



MARIN COUNTY
COMMUNITY DEVELOPMENT AGENCY
ALEX HINDS, DIRECTOR

**STAFF REPORT TO THE MARIN COUNTY PLANNING COMMISSION
SHAW VARIANCE, USE PERMIT, DESIGN REVIEW CLEARANCE, AND
LOT LINE ADJUSTMENT**

Item No.:	5	Application No.:	VR 02-1, UP 02-1 DC 03-83, LLA 03-08
Applicant:	Douglas and Ericka Shaw	Owners:	Douglas and Ericka Shaw
Property Address:	53 Laurel Grove Avenue, Kentfield	Assessor's Parcels:	071-152-31 and 071-152-51
Hearing Date:	June 16, 2003	Planner:	Jeremy Tejirian

RECOMMENDATION: Approve with Conditions
APPEAL PERIOD: Five working days to the Marin County Planning Commission
LAST DATE FOR ACTION: June 16, 2003

APPEAL SUMMARY AND RECOMMENDATION:

This is a public hearing to consider an appeal of the Deputy Zoning Administrator's conditional approval of the Shaw Variance, Use Permit, Design Review Clearance, and Lot Line Adjustment application submitted by Leonard Rifkind on behalf of Florance Lauder, who owns the adjacent property to the east of the subject property, which is downslope from the proposed development. The appeal reiterates issues that were considered during the Deputy Zoning Administrator's hearing on the project, including potential impacts to the physical character of the surrounding neighborhood. The appellant asserts that the proposed project would adversely affect the privacy and visual quality enjoyed from Mrs. Lauder's property because of the scale and design of the residence, and the tree removal that would result from the development. Staff recommends sustaining the Deputy Zoning Administrator's action and denying the Lauder appeal because the project design and conditions of project approval adequately addresses the issues raised and the development would not result in adverse affects to the Lauder property or to the character of the Kentfield community.

PROJECT DESCRIPTION:

The project has several components. The applicant would adjust the existing lot lines between the subject property, Assessor's Parcel 071-152-31, and Assessor's Parcel 071-152-51, which is a portion of an adjacent flag lot. The existing property is 10,114 square feet and the Lot Line Adjustment would increase the size of the lot by 4,483 square feet, resulting in a proposed lot area of 14,597 square feet. The applicant proposes to demolish an existing single-family residence and detached garage and replace them with a new single-family residence and a new detached accessory structure

with an upper level garage and living area underneath. The proposed development would be located in approximately the same area as the existing development, and would maintain the following minimum setbacks: 38.3 feet from the access easement along the southern front property line; 2 feet from the access easement along the western side property line; 19 feet from the eastern side property line; and 9 feet from the northern rear property line. The residence would attain a maximum height of 32 feet above finished grade and the detached accessory structure would attain a maximum height of 25.25 feet above natural and finished grade. The proposed three-story residence and living area underneath the garage would have a total of 4,379 square feet of floor area, and the garage would have 390 square feet of floor area. The floor area ratio on the proposed 14,597 square foot lot would be 30 percent, not including the floor area of the garage. The proposed development would require Variance approval to encroach into the western side yard setback, Use Permit approval is required to allow the two-story detached accessory structure to exceed a height of 15 feet above grade and encroach into the rear yard setback, and Design Review Clearance approval is required to allow the residence to exceed a floor area of 4,000 square feet and a height of 30 feet above finished grade.

GENERAL INFORMATION:

General Plan:	SF5 (Single-family, 2 to 4 units per acre maximum density)
Zoning:	R1:B-2 (Residential, Single-Family, 10,000 square foot minimum lot size)
Lot size:	14,597 square feet
Adjacent Land Uses:	Residential
Vegetation:	Native and introduced
Topography and Slope:	Steep
Environmental Hazards:	None identified

ENVIRONMENTAL REVIEW:

The Environmental Coordinator has determined that this project is Categorical Exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Sections 15303, Class 3, and Section 15305, Class 5, of the CEQA Guidelines because it entails a lot line adjustment and the construction of a single-family residence with no 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 accordance 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 subject to the policies and regulations of the Countywide Plan and the Kentfield/Greenbrae Community Plan, which emphasize protecting natural resources and preserving the character of the local community. Please see the analysis below and the attached resolution for detailed findings.

PROJECT ANALYSIS:

Overview

The project site is located near the end of a narrow access way leading to Laurel Grove Avenue in Kentfield. The properties closer to Laurel Grove Avenue are relatively level and the access way is lined with a row of mature trees, which provide a distinctive natural feature that enhances the neighborhood. The project site is located where the hillside begins to rise above the residences on the lower properties. The existing development in the area consists of single-family residences of various sizes and architectural styles. A survey of the County Assessor's information for 10 properties that surround the project site indicate that the residences in the immediate vicinity of the site range from 1,888 square feet to 4,178 square feet in size. Due to the steep terrain commonly found in the area, the County has previously approved 12 other setback Variances for properties shown on the same Assessor's page as the Shaw property.

The property owner has purchased the Assessor's Parcel that contains the access way leading from Laurel Grove Avenue, and would incorporate it with the rest of his property through the Lot Line Adjustment process to increase the size of his property. Staff has reviewed the Plan of Villa Lots, R.M. Bk. 1, Pg. 11, which subdivided the area in 1884, and determined that the Dean parcel consisting of the access easement was not depicted on the Map, offered for dedication to the public, or accepted by the County. The properties in this vicinity were thereafter split and reconfigured by deeds, and additional maps that would create roadways were not recorded. Consequently, the parcel constitutes a private easement that is part of the Dean property and therefore is included in lot area calculations. There is no indication that this Assessor's Parcel is a legal lot of record, however, the owner has submitted a Merger application to be processed as a condition of project approval in order to formally record that his property would constitute a single building site. The Lot Line Adjustment would result in a flag lot configuration for the property, but would not alter the location of the boundary from where the front yard setback is measured. The setbacks for the property have been measured from the property lines or the access easements affecting the property, whichever is more restrictive, and the southern end of the property is designated as the front to maintain consistency with the historic precedent of development on the property and in the surrounding area.

