



MARIN COUNTY

COMMUNITY DEVELOPMENT AGENCY

ALEX HINDS, DIRECTOR

STAFF REPORT TO THE PLANNING COMMISSION

GHAZI VARIANCE AND DESIGN REVIEW

Item No:	7.	Application No's:	VR 04-11, DM 04-23
Applicants:	Fakoor Popal	Property Owner	Mahmood Ghazi
Property Address:	49 Bret Harte Road, San Rafael	Assessor's Parcel:	018-123-08
Hearing Date:	January 12, 2004	Planner:	Ben Berto

RECOMMENDATION:	Deny the Ghazi Variance and Partially Approve, Partially Deny the Ghazi Design Review
APPEAL PERIOD:	Ten calendar days to the Marin County Board of Supervisors
LAST DATE FOR ACTION:	January 17, 2004

SUMMARY RECOMMENDATION:

Staff recommends that the Planning Commission approve in part and deny in part the Ghazi Variance and Minor Design Review. Findings can not be made to amend the 2001 Design Review approval to permit construction of a two story portion of the house extending into the front yard setback, or to approve a lighter shade of paint for the exterior of the structure. Findings can be made to approve the other proposed setback amendments, and to approve the revised landscaping plan and proposed fence. Recommended conditions of approval require the following modifications to the existing residence to comply with the 2001 Design Review approval and the County's Design Review findings: remove the portion of the house that encroaches into the front yard setback, repaint the exterior surfaces of the house and retaining walls, modify the landscaping, and construct a property line fence.

PROJECT DESCRIPTION:

The applicant is requesting Variance approval for a 130 square foot (65 square feet per story), as-built portion of the house that is located 22.8 feet from the north front property line and encroaches 7.2 feet into the 30-foot front yard setback required by the governing R-1:B-3 zoning. This represents a change from the 31.5-foot front yard setback previously approved through Design Review. In addition, the applicant is requesting Design Review approval of the change in the east side setback from the approved 36.3 feet to 39.2 feet, and in the west side setback from the approved 104 feet to 94 feet. The applicants are also requesting approval of a change in the building and retaining wall colors from the approved medium tans to lighter shades of tan. Revisions to the approved landscape plan and a six-foot wood fence on the north property line are also proposed with this application.

The house, containing 6,542 square feet, with a maximum height of 29 feet and including 540 square feet of attached garage space, received Design Review approval on December 28, 2001. A pool and landscaping were also included in the original Design Review approved plans.

GENERAL INFORMATION:

Countywide Plan: SF4, (Residential single family 1-2 units/acre)
Zoning: R-1:B-3 (Single family residential, minimum lot size 20,000 square feet)
Lot size: 52,000 square feet (per Assessor's records)
Adjacent Land Uses: Single-family residential
Vegetation: Introduced landscaping consisting of trees and shrubs
Topography and Slope: Steeply sloping with exception of benched terrace
Environmental Hazards: former slide

ENVIRONMENTAL REVIEW:

The Environmental Coordinator has determined that this project is Categorically Exempt from the requirements of the California Environmental Quality Act pursuant to Section 15301, Class 1 of the CEQA Guidelines because the construction of an addition to an existing residence in conformance with the governing zoning standards would not result in potentially significant impacts on 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 accord 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 generally consistent with the goals and policies of the Marin Countywide Plan. Please refer to the plan consistency findings contained in the attached resolution.

PROJECT ANALYSIS:

Background

The residence at 49 Bret Harte originally was approved for a building permit in January, 2001 to construct a 3,950 square foot house with 545 square feet of garages. The residence did not require discretionary Planning approval because the property is in a conventional (R-1:B-3) zoning district, and residence was shown to contain less than 4,000 net square feet of area, the threshold for triggering Design Review. In the course of construction, the County received a complaint that the house being built was considerably larger than what was shown and authorized in the approved building permit. Construction on the project was halted, and the applicant given the option of abating the violation or applying for Design Review. Design Review was determined to be required for the project pursuant to Marin County Code Section 22.82.030 because the proposed floor area exceeded 4,000 square feet. The applicant subsequently submitted a Design Review application.

