimony.

Paul Smith, Civic Engineer for the applicant, concurred with Commissioner Thompson in that the detention pond was proposed because it was clear that drainage problems existed on the property. Since the house straddled the existing 24 inch pipe, it had to be moved. Additionally, the detention pond also addressed geotechnical and hydrological concerns raised.

In response to Commissioner Thompson, Mr. Smith stated that the detention pond would hold water 13 minutes before it was dispersed.

Rupert Hansen, appellant, noted that not only was the home demolished, but the property was cleared of all vegetation. He presented photographs from before and after showing the grading done without permits, removal and replacement of the old pipe, removal of the rock siding, and damage to his property during a flood. He then commented on how drainage would be altered by the proposed project. He asked that should the project be approved, that a deed restriction be recorded to prohibit removal of the detention pond once it is installed. He concluded by noting that the parcel where the detention pond is to be located was listed for sale.

Debbi Peterson, concerned neighbor, stated that while she did not object to development of the property, she was concerned that the applicant has not proceeded in good faith. She asked that should the project be approved, strict conditions be included to ensure that neighboring properties are protected.

Bruce Baum, concerned neighbor, noted his written comments briefly highlighting flooding problems on Butterfield Road during the storms between December 14<sup>th</sup> and December 16<sup>th</sup>.

Mr. Smith stated that the detention pond was a required condition of approval and could not be removed once it was installed.

In response to Commissioner Berland, Mr. Smith stated that should in the future be determined that the volume of flow to downstream properties has increased, the applicant would either have to find a mechanism to slow down flow at this property or improve the system all the way downstream. With regards to potential removal of the detention pond, Mr. Smith stated that it would be unlikely since it was a condition of approval.

Mr. Smith stated, in response to Commissioner Thompson that it could be helpful to reinstall the open, rock siding ditch to dissipate water.

The hearing was closed to public testimony.

In response to Commissioner Julin, staff stated that the applicant did own three contiguous parcels which were legal lots of record that could be potentially developed as three separate lots. Even though the detention pond would be located on a separate lot, it would still be a separate legal lot of record which could be developed separately.

Commissioner Barner asked whether the demolition permit actually approved removal of the vegetation that was removed. Staff stated that it was unknown whether the demolition permit allowed vegetation removal. However, although the original submittal required that most of the vegetation be retained, most of it had been removed.

Commissioner Thompson stated that in reviewing the findings, he could not make either Finding II or III without additional information. He then apologized for having to leave before the conclusion of this matter.

While Commissioner Berland concurred with drainage concerns raised by neighbors, he was also concerned that the applicant was asking for approval of a home which would be two and a half times larger than the average home in the area. Therefore, he could not make Findings VII for Design Review and VIII(B) and (C). Additionally, he was concerned that easement rights were not required for the detention pond. Commissioner Julin concurred, particularly with the inability to make Findings, in addition to Findings VI(F) with regards of minimal soil disturbance and retention of natural vegetation. Furthermore, she could not make Finding VII(4) moot at this point since the property had already been cleared. In her opinion, the property was significantly altered without regard for the land. She would vote to deny the project as proposed.

Commissioner Barner also found that he could not make Findings VI(C-E) and VIII(F) for the project as proposed. However, he expressed concern that site alterations needed to be corrected since the rainy season was not over, and questioned how the illegal grading could be addressed.

Commissioner Garbarino stated that the issue before the Commission felt more like an enforcement matter since much work had been done without required permits, and therefore, should be treated as such.

Chair Herbertson agreed that the current situation needs to be remediated and corrected immediately.

Staff stated that should the Planning Commission uphold the appeal and deny the project, the matter could be appealed to the Board of Supervisors. If the Board of Supervisors also denied the project, then the matter would be treated as an enforcement case at which time the applicant would be required to correct the violation.

Chair Herbertson stated that since the Commission has been informed of a violation, staff was directed to begin the enforcement process in order to correct the violation in an expedient manner.

Staff reiterated that the Findings that could not be made by the Commission were Findings II, III, IV, V, VI(C-F), VII(1-5), and VIII(B,C,F).

Chair Herbertson stated that the direction to the applicant was to provide proof of recorded easements over the three parcels for drainage purposes.



M/s Julin/Berland, and passed unanimously of those present, to adopt a resolution upholding the Hansen Appeal of the Agency's approval of the Thompson Design Review based on the findings as set forth therein. Said resolution would be ratified at the hearing of February 24, 2003. Motion passed 5/0 (Commissioners Thompson and Buddie not present).

Chair Herbertson informed all parties of interest that this action could be appealed to the Board of Supervisors within five (5) working days)

7. MINUTES

M/s Julin/Berland, and passed unanimously of those present, to approve the Minutes of December 9, 2002, with minor modifications. Motion passed 5/0 (Commissioners Thompson and Buddie not present).

*(Item #8 was taken up at 1:20 p.m.)*

8. FUTURE AGENDA DISCUSSION ITEMS, FIELD TRIPS

February 24, 2003 (starting at 11:00 a.m.)

Oakview FEIR and Master Plan (San Rafael)

Dickens Subdivision (San Rafael)

Workshop on Procedures and Protocol

Nicks Cove Master Plan/Coastal Permit/Development Plan (JP)

March 10, 2003

Milstein Design Review (Kentfield)

Housing Element

Hedlund Minor Design Review (San Geronimo)

March 24, 2003

Hicks Mt. Master Plan/Development Plan (Nicasio)

Tobias Variance Appeal (Lucas Valley)

Fitzgerald Design Review (San Rafael)