Variance Issues

Variance approval has been requested to allow the residence to encroach 8 feet into the western side yard setback where 10 feet is required by the governing R-1:B-2 zoning district. The setback is measured from a 10-foot wide access easement, which is used as the driveway for the residence that is behind the Shaw property. The distance of the proposed residence from the western property line exceeds 10 feet, which is the side yard setback normally required by the governing R-1:B-2 zoning district. However, the zoning code requires that setbacks be measured from access easements that encumber a property or the property lines, whichever is more restrictive, so Variance approval is required for the proposed project.

Within the context of the required Variance findings, the property has a special physical circumstance due to the steep hillside that ascends from the base of the Shaw property. Inspection of the neighborhood reveals that there are a number of other lots with the same zoning that do not have steeply sloping topography. The steep slope is a natural topographical feature that limits the applicant's ability to meet the same setbacks as other properties in Kentfield that have level building areas. Therefore, the strict application of the 10-foot setback would result in a constrained building envelope in comparison to other lots in the area that are subject to identical zoning. Locating the residence closer to the western access easement than is normally allowed benefits the downslope

property owner by increasing the distance of the proposed residence from the common property line, and does not visually impact either the upslope neighbor or the neighbor to the rear.

Use Permit Issues

Use Permit approval has been requested to allow the detached accessory structure, which would be a garage on the upper level and an artist's studio on the lower level, to exceed a height of 15 feet above grade and encroach by 1 foot into the 10-foot rear yard setback required by the governing R-1:B-2 zoning district. The approval of a Use Permit requires a finding that the project would not result in unreasonable impacts to the surrounding community. The elevation of the finished floor of the garage is determined by the elevation of the driveway to provide level and code-compliant access to the garage and pullout apron. Developing the studio area underneath the garage is an efficient use of understory area that would not substantially increase the mass, bulk, or highest elevation of the structure.

Lot Line Adjustment Issues

The existing lot area is approximately 10,114 square feet and the proposed floor area is 4,379 square feet, which would result in a floor area ratio of approximately 43 percent if the Lot Line Adjustment was not accomplished. Without the additional floor area enabled by the Lot Line Adjustment then the maximum floor area allowed on the subject property would be approximately 3,034 square feet. Based on a review of Assessor's Records that show the approximate size of the residences in the surrounding area, the scale of the residence is comparable to other residences in the immediate vicinity. As discussed in the Design Review section below, the mass and bulk of the residence would be minimized by sinking a portion of the living area into the slope and by the architectural design. Further, the Variance approval would allow the applicant to locate the residence farther up the slope away from the appellant, which would reduce visual and privacy impacts to her property.

Design Review Clearance Issues

Design Review Clearance approval has been requested to allow the proposed residence to exceed a height of 30 feet and to allow the floor area for the development on the property to exceed 4,000 square feet. The residence would be 3,833 square feet and the studio area beneath the garage would be 715 square feet in size. However, a large portion of the lower levels of these structures would be sunken into the hillside, which would reduce the mass and bulk of the proposed development. Further, the rear portion of the proposed residence would not extend as far to the northeast as the existing residence, which would reduce the visual and privacy impacts from the existing residence downslope of the site. The architecture of the proposed residence has a distinctive style characterized by exterior walls that would have oblique angles and roofs that are pitched and oriented to reflect the natural topography. The atypical angles and architectural features such as decking and the vertically tapered window seat area in the den would articulate the facades of the residence. The exterior materials would be clapboard or shingle siding stained a dark color to recede in the natural surroundings.

The proposed project would minimize grading because it would be located in the same area as the existing residence, and the majority of the ground disturbance would be limited to the excavation for the lower level living areas. This excavation would not significantly reform the surrounding natural topography, and lowering the residence into the hillside would reduce its mass and bulk. Two trees would be removed for the project and replaced with four trees of the same type, and the remainder of the trees would be protected during construction. None of the trees between the applicant's and the appellant's residences' would be removed. Further, by obtaining an exception from the Department of

Public Works for the required width of the driveway improvements, the applicant would protect the mature trees along the common driveway to Laurel Avenue. These trees enhance the local neighborhood and are a distinguishing natural feature of the area. Finally, as modified by the conditions of approval, the proposed landscaping would enhance privacy and screen the proposed development from the surrounding area.

Design Review Board Comments

The Kentfield Planning Advisory Board (KPAB) considered several iterations of the plans, and recommended approval of the project after the applicant proposed increasing the size of the property by purchasing the adjoining Assessor's Parcel from the neighbor. KPAB suggested that the applicant provide additional landscaping along the western side of the proposed residence. Further, KPAB suggested that the proposed garage be increased from 21 feet to 24 feet in depth, and located 20 feet from the edge of the western access easement. These modifications would result in the accessory structure being 9 feet closer to the appellant's property and approximately 2 feet higher than the applicant has proposed.

Implementing KPAB's suggestion of enlarging and relocating the garage would adversely affect the appellant's property by increasing the mass and bulk of the accessory structure and decreasing the separation between the structure and the appellant's property. Further, the modifications suggested by KPAB are unnecessary because the Department of Public Works has reviewed the proposed access and parking and determined that it meets County standards. However, staff concurs with KPAB's recommendation for approving the project with the modifications discussed below.

Public Comments

Staff received letters from community members concerning the proposed project and the issues raised were discussed during the Deputy Zoning Administrator's hearing.

Michael Freeman has expressed his support for the project, but identified the existing utility lines that extend from Laurel Grove Avenue down the shared driveway as an eyesore. He discussed plans for a group of neighboring property owners to share the expense for installing the utility lines underground for the length of this shared driveway. A condition of project approval requires that new connections from the existing utility lines to the proposed residence would be installed underground, and staff would encourage the installation of the existing utility lines underground provided the construction is done in conformance with the Arborist's recommendations for tree protection. The installation of the existing utilities underground would be deemed a part of the proposed project, and would be subject to the recommended conditions of project approval. It should be noted, however, that the utility lines that extend down the shared driveway do not serve the subject property, which relies on utility lines that extend from the north.