In December, 2001, Design Review approval was granted for a 6,542 square foot single-family residence with 674 square feet of attached garages and a 280 square foot pool house on a 52,000 square foot lot. (Note: approximately 1600 square feet of area was an increase in actual building size over the original

plans, and approximately 990 square feet of area resulted from a planning determination that the area of the approximately 25-foot tall, open great room should be counted as two stories for design review square footage calculation purposes.) Excluding 540 square feet of garage space and 250 square feet of detached accessory structures, the total floor area of 6,706 square feet results in a 13% floor area ratio. The residence has a maximum height of approximately 29 feet above grade. Required (approved) setbacks for the residence were as follows:

Setback	Zoning minimum	Proposed & approved 12/01
Front yard	30 feet	33 feet
Side yard (east)	15 feet	31 feet
Side yard (west)	15 feet	104 feet
Rear yard	25 feet	128 feet

In the summer of 2003, staff, investigating a citizen complaint, discovered that there were discrepancies between the approved and constructed front yard setbacks for the residence, and between the approved building and retaining wall colors. Accordingly, construction on the project was again halted and the County conducted surveys to accurately determine the location and height of the residence. The surveys (see attached) revealed that while the height of the house was consistent with the Design Review stipulated maximum height of 29 feet, the setbacks were as follows:

Setback	Zoning minimum	Approved	Constructed
Front yard	30 feet	33 feet	22.8 feet
Side yard (east)	15 feet	31 feet	39.2 feet
Side yard (west)	15 feet	104 feet	94 feet
Rear yard	25 feet	128 feet	128.8 feet

The as-built building corner with the 22.8-foot front yard setback was substantially less than the original Design Review approval (33 feet) and less than the minimum front yard zoning setback requirement (30 feet). The applicant was given the option of abating the encroachment or applying for a Variance and Design Review. The applicant subsequently applied for a Variance and Design Review.

Other modifications from the December, 2001 Design Review approved plans include exterior color that is a lighter shade than what was approved, other setback changes for the residence, modified landscaping, and a proposed wooden fence on the north property line. These are addressed in the Design Review portions of this staff report.

Variance Analysis

According to State planning law and County zoning regulations, one of the principal findings required to approve a Variance is that special circumstances apply to the property wherein strict application of the (setback) regulations denies the property owner of privileges enjoyed by other property owners in the vicinity and the same zoning district (State Government Code Section 65906, Marin County Code Section 24.54.050).

The residence was built 10 feet uphill and closer to the front property line than the approved plan with its 33 foot front yard setback. The discrepancy was not discovered until the residence was almost completed. Only a portion of the house encroaches into the required 30 foot front yard setback. To support his retroactive front yard variance request, the applicant provided reports dated October 7, 2003, December 10, 2003, and December 11, 2003, from two engineering firms involved with his project (see Attachment 7). The reports claim that the poor soil conditions present on the site justify the location of the house closer to the front uphill property line than what was approved. However, the County Department of Public Works (DPW) notes that the certification was previously provided by the same geotechnical firm (Earth Science

Consultants) states that the design and construction (which includes location) of the *approved* house was consistent with the firm's recommendations (see Attachments 6 & 8 11/19/03, and two certification letters from the geotechnical engineer dated August 12 & 14, 2000). The geotechnical engineer's certifications made no recommendations about relocating the house uphill. DPW notes that the most recent 12/11/03 letter from Earth Science Consultants appears to be valid when it states that the current, more uphill location of the house is better from a geotechnical standpoint. Earth Science Consultants' ex post facto justification does not, however, negate the fact that the firm had already certified as acceptable the applied for and approved (downhill) house location. Furthermore, according to the 1997 California Building Code, Section 106.4.1, "approved plans shall not be changed, modified or altered without authorization from the building official, and all work regulated by this code shall be done in accordance with the approved plans." (see Attachments 9 & 10). No in-the-field modifications to approved plans are acceptable without prior application, review, and approval.

Another issue concerns the Planning determination that the north-side property line facing the uphill neighbor is the front property line. The determination was made due to the unusual configuration of the lot, wherein any property line that circumscribes a significant portion of the site abuts one neighbor or another, and not the street. The front property line determination was not appealed by the applicant and has been consistent throughout the Planning Division review of the project

Staff is unable to make the Variance finding regarding special circumstances because staff is unable to find that the project would not be detrimental to the welfare of other properties in the area. The visual impact results primarily from the extent of roof massing in closest proximity to the adjacent property to the north. Although the residence approved by the 2001 Design Review would have also been clearly visible from the neighboring property to the north, the residence's location within the front yard setback brings it approximately 30 percent closer to the uphill neighbor than what was approved, resulting in greater visual impacts, including to privacy and views, than would have otherwise occurred if the house were built to plans.