Another neighbor, Robert Beeney has expressed concern regarding the proposed project, asserting that the development would be out of scale with the surrounding neighborhood and result in adverse visual effects to the Shaw's downslope neighbor. He refers in particular to the Lot Line Adjustment, which the applicant is using to increase his lot size and maximum floor area ratio. Although Mr. Beeney is not party to the appeal, these issues are discussed in more detail in the appeal section below.

Appeal

The representative for the downslope property owner, Mrs. Lauder, has raised several concerns with

the proposed project. Mrs. Lauder's representative asserts that there would be visual and privacy impacts to the appellant's property from the project, and policy inconsistencies are identified related to these impacts. The appellant also raises concerns with the lot line adjustment and the scale of the proposed development. Staff has reviewed these comments, and recommends that the project should be modified to address adverse impacts to the downslope property and conform with County policies. The applicant has submitted information, including a slope section showing sitelines from the downslope property and visual massing studies, and a written statement asserting that the privacy impact to the downslope property would be minimized by the grant of Variance to move the proposed development farther up the slope, and that the construction of decks with solid railings would block downslope views of the windows on the western side of the proposed residence. Several factors have been identified by the applicant that minimize adverse affects to the downslope property, including the increased distance between the proposed residence and the appellant's residence that would result from the Variance approval and the vegetation that would screen the development.

The purpose of the Lot Line Adjustment is to increase the lot size and permitted floor area for the proposed residence without the need for a Variance. The area that would be incorporated into the subject property is encumbered by an access easement, and therefore does not increase the buildable portion of the property. However, the conventional method of calculating lot area includes area that is encumbered by access easements. The area of the access easement under the existing lot configuration increases the lot area and maximum floor area permitted on the Dean property, which is adjacent to the Shaw property but farther removed from the Lauder property. Consequently, the adjustment shifts the maximum floor area permitted by the area of the access easement from the Dean property to the Shaw property. The regulatory method used to ensure that large residences in conventionally zoned areas minimize adverse affects to the surrounding neighborhood is Design Review, and the proposed development exhibits several features that would substantially reduce adverse affects to the Lauder property that could otherwise result from development on the Shaw property not requiring Design Review or other discretionary permit approval.

Staff has reviewed the comments submitted by the appellant's representative and recommends denying the appeal because there is insufficient basis to overturn the Deputy Zoning Administrator's conditional approval of the project. There are several factors supporting this conclusion, which are discussed below.

First, the proposed residence would not visually impose on the appellant's residence because the residence is a single story located relatively near the base of the hill rising to the Shaw's proposed building pad. Viewed from the applicant's property, the roof is the most visible portion of the appellant's residence, and the appellant asserts that the greatest impact from the development would be to the appellant's rear patio.

Second, the appearance of mass and bulk of the proposed development is most directly related to the eastern side façades facing the appellant's property. The design of the residence steps the building forms down the slope with the rooflines pitched and oriented with the topography. The result of this design is to present a façade facing the Lauder property that is approximately 22 feet high, and appears as a 2 story rather than a 3 story residence. The façade of the residence is articulated with the decks and chimney, further reducing the appearance of mass and bulk.

It should be noted that the regulatory method of addressing the scale of the accessory structure is somewhat different from the method used for the residence. Section 22.72.055 permits parking structures on steeply sloping lots to maintain a 3-foot setback from the front and side property lines without requiring discretionary entitlements when the property is conventionally zoned. In these circumstances the height of the structure is measure from the finished floor of the parking structure to the roof ridge. Frequently, this results in a garage near a road with empty crawl space underneath that is enclosed with lattice or leaves the structural supports exposed. Adding living area underneath such a structure does not increase the height of that structure above what would be allowed with a Building Permit or substantially increase the mass and bulk of the structure. These circumstances exist on the subject property, so the conditional approval of a Use Permit for the proposed accessory structure would not be detrimental to the downslope property in comparison to what is normally allowed in the governing zoning district. The detached accessory structure would also present a 22 foot high eastern side façade and would feature a similar roof pitch and orientation as the residence.

Third, the distance between the development on the applicant's property and the appellant's property, particularly the patio, would be substantially increased beyond what currently exists or would otherwise be permitted with a Building Permit. There is a wing of the existing residence that extends approximately 14 feet closer to the area of the appellant's patio than the proposed development, which is advantageous for the continued health of an 18-inch diameter at breast height oak and would provide additional area for landscaping to screen the residences from each other. Further, the proposed development would maintain a 19-foot minimum setback from the common property line where 10 feet is required. Distance is an important factor for reducing both visual and privacy impacts to the appellant's property.

Fourth, significant portions of both the proposed residence and the proposed detached accessory structure are sunken below grade, which significantly reduces the appearance of scale, mass, and bulk for the proposed project in comparison with several other residences in the surrounding neighborhood. The proposed project would require 25 cubic yards of excavation for the residence and 71 cubic yards of excavation for the detached accessory structure. One hundred cubic yards of material is not an uncommonly large amount of material to excavate for the development of a residence on a hillside, and the project would not substantially reform the natural topography apart from the area within the building footprint. Reforming natural topography tends to have a greater environmental affect, such as altering drainage patterns and removing trees, than excavating within a building footprint. Therefore, the proposed design approach of excavating a portion of the hillside to allow for a reduction in the mass and bulk of the new residence is consistent with design review criteria and Countywide Plan policies regarding grading.

Fifth, the proposed project limits tree removal to two mature oak trees, and the conditions of project approval require an arborist to review the development and recommend tree protection and replacement measures that require tree protection fencing and planting four additional oak trees. The conditions of approval also require a revised landscape plan that would include a 6-foot high fence along the eastern side property line and additional vegetation that would screen the two properties from each other. The existing vegetation, and required landscaping and fence would minimize adverse visual and privacy affects to the appellant's property.

Based on the discussion above and the mandatory findings for approval of the Shaw Variance, Use Permit, Design Review Clearance, and Lot Line Adjustment, staff recommends that there is insufficient basis to overturn the Deputy Zoning Administrator's action on the project.

Design Modifications

Despite the general aesthetic appeal of the proposed residence, several conditions should be imposed to decrease the mass and bulk of the proposed residence and improve the landscaping for screening the proposed property from the surrounding area. Therefore, staff recommends approving the proposed project with the following modifications required through conditions of approval.