Design Review Analysis

The applicant is also requesting Design Review approval for: the revised residential setbacks, including front yard setback, other than for the front yard setback for which the Variance is requested (see above), for modifications to the landscaping plan, for a new fence, and for revisions to the color scheme from the approved palette.

The Design Review setback revisions requested: front yard (outside the front yard setback), side yard east, side yard west, and rear yard, do not raise substantive design review issues. The closest of these setbacks is 30 feet, three feet less than the previously approved distance. However, the 30 feet provides enough separation from the northerly neighbor to buffer visual and privacy impacts. The remaining setbacks: 39 feet (an increase of 8 feet from the approved setback), 94, and 128 feet, are adequately removed from the property line to minimize potential visual impacts.

The applicant is requesting to modify the landscape plan, primarily in an effort to bolster the landscaping on the north (uphill) front yard portion of the lot, where he is proposing the variance for reducing the building setback. Staff understands that the applicant is utilizing the same landscaper as the adjoining neighbor. Staff has reviewed the proposed landscape modifications and additions, and believes that they help screen the applicant's house without substantial visual (view) impacts. It should be noted, however, that the revised landscaping per se does not adequately buffer the visual impact of the house. It is also somewhat uncertain how successfully landscaping will become established

Staff supports the applicant's request to install a new wooden fence of the design shown on the proposed plans (see Attachment 1). The fence will provide a secure separation between neighbors and features an attractive design.

Staff does not support the newly proposed (and applied) color scheme. These new colors were part of a range of colors included as part of the original Design Review application reviewed by the original project planner. The planner selected and approved from the applicant's range of colors deeper earthtones for the house exterior walls and outside retaining walls. Staff concurs with the original Design Review determination that a darker color scheme is preferable. The more muted earthtone better buffers the visual mass of the residence and retaining walls. Given the residence's unusual visual prominence, staff in fact recommends that that house base, trim, doors, and windows be required to be the medium brown originally approved for the house base. These darker colors will substantially attenuate the visual impact of the structure, especially in conjunction with the landscape once that is established.

CONCLUSION:

In conclusion, staff recommends the following: 1) **Deny** the Ghazi Variance for failure to make all of the necessary findings to approve the Variance; 2) **Approve in part and Deny in part** the Design Review application, because the findings for approval can only be made for the portions of the Design Review application involving the residential setbacks, the revised landscaping, and the fence.

RECOMMENDATION:

Staff recommends that the Planning Commission review the administrative record, conduct a public hearing, and move to adopt the attached resolution: (1) denying the Ghazi Variance; and (2) approving in part and denying in part the Design Review application.

- Attachments:
1. Resolution denying Variance, denying in part and approving in part Design Review
 2. Plans dated received 10/17/03
 3. CEQA Exemption
 4. Design Review approval dated 12/28/01
 5. Height and setback surveys dated 9/03, 11/14/03
 6. Department of Public Works memoranda dated 11/19/03, 12/29/03
 7. Soils engineers reports dated 10/7/03, 12/10/03, 12/11/03
 8. Soils engineers letters dated 8/12/00, 8/14/00
 9. Uniform Building Code Section 106.4.1, 106.4.3
 10. California Building Code Section 106.4.1, 106.4.3
 11. Petition of support dated received 10/29/02
 12. Assessor's Parcel Map

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. _____

A RESOLUTION DENYING THE GHAZI VARIANCE AND APPROVING IN PART AND DENYING IN PART THE GHAZI DESIGN REVIEW
49 BRET HARTE, SAN RAFAEL
ASSESSOR'S PARCEL 018-123-08

SECTION I: FINDINGS

- I. WHEREAS Fakoor Popal on behalf of the owner Mahmood Ghazi has submitted a Variance request for a front yard setback of 22.8 feet, 7.2 feet less than the 30 foot setback required by the underlying R1:B3 zoning and 10.2 feet less than the front yard setback approved by Design Review on December 28, 2001. In addition, the applicant has submitted a Design Review request for modified residence setbacks, modified building colors, landscape modifications, and a new wooden fence. The requests are in response to discoveries by the County of Marin that the project as built differed from the Design Review plans and conditions approved on December 28, 2002. The subject property is located at 49 Bret Harte Road, San Rafael, and is further identified as Assessor's Parcel 018-123-08.
- II. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on January 12, 2004, 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 finds that the proposed project is Categorically Exempt from the requirements of the California Environmental Quality Act, per Section 15301, Class 1 because modifications to the site and largely built residence would not result in significant adverse environmental effects.
- IV. WHEREAS the Marin County Planning Commission finds that the proposed project is consistent with the Marin Countywide Plan for the following reasons:
 - A. The project would be consistent with the SF4 (Single-family Residential, one to two units per acre) land use designation;
 - B. The project would comply with Marin County standards for flood control, geotechnical engineering, and seismic safety, and include improvements to protect lives and property from hazard;
 - C. The project would comply with governing development standards related to roadway construction, parking, grading, drainage, flood control and utility improvements as verified by the Department of Public Works;
 - D. The project would not cause significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation, or other services; and
 - E. The project would minimize soil disturbance and maximize retention of natural vegetation.
- V. WHEREAS, the Marin County Planning Commission finds that, with respect to the proposed encroachment of the residence into the front yard setback, the project is inconsistent with the Marin Countywide Plan Policy EQ-3.8 because it results in a project that is not of good aesthetic design.