1. The maximum height of the proposed residence should be reduced to 30 feet above finished grade.
2. The site should be evaluated by an arborist who would install or inspect tree protection fencing to protect trees during construction and recommend further measures if necessary.
3. Additional landscaping should be proposed for the areas along the western side of the buildings and on the eastern portion of the lot to provide adequate screening to the downslope neighbor.
4. The plans should be supplemented prior to issuance of a Building Permit to show an elevation of the fence along the eastern property line and to provide details of the exterior lighting and samples of the exterior colors.

Incorporating these conditions would improve the project by reducing visual and privacy impacts to the surrounding area, and ensuring that the project would comply with the County policies.

Conclusion

The proposed development has undergone thorough review and analysis, and as modified by the conditions of approval, the project would be suitable for the subject property. The steep slope deprives the property of privileges enjoyed by other properties in Kentfield that have level building areas. Therefore, the strict application of the 10-foot setback would result in a constrained building envelope in comparison to other lots in the area that are subject to identical zoning. The proposed development has been reviewed and recommended for approval by the Department of Public Works, the special districts for the Kentfield area, and the Kentfield Planning Advisory Board. Based on the foregoing analysis, the proposed development would be consistent with the Marin Countywide Plan, the Kentfield/Greenbrae Community Plan, and the Zoning Code because it would minimize adverse impacts to the surrounding natural and built environment.

RECOMMENDATION

Staff recommends that the Planning Commission review the administrative record, conduct a public hearing, and adopt the recommended resolution approving the Shaw Variance, Use Permit, Design Review Clearance, and Lot Line Adjustment.

Attachments:

1. Recommended Resolution denying the Lauder appeal approving the Shaw Variance, Design Review Clearance, Use Permit, and Lot Line Adjustment
2. Deputy Zoning Administrator hearing minutes
3. Staff supplemental memorandum to the Deputy Zoning Administrator
4. Deputy Zoning Administrator staff report, recommended Resolution, and attachments
5. Rifkind comments, received 6-5-03
6. Shaw comments, received 5-29-03
7. Rifkind comments, received 4-3-03

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. _____

A RESOLUTION DENYING THE LAUDER APPEAL AND CONDITIONALLY APPROVING THE SHAW VARIANCE , USE PERMIT, DESIGN REVIEW CLEARANCE, AND LOT LINE ADJUSTMENT

ASSESSOR'S PARCEL 071-152-31 AND -071-152-51
53 LAUREL GROVE AVENUE, KENTFIELD

SECTION I: FINDINGS

- I. WHEREAS, the applicant would adjust the existing lot lines between the subject property, Assessor’s Parcel 071-152-31, and Assessor’s Parcel 071-152-51, which is a portion of an adjacent flag lot. The existing property is 10,114 square feet and the Lot Line Adjustment would increase the size of the lot by 4,483 square feet, resulting in a proposed lot area of 14,597 square feet. The applicant proposes to demolish an existing single-family residence and detached garage and replace them with a new single-family residence and a new detached accessory structure with an upper level garage and living area underneath. The proposed development would be located in approximately the same area as the existing development, and would maintain the following minimum setbacks: 38.3 feet from the access easement along the southern front property line; 2 feet from the access easement along the western side property line; 19 feet from the eastern side property line; and 9 feet from the northern rear property line. The residence would attain a maximum height of 32 feet above finished grade and the detached accessory structure would attain a maximum height of 25.25 feet above natural and finished grade. The proposed three-story residence and living area underneath the garage would have a total of 4,379 square feet of floor area, and the garage would have 390 square feet of floor area. The floor area ratio on the proposed 14,597 square foot lot would be 30 percent, not including the floor area of the garage. The proposed development would require Variance approval to encroach into the western side yard setback, Use Permit approval is required to allow the two-story detached accessory structure to exceed a height of 15 feet above grade and encroach into the rear yard setback, and Design Review Clearance approval is required to allow the residence to exceed a floor area of 4,000 square feet and a height of 30 feet above finished grade. The subject property is located at 53 Laurel Grove Avenue, Kentfield, and is further identified as Assessor's Parcels 071-152-31, and -51.
- II. WHEREAS, the Marin County Deputy Zoning Administrator held a duly noticed public hearing on April 24, 2003, to consider the merits of the project, and hear testimony in favor of, and in opposition to, the project.
- III. WHEREAS, the Marin County Planning Commission held a duly noticed public hearing on June 16, 2003, to consider the merits of the project and the appeal, and hear testimony in favor of, and in opposition to, the project.
- IV. WHEREAS, the Marin County Planning Commission finds that there is insufficient basis to support the Lauder appeal, for the following reasons:

- A. Granting the setback Variance would benefit the downslope neighbor by increasing the distance between the residences, and would reduce the amount of grading and tree removal that would otherwise be necessary for construction of the residence.
- B. Granting Use Permit approval would allow the detached accessory structure, which would be a garage on the upper level and an artist's studio on the lower level, to exceed a height of 15 feet above grade and encroach by 1 foot into the 10-foot rear yard setback required by the governing R-1:B-2 zoning district. The elevation of the finished floor of the garage is determined by the elevation of the driveway to provide level and code-compliant access to the parking area. Developing the studio area underneath the garage is an efficient use of understory area that would not substantially increase the mass, bulk, or highest elevation of the structure.
- C. As modified by the conditions of approval, Design Review Clearance approval would allow the floor area for the development on the property to exceed 4,000 square feet. The residence would be 3,833 square feet and the studio area beneath the garage would be 715 square feet in size. However, a large portion of the lower levels of these structures would be sunken into the hillside, which would reduce the mass and bulk of the proposed development. Further, the rear portion of the proposed residence would not extend as far to the northeast as the existing residence, which would reduce the visual impact to the downslope neighbor. The architecture of the proposed residence has a distinctive style characterized by exterior walls that would not conform to right angles and roofs that are pitched and oriented to reflect the natural topography. The atypical angles and architectural features such as decking and the vertically tapered window seat area in the den would articulate the facades of the residence. The exterior materials would be clapboard or fire resistant shingle siding stained a dark color to recede in the natural surroundings.
- D. The proposed project would minimize grading because it would be located in the same area as the existing residence, and the majority of the ground disturbance would be related to the excavation for the lower level living areas. This excavation would not significantly reform the surrounding natural topography, and lowering the residence into the hillside would reduce its mass and bulk. Two trees would be removed for the project, but the remainder would be protected during construction. Further, by obtaining an exception from the Department of Public Works for the required width of the driveway improvements, the applicant would protect the mature trees along the common driveway to Laurel Avenue. These trees enhance the local neighborhood and are a distinguishing natural feature of the area. Finally, as modified by the conditions of approval, the proposed landscaping would provide privacy and soften the appearance of the proposed development from the surrounding area.
- E. As modified by the conditions of approval, the proposed development would be of a comparable height, size and scale with other structures existing in the surrounding community. Additionally, the project would utilize creative design features that break up the mass of the structure such as articulations in the building facades, decking and fenestration.
- F. As modified by the conditions of approval, the proposed development would not limit or inhibit the use or enjoyment of other properties in the vicinity because the improvements are consistent with the uses permitted by the governing zoning district and would maintain adequate setbacks from all property lines and other buildings on the subject and surrounding properties. Finally, the project has been designed to protect and preserve existing views, light, and privacy of surrounding residences.

V. WHEREAS, the Marin County Planning Commission finds that the proposed project is

Categorically Exempt from the requirements of the California Environmental Quality Act, per Sections 15303, Class 3, and Section 15305, Class 5, of the CEQA Guidelines because it entails the construction of a single-family residence with no potentially significant impacts to the environment.

VI. WHEREAS, the Marin County Planning Commission finds that the proposed project is consistent with the Marin Countywide Plan because:

- A. The project would comply with Marin County standards for geotechnical engineering and seismic safety, and include improvements to protect lives and property from hazard;
- B. The project would comply with the Countywide Plan SF5 Land Use Designation as a single-family residence;
- C. The project would comply with Department of Public Works standards related to parking, grading and drainage;
- 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 comply with Countywide Plan Policy EQ-3.11 in that the project would not result in significant visual impacts to the surrounding natural or built environment, as discussed in the findings below;
- F. The project would minimize soil disturbance and maximize protection of natural vegetation as discussed in the findings below; and
- G. The project would minimize potential hazards to the public from private construction.

VII. WHEREAS, the Marin County Planning Commission finds that the proposed project is consistent with the Kentfield/Greenbrae Community Plan because:

- A. 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.
- B. The subject property maintains adequate access and off-street parking to accommodate the proposed project as verified by the Marin County Department of Public Works.
- C. The subject property would have adequate water supply and sewage disposal, as confirmed by the Marin Municipal Water District and Ross Valley Sanitary District.
- D. As discussed in the analysis section, the proposed project would not adversely impact the surrounding natural environment relative to vegetation, species habitats or on-site drainage.

VIII. WHEREAS, the Marin County Planning Commission finds that the proposed project is consistent with the mandatory findings to approve a Variance (Section 22.86.025[4] of the Marin County Code).

- A. **Because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other properties in the vicinity under an**

identical zoning district.

The topography of the subject property exceeds an 18 percent slope descending from the west to the east, resulting in site constraints that affect the proposed development. The steep slope deprives the property of privileges enjoyed by other properties in Kentfield that have level building areas. The development proposal responds to these constraints by locating the structures near the upper portion of the lot, encroaching into the required western side yard setback. Strict application of the 10-foot setback would result in a constrained building envelope in comparison to other lots in the area that are subject to identical zoning.

B. The granting of a Variance for the property will not be detrimental to the public welfare or injurious to other property in the vicinity.

The portion of the residence that would encroach into the side yard setback would not adversely impact the adjacent neighbors because the existing and proposed vegetation would provide screening to the surrounding area, and the residence would be designed to blend into the natural landscape. The setback is measured from the edge of a 10-foot access easement, which is used as a private driveway benefiting a single neighbor behind the applicant's property. Adequate separation from the upslope property owner to the east is provided by this 10-foot driveway, and Variance approval would allow the residence to be located farther from the downslope neighbor, who has raised concerns regarding visual and privacy impacts from the proposed development. Granting the setback Variance would benefit the downslope neighbor by increasing the distance between the residences, and would reduce the amount of grading and tree removal that would otherwise be necessary for construction of the residence. Therefore, Variance approval would benefit the community because it would allow the applicant to minimize adverse affects to the surrounding natural and built environment.

C. The granting of a Variance for the property does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity under an identical zoning district.

Granting a Variance for the subject property would not constitute a grant of special privilege that is inconsistent with the limitations placed on other properties in the vicinity. Review of planning records indicates that several other properties in the vicinity and shown on the same Assessor's map page have been granted Variance approval for setback encroachments in the past. Consequently, approval of the proposed Variance would be consistent with previous County actions in the community as summarized in the table below.

ASSESSOR'S PARCEL	VARIANCES
071-152-03	rear encroachment
071-152-12	front encroachment
071-152-13	front, side, rear encroachments
071-152-14	side, side, rear encroachments
071-152-22	rear encroachment
071-152-33	side encroachment
071-152-35	front, side encroachments
71-152-40	side encroachment
071-152- 46	side encroachment
071-152-48	side encroachment
071-152-58	front encroachment

Finally, approving the proposed project would not be a grant of special privilege because the slope of the subject lot results in constraints that most property owners in the wider area of Kentfield do not face.

D. The granting of a Variance for the property does not authorize a use or activity that is not otherwise expressly authorized by the particular zoning district regulations governing such property.

The granting this Variance would not allow or authorize a use or activity that is not otherwise expressly authorized by the governing R-1:B-2 zoning district regulations because it involves the construction of a single-family residence.

IX. WHEREAS, the Marin County Planning Commission finds that the proposed project is consistent with the mandatory findings to approve a Design Review Clearance (Section 22.82.040 of the Marin County Code).