VI. WHEREAS the Marin County Planning Commission finds that the proposed project is not consistent with the mandatory findings to approve a Variance (Section 22.54.050 of Marin County Code and Section 65906 of the California Government Code), as specified below.

- A. Because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance is found to deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification.**

The Variance request is for a reduction in the front yard setback. The applicants have not provided sufficient justification that relocation of the house was necessary to avoid health or safety problems (see variance analysis in staff report) with would have otherwise adversely affected the house in the approved location. The majority of homes in the neighborhood also appear to comply with the required 30 foot front yard setback.

- B. The granting of the Variance will not be detrimental to the public welfare or injurious to other property in the territory in which said property is situated.**

The granting of the Variance will have an adverse impact on the privacy and views of the uphill neighbor at 53 Bret Harte Road, an impact that would be lessened if the house complied with either the approved setback or the required minimum front yard setback for the zoning district.

- C. The granting of this Variance does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is situated.**

Granting of the Variance would constitute a grant of special privilege insofar as other properties in the vicinity and under the same zoning district have been required to meet the minimum front yard setback. Special circumstances do not exist which would justify an exception to this setback.

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

The granting of a Variance for a reduced front yard setback for a single-family residence does not authorize a use which is not expressly authorized by the R1:B3 zoning district governing the property.

VII. WHEREAS the Marin County Planning Commission finds that the project is consistent in part and inconsistent in part with the mandatory findings to approve a Design Review application (Section 22.42.060 of the Marin County Code), as specified below:

- A. The proposed development will properly and adequately perform or satisfy its functional requirements without being unsightly or creating incompatibility/ disharmony with its locale and surrounding neighborhood.**

The residence as proposed in the 2001 Design Review approval is a large and highly visible structure in comparison to residences in the surrounding neighborhood. The encroachment of the as-built residence into the front yard setback results in adverse visual impacts on the adjacent neighbor to the north. The light color of the residence and dearth of downslope landscaping also present substantial visual impacts from Highway 101 and nearby neighborhoods. Reducing the proximity of residence, with its tall walls and roof massing, to the required 30-foot front yard setback, combined with intervening ,enhanced

landscaping and darker building colors, will adequately buffer its incompatibility and disharmony with the neighborhood and locale.

- B. The proposed development will not impair, or substantially interfere with the development, use, or enjoyment of other property in the vicinity, including, but not limited to, light, air, privacy and views, or the orderly development of the neighborhood as a whole, including public lands and rights-of-way;**

With the exception of the reduced distance to the front (north) property line requested in the variance application, the development as conditioned will not interfere with the use and enjoyment of other property in the vicinity.

- C. The proposed development will not directly, or cumulatively, impair, inhibit, or limit further investment or improvements in the vicinity, on the same or other properties, including public lands and rights-of-way;**

The project is located entirely within the boundaries of the project site and has driveway access to a public street. Therefore, the project will not impair further investments and improvements in the vicinity.

- D. The proposed development will be properly and adequately landscaped with maximum retention or trees and other natural features and will conserve non-renewable energy and natural resources;**

The applicants have submitted a revised landscaping plan that provides a considerable amount of trees and shrubs between themselves and the uphill neighbors. The enhanced landscaping should assist in buffering the mass and bulk of the residence. However, additional downhill landscaping should be provided as well, to soften the visual impacts from Highway 101 and nearby properties.

- E. The proposed development will comply with applicable design and locational characteristics listed in Chapter 22.16 (Planned District Development Standards);**

Planning District Development Standards are not applicable in this conventionally zoned district.