Design Review Clearance approval has been requested to allow the proposed residence to exceed a height of 30 feet and to allow the floor area for the development on the property to exceed 4,000 square feet. The residence would be 3,833 square feet and the studio area beneath the garage would be 715 square feet in size. However, a large portion of the lower levels of these structures would be sunken into the hillside, which would reduce the mass and bulk of the proposed development. Further, the rear portion of the proposed residence would not extend as far to the northeast as the existing residence, which would reduce the visual impact to the downslope neighbor. The architecture of the proposed residence has a distinctive style characterized by exterior walls that would have oblique angles and roofs that are pitched and oriented to reflect the natural topography. The atypical angles and architectural features such as decking and the vertically tapered window seat area in the den would articulate the facades of the residence. The exterior materials would be clapboard or fire resistant shingle siding stained a dark color to recede in the natural surroundings.

The proposed project would minimize grading because it would be located in the same area as the existing residence, and the majority of the ground disturbance would be limited to the excavation for the lower level living areas. This excavation would not significantly reform the surrounding natural topography, and lowering the residence into the hillside would reduce its mass and bulk. Two trees would be removed for the project, but the remainder would be protected during construction. Further, by obtaining an exception from the Department of Public Works for the required width of the driveway improvements, the applicant would protect the mature trees along the common driveway to Laurel Avenue. These trees enhance the local neighborhood and are a distinguishing natural feature of the area. Finally, as modified by the conditions of approval, the proposed landscaping would provide privacy and soften the appearance of the proposed development from the surrounding area.

As modified by the conditions of approval, the proposed development would be of a comparable height, size and scale with other structures existing in the surrounding community. Additionally, the project would utilize creative design features that break up the mass of the structure such as articulations in the building facades, decking and fenestration.

As modified by the conditions of approval, the proposed development would not limit or inhibit the use or enjoyment of other properties in the vicinity because the improvements are consistent with the uses permitted by the governing zoning district and would maintain adequate setbacks from all property lines and other buildings on the subject and surrounding properties. Additionally, the project has been designed to protect and preserve existing views, light, and privacy of surrounding residences.

As modified by the conditions of approval, the proposed development would minimize potential adverse physical and visual impacts because it would be constructed of building materials and colors that compliment the surrounding natural environment and would be consistent with the surrounding community character. Finally, the design of the proposed development would incorporate current goals and policies contained in the Marin Countywide Plan and development standards in the Marin County Code to ensure that it minimizes alterations to the natural environment by reducing grading activities and replacing significant trees removed for development.

X. WHEREAS, the Marin County Planning Commission finds that the proposed project is consistent with the mandatory findings to approve a Lot Line Adjustment (Section 20.56.080 of the Marin County Code).

A. The proposed Lot Line Adjustment is limited to four or fewer existing adjoining lots.

The proposed adjustment includes a single legal lot of record and a portion of an adjacent lot.

B. Each of the affected lots is a separate legal lot of record because they were created in compliance with the applicable subdivision regulations in effect at the time of their creation.

As a condition of project approval the Lands of Shaw, including Assessor's Parcel 071-152-31, and Assessor's Parcel 071-152-51, which is currently owned by Dean, but would be purchased by Shaw, shall be merged into a single, legal lot of record. A voluntary merger application has already been submitted, but cannot be finalized until the sale of the property has been completed. There is no indication that Assessor's Parcel 071-152-51 is a legal lot of record, however, the Merger would resolve any remaining questions regarding the legal status of the Assessor's Parcel 071-152-51.

C. The proposed Lot Line Adjustment would not result in the creation of additional parcels or additional potential building sites.

The proposed Lot Line Adjustment would reconfigure existing legal lots of record, but would not create additional lots.

- D. The proposed Lot Line Adjustment would comply with policies of the Countywide Plan and applicable community plan and local coastal plan.

The adjustment would transfer ownership of Assessor's Parcel 071-152-51 from Dean to Shaw. The subject Assessor's Parcel is the access easement portion of the flag lot owned by Dean. The remainder of the lot owned by Dean would be contained in Assessor's Parcel 071-152-57, which is approximately 13,300 square feet in size. The existing residence on the remaining Dean lot is approximately 3,072 square feet in size, and therefore the lot line adjustment would result a floor area ratio on the Dean property of approximately 23 percent. The adjustment would not affect the setbacks on the Dean property, because front yard setbacks are measured from where the bulk of the lot begins. The proposed project is consistent with the goals and policies of the Marin Countywide Plan SF5 single-family land use designation, Title 22 of the Marin County Code, and the Kentfield/Greenbrae Community Plan because the resulting properties would meet the development standards required by the governing R-1:B-2 zoning district. The reconfiguration of the lot lines would result in lots that meet the 10,000 square foot minimum lot size requirement for the subject properties.

- E. The proposed Lot Line Adjustment would comply with zoning and development provisions of Titles 18, 20, 22, and 24 of Marin County Code, including but not limited to those which address minimum lot size, lot width, street frontage and setbacks from all property lines.

- XI. WHEREAS, the Marin County Planning Commission finds that the proposed project is consistent with the mandatory findings to approve a Use Permit (Section 22.88.020 of the Marin County Code).

The establishment, maintenance or conducting of the use for which a Use Permit is sought will not, in this case, be detrimental to the health, safety, morals, comfort, convenience, or welfare of persons residing or working in the neighborhood of this use and will not, under the circumstances of this case, be detrimental to the public welfare or injurious to property or improvements in said neighborhood for the reasons listed below.

- A. Use Permit approval has been requested to allow the detached accessory structure, which would be a garage on the upper level and an artist's studio on the lower level, to exceed a height of 15 feet above grade and encroach by 1 foot into the 10-foot rear yard setback required by the governing R-1:B-2 zoning district. The elevation of the finished floor of the garage is determined by the elevation of the driveway to provide level and code-compliant access to the parking area. Developing the studio area underneath the garage is an efficient use of understory area that would not substantially increase the mass, bulk, or highest elevation of the structure.
- B. The accessory structure would not generate any activities that would be detrimental to the use or enjoyment of surrounding properties because the use of the structure would be compatible with surrounding residential uses within the neighborhood and would not result in adverse noise or visual impacts on adjacent properties. Furthermore, as a condition of project approval, the applicant would be required to record a deed restriction stipulating that the detached accessory structure would not be converted into a second dwelling unit without County authorization.

- C. The accessory structure would be visually compatible with development on the subject property and surrounding properties because it would have a rustic design with a pitched roof and wood siding.
- D. The accessory structure does not impair or obstruct significant viewsheds enjoyed from off-site locations because of its location on the subject property.
- E. Improvements to the accessory structure would not impact or alter existing water or sewer services to the subject or surrounding properties.
- F. The accessory structure would be required to meet Uniform Building Code standards and, therefore, would be constructed in a manner that would preclude potential damage to improvements on the subject property or on neighboring properties.
- G. The proposed project would not entail significant alterations to the natural environment, including topography and vegetation.
- H. The proposed project has been reviewed and recommended for approval by the Kentfield Planning Advisory Board.

SECTION II: CONDITIONS OF PROJECT APPROVAL (VR 02-1, UP 02-1, DC 03-83, LL 03-8)

NOW THEREFORE, BE IT RESOLVED that the Marin County Planning Commission hereby approves the Shaw Variance, Use Permit, Design Review Clearance, and Lot Line Adjustment, subject to the following conditions:

Marin County Community Development Agency - Planning Division

1. The Shaw Variance, Use Permit, Design Review Clearance, Lot Line Adjustment, and Merger is approved to adjust the existing lot lines between the subject property, Assessor's Parcel 071-152-31, and Assessor's Parcel 071-152-51, which is a portion of an adjacent flag lot. The existing property is 10,114 square feet and the Lot Line Adjustment is approved to increase the size of the lot by 4,483 square feet, resulting in a lot area of 14,597 square feet. The approvals include demolishing an existing single-family residence and detached garage and replacement with a new single-family residence and a new detached accessory structure with an upper level garage and living area underneath. The approved development would be located in approximately the same area as the existing development, and would maintain the following minimum setbacks: 38.3 feet from the access easement along the southern front property line; 2 feet from the access easement along the western side property line; 19 feet from the eastern side property line; and 9 feet from the northern rear property line. The residence is approved to attain a maximum height of 30 feet above finished grade and the detached accessory structure is approved to attain a maximum height of 25.25 feet above natural and finished grade. The approved three-story residence and living area underneath the garage would have a total of 4,379 square feet of floor area, and the garage would have 390 square feet of floor area. The floor area ratio on the proposed 14,597 square foot lot would be 30 percent, not including the floor area of the garage. The subject property is located at 53 Laurel Grove Avenue, Kentfield, and is further identified as Assessor's Parcels 071-152-31 and -51.
2. The detached structure approved herein shall not be used as a second unit or contain a kitchen or food preparation area without prior approval by the Community Development Agency.

3. Plans submitted for a building permit shall substantially conform to plans on file in the Community Development Agency-Planning Division identified as "Exhibit A," entitled "Shaw Residence," consisting of 18 sheets, prepared by Doug Shaw, date stamped January 6, 2003.
4. 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 Conditions of Approval as notes.
5. BEFORE RECORDATION OF A MERGER, the approved Lot Line Adjustment shall be vested in conformance with the requirements contained in condition 19 h.
6. BEFORE ISSUANCE OF A BUILDING PERMIT, Assessor's Parcels 071-152-31 and -51 shall be merged in accordance with the Subdivision Map Act and County requirements.
7. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall submit exterior materials and color samples and details of the exterior lighting for the review and approval of the director. Exterior materials shall be dark earthtone colors and exterior lighting shall be downward directed and hooded.
8. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall submit revised plans that show that the maximum height of the residence shall not exceed 30 feet above natural or finished grade, whichever is more restrictive.
9. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall submit a revised landscape plan that shows additional vegetation for screening the eastern side of the development from the downslope neighbor, and shows that shrubs shall be planted along the western edge of the residence. The location, type, and gallon size of replacement trees shall be indicated on the landscape plan in conformance with Condition 10 below. The location of exterior lighting fixtures shall also be shown on the landscaping plan. A detail of the 6-foot high fence downslope from the development shall be included on the landscape plan. If irrigation is necessary, then drip irrigation shall be utilized, and irrigation shall not be used within 6 feet of significant trees. The plans shall be submitted for the review and approval of the Director.
10. BEFORE COMMENCEMENT OF GRADING OR CONSTRUCTION ACTIVITIES AND ISSUANCE OF A BUILDING PERMIT, the applicant shall submit for the review and approval of the Director a revised site plan and written verification from a licensed consulting arborist that the project conforms to the following requirements:
 - a. The arborist shall establish Tree Protection Zones (TPZ) around trees that are to be retained and may be affected by the approved project. The boundaries of the TPZ shall protect the trees to the maximum extent feasible during construction activities, and should be at the dripline of the trees where possible. Tree protection fencing shall be erected at the perimeter of the TPZs prior to grading and construction activities and shall remain in place until all construction, including utility installation, has been completed. All structures including construction trailers, equipment storage areas and any other construction traffic are prohibited within fenced areas. No materials, equipment, spoil, waste, or washout water shall be deposited or stored within fenced areas. Excavation equipment shall operate from outside the TPZ. The location of the tree protection fencing shall be clearly shown on the revised site plan.