- F. The proposed development will minimize or eliminate adverse physical or visual effects which might otherwise result from unplanned or inappropriate development, design, or placement. Adverse effects include those produced by the design and location characteristics of the following:**

- 1. The area, heights, mass, materials, and scale of the structures;**
- 2. Drainage systems and appurtenant structures;**
- 3. Cut and fill or the reforming of the natural terrain, and appurtenant structures (e.g., retaining walls and bulkheads);**
- 4. Areas, paths, and rights-of-way for the containment, movement or general circulation of animals, conveyances, persons, vehicles, and watercraft; and**
- 5. Will not result in the elimination of significant sun and light exposure, views, vistas, and privacy to adjacent properties.**

The height, mass, and exterior colors of the structure in its proposed (constructed) location present adverse visual and privacy impacts to the uphill neighbor. If the portion of the structure that encroaches

into the setback is moved back so that it is the minimum front yard setback distance, the visual and privacy impacts to the neighbor will be mitigated. The color of the house should be changed to the colors that were approved with the original Design Review (with minor changes), which will also help reduce the house's visual impact.

G. The project design includes features which foster energy and natural resource conservation while maintaining the character of the community.

The project complies with Marin County's Title 24 Energy Conservation requirements.

H. The design, location, size, and operating characteristics of the proposed use are consistent with the Countywide Plan and applicable zoning district regulations, are compatible with the existing and future land uses in the vicinity, and will not be detrimental to the public interest, health, safety, convenience, or welfare of the County.

The project as proposed is inconsistent with the Countywide Plan Policy EQ-3.8. Inability to make the findings for the requested variance demonstrates that the house as proposed does not comply with the applicable zoning district regulations. The project as conditioned will not require a variance and has been modified to be consistent with Countywide Plan policies. Public health, safety, and welfare will benefit from the house complying with the front yard setback, and from the other minor modifications to the proposed project set forth in the Conditions of Approval (below).

SECTION II: CONDITIONS OF PROJECT APPROVAL

NOW, THEREFORE, BE IT RESOLVED that the Marin County Planning Commission hereby **denies** the Ghazi Variance and **approves in part and denies in part** the Ghazi Design Review, subject to the following conditions:

Marin County Community Development Agency, Planning Division

1. Pursuant to Chapters 22.42 of the Marin County Code, the Ghazi Design Review is approved to change the front north setback from 33 feet to 30 feet, the east side setback from 36.3 feet to 39.2 feet, the west side setback from 104 feet to 94 feet, revise the landscape plan, and construct a 6-foot wooden fence on the north property line, consistent with plans submitted on September 3, 2003, and October 11, 2003, except as modified by conditions below. The subject property is located at 49 Bret Harte Road, San Rafael, and is further identified as Assessor's Parcel 018-123-08.
2. Within 60 days of final Design Review approval, the applicant shall submit plans showing the removal of the portion of the house encroaching into the front yard setback.
3. Within 180 of final Design Review approval, the applicant shall complete modifications to the residence and site consistent with the approved plans and these conditions.

4. Revised colors approved for the project are:

Siding and retaining walls	Ralph Lauren "Expedition Khaki" SA11D (light brown)
Trim, doors, windows, stucco	Ralph Lauren "Stag Horn" Th01D

base	(medium brown)
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3. Revised landscape plans shall be submitted, and include additional trees and bushes oriented towards screening the house from downslope views, including from U.S. Highway 101. These plants shall be of 15-gallon size, except at least one-fourth of the trees shall be of 24-inch box. A minimum of 12 downslope trees shall be included in the revised plans.
4. Final inspection approval for this project shall not be granted until all work required by this approval has been completed.
5. All other conditions of approval pursuant to the Design Review approval dated December 28, 2001, shall remain in effect (see Exhibit "A" of this Resolution).

SECTION III: DECISION

NOW, THEREFORE BE IT FURTHER RESOLVED that the applicant must vest this approval by complying with the Conditions of Approval in Section II, or all rights granted in this approval shall lapse unless the applicant applies for an extension at least 30 days before the expiration date above and the Zoning Administrator approves it. An extension of up to 1 year may be granted for cause pursuant to Section 22.56.050 of the Marin County Development Code.

SECTION IV: VESTING AND APPEAL RIGHTS

NOW, THEREFORE BE IT 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 January 23, 2004.**

SECTION V: VOTE

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 12th day of January, 2004, by the following vote to wit:

AYES:

NOES:

ABSENT:

ROSS HERBERTSON, CHAIR
MARIN COUNTY PLANNING COMMISSION

Attest:

Alexandra Morales
Planning Commission Secretary