- b. The arborist shall be on site to monitor any necessary incursions into the TPZs, and the applicant shall follow the protection measures recommended by the arborist to mitigate any disturbance of the protected trees. The arborist shall perform or directly supervise the removal, trimming or root pruning required by the construction.
 - c. Mulch shall be spread under the canopy of all trees to a depth of 6 to 12 inches and remain for the duration of construction activities.
 - d. Cuts for access improvements shall be minimized to avoid disturbing tree root systems.
 - e. Irrigation shall not be located within 6 feet of the trunks of significant trees.
 - f. The arborist shall be responsible for all root and limb trimming necessary for the development.
 - g. The arborist shall assess the impact to the 36 inch pine in the front yard adjacent to the driveway improvements and recommend specific tree protection measures if necessary.
 - h. The installation of utilities, including power lines and sewer lines, shall be done in conformance with the tree protection and replacement measures contained herein.
11. It shall be the responsibility of the applicant to store all construction materials and equipment at the site (or secured at an approved off-site location) in such a manner as to permit safe passage for vehicular traffic at all times. Every effort shall be made by the holder of the building permit to strictly limit the number of vehicles used to transport workers and materials to the site to the minimum number necessary. No authorization to trespass upon other private property is granted or implied by this approval. Work at the site shall be limited to the hours of 7:00 AM and 5:00 PM, Monday through Friday, and 9:00 AM to 4:00 PM Saturday. No work shall be permitted on Sundays or holidays.
 12. During construction, the applicant shall take all appropriate measures, including watering of disturbed areas and covering the beds of trucks hauling fill to or spoils from the site, to prevent dust from grading and fill activity from depositing on surrounding properties.
 13. All new utility connections and extensions serving the project shall be installed underground. If PG&E connects the approved residence to the power grid through the lines that run underneath the 15 foot access easement that leads to Laurel Grove Avenue, then those lines shall be installed underground to reduce the visual impacts related to the approved development, unless this will cause the extensive loss of the existing trees so as to cause a significant change to the visual and community character, as determined by the Community Development Director.
 14. If archaeological resources are discovered during construction, all work at the site shall cease and the applicant shall contact the Marin County Environmental Coordinator. 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 Director advancing appropriate measures to protect the resources discovered. No work at the site may recommence without approval of the Community Development Director. All future development of the site must be consistent with findings and recommendations of the archaeological report as approved by the Community Development Director. If the report identifies significant resources, amendment of the permit may be required to implement measures to protect resources.

15. BEFORE FINAL INSPECTION, the applicant shall submit a report by a qualified arborist that assesses the health of the existing trees on the project site that may have been impacted by construction. The report shall confirm that the arborist has conducted periodic site inspections and verify that the project has conformed to the following requirements:
 - a. The applicant shall comply with all recommendations made by the Arborist with respect to tree protection during construction activities, general tree care practices, and long-term vegetation management to ensure continued viability of the site's native vegetation. If damage has occurred to trees, measures such as additional replacement, aeration and fertilization shall be implemented to compensate for any damage. Minor adjustments to this condition may be approved by the Director.
 - b. The applicant shall plant two 15-gallon size Oak trees for every significant tree removed. At least 4 trees shall be planted in an appropriate area on the site to replace the 2 trees proposed for removal.
16. BEFORE FINAL INSPECTION, the applicant shall install all required landscaping and a drip irrigation system to serve it. The applicant shall call for a Community Development Agency staff inspection of the landscaping, including the lighting and fence, at least five working days before the anticipated completion of the project. All plantings shall be clearly and accurately labeled at the time of inspection. Failure to pass inspection will result in withholding of the occupancy and imposition of hourly fees for subsequent reinspections.
17. BEFORE FINAL INSPECTION, and upon vesting of this approval, this Resolution shall be recorded with the Marin County Recorder.
18. Any changes or additions to the project shall be submitted to the Community Development Agency for review and approval before the contemplated modifications may be initiated.

Department of Public Works-Land Use and Water Resources

19. BEFORE ISSUANCE OF A BUILDING PERMIT, the following requirements shall be satisfied:
 - a. The applicant shall submit Erosion and Siltation Control plans.
 - b. The site/driveway retaining walls, drainage, and grading plans must be designed by a Registered Civil Engineer or Architect. Plans must have the engineer/architect's original signature and wet stamp.
 - c. The plans must be reviewed and approved by a Registered Soils Engineer. Certification shall be either by the engineer's wet stamp and original signature on the plans or by wet stamp and signed letter.
 - d. Prior to issuance of building permit site plan shall be revised to show guest parking stalls with County standard width of 8 ½ feet. Indicate retaining wall height and all improvements to create guest parking with a cross slope of less than 8%.

- e. Note on the plans that the Design Engineer/Architect shall certify to the County in writing that all grading, drainage, and retaining wall construction was done in accordance with plans and field directions. Also note that driveway, parking, and other site improvements shall be inspected by a Department of Public Works engineer.
- f. The applicant's request for an exception to a 16-foot driveway on the property is acceptable. The minimum driveway width within the property limits shall be 12 feet, except in the immediate area of the single "36-inch pine" which can remain standing. The common driveway outside of the property limits requires no improvements.
- g. It is recommended that points be set at new property corners and that a Record of Survey be filed with the Department of Public Works to be recorded simultaneously with the deeds and descriptions.
- h. If a Record of Survey is not filed, it shall be a condition of approval that prior to recordation, deed(s) shall be submitted to the Department of Public Works for review and approval along with a fee of \$165.00. A Licensed Land Surveyor or a Registered Civil Engineer shall prepare the deeds, and an exhibit shall be attached to each deed that graphically depicts the lot line adjustment. Note that a Record of Survey shall be required for a Lot Line Adjustment in accordance with Section 8762 of the California Business and Professional Code.
- i. A roadway and utility easement shall be created for the benefit of the Lands of Dean (071-152-57)

Marin Municipal Water District

- 20. All landscape and irrigation plans must be designed in accordance with District landscape Ordinance #385.

Ross Valley Sanitary District

- 21. The applicant shall submit written certification from the Sanitary District that the District's requirements have been met.

Kentfield Fire District

- 22. The applicant shall submit written certification from the Fire District that the District's requirements have been met.

SECTION III: VESTING AND APPEAL RIGHTS

NOW, THEREFORE BE IT RESOLVED that the applicant must vest the Shaw Variance, Use Permit, Design Review Clearance, and Lot Line Adjustment approval by securing a Building Permit and substantially completing all of the approved work by **June 16, 2005**, or all rights granted in this approval shall lapse unless the applicant applies and pays for an extension at least 30 days before the expiration date and it is approved by the Community Development Director. An extension may be granted for the approved project for cause pursuant to Sections 22.86.070, 22.88.050 and 22.82.130 of the Marin County Code.

NOW, THEREFORE BE IT FURTHER RESOLVED that this decision is final unless appealed to the

Marin County Board of Supervisors. A Petition for Appeal and a \$675.00 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 June 23rd, 2003.

SECTION IV: VOTE

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 16th day of June, 2003, by the following vote to wit:

AYES:

NOES:

ABSENT:

ROSS HERBERTSON, CHAIRMAN
MARIN COUNTY PLANNING COMMISSION

Attest:

Alexandra Morales
Planning Commission Secretary