

**COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION**

M E M O R A N D U M

TO: Marin County Planning Commission

FROM: Ben Berto, Principal Planner

RE: Item No. 4, Planning Commission hearing of January 26, 2004
Resolution for Planning Commission decision
Ghazi Variance and Design Review
49 Bret Harte Road, San Rafael
Assessor's Parcel 018-123-08

DATE: January 21, 2004

Staff has prepared a Resolution for Planning Commission adoption concerning the action taken by the Planning Commission on January 12, 2004, to deny the Ghazi Variance and Design Review applications. The Planning Commission directed staff to return with a Resolution incorporating findings for denial. Staff has done so by attached Resolution.

RECOMMENDATION

Adopt the attached Resolution.

Attachment: Resolution No. _____

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. _____ (Revised)

A RESOLUTION DENYING THE GHAZI VARIANCE AND 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 8.45 feet less than the 31.25 foot 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, 2001. 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 County development entitlement that the property owner was granted to construct a residence at 49 Bret Harte Road, which in amended form is the subject of this Variance and Design Review proposal, has not been properly vested in accordance with the provisions in Duration Of Permit And Vesting Of Rights section of the December 28, 2001 Design Review Notice of Decision. The property owner failed to construct the residence in conformance with the approved Design Review plans and conditions of approval required by the above Notice of Decision. In particular, the existing residence does not comply with the approved setbacks required by Condition #1 of the Notice of Decision. Therefore, the property owner did not perform a substantial amount of work in accordance with the approved Design Review and building permit plans within the 2 year vesting period prescribed by the above Notice of Decision. The constructed residence also does not conform to the initial building permit issued for the property on January 18, 2001, prior to the submittal and approval of the December 28, 2001 Design Review, because that initial permit proposed a smaller, 3,950 square foot building that complied with the setback and other zoning development standards and did not exceed the thresholds (floor area and building height) for requiring Design Review. The initial building permit was subsequently superseded by a building permit issued on March 5, 2002, in reliance upon the December 28, 2001 Design Review approval. The following

findings, and particularly those pertaining to Design Review in Finding [insert #xxx], reflect the finding that the project was not properly vested, and therefore, the property owner has not secured any rights to construct either the project approved by the December 28, 2001 Design Review approval or the project that was constructed.

- V. WHEREAS the Marin County Planning Commission finds that the proposed project is not consistent with the Marin Countywide Plan (MCP) for the following reasons:
- A. The project is located in the Ridge and Upland Greenbelt Policy Area (see Figure EQ-10, MCP). The structure is not located, designed, or screened to minimize its visual prominence, inconsistent with MCP Program EQ-3.18a and Policy EQ-3.19.
 - B. The project as originally approved complied with Marin County standards for flood control, geotechnical engineering, and seismic safety. The property location is classified as Weak in MCP Figure EH-3 “Maximum Ground Shaking Intensity”, and having a Moderate Level of Susceptibility in the MCP Figure EH-4 “Geologic Units Susceptible to Ground Shaking.” Geotechnical information submitted with the application indicates that although a slide area exists adjacent to the site, the slope stability classification of the property is Zone 2 on a sliding scale of 1 to 4, with one being the most stable and 4 being the least. Inadequate geotechnical engineering justification has been presented to support any necessity of relocating the house uphill on the lot from the original location approved by the December 28, 2001, Design Review Notice of Decision and plans prepared by the applicant.
 - C. The project involves a substantial amount of excavation and grading, inconsistent with MCP Policy EQ-3.16, including additional grading resulting from moving the house uphill but at the same vertical elevation as the residence approved by Design Review.
 - D. The project’s proposed encroachment of the residence into the front yard setback is inconsistent with the Marin Countywide Plan Policy EQ-3.8 because it results in a project that is not of good aesthetic design. The residence features overly tall floor heights (12 and 9 feet for the first and second floors, respectively), unbroken vertical walls greater than 20 feet in height, a great room with a ceiling greater than 23 feet in height, substantial cuts into the natural grade resulting in a flat building and site pad on a steeply sloped lot, visual and privacy impacts to the immediate neighbors, excessive retaining walls, exterior colors that are too bright, and a relative lack of screening landscaping.
- 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 finding cannot be made, because no special circumstance exists with respect to shape, topography, location, or surroundings to justify the variance. The applicants have not provided sufficient rationale that relocation of the house was necessary to avoid health or safety problems (see variance analysis in staff report) that would have otherwise adversely affected the house in the approved location. In addition, the geotechnical reports and other information submitted with the Variance application do not establish special circumstances regarding the physical aspects of the property, its location, or surroundings, that warrant deviating from the required front yard setback standard. As submitted with the approved building permit application, feasible alternatives were available that adequately addressed geotechnical issues in a manner consistent with the required setbacks. 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 finding cannot be made. The granting of the Variance will be detrimental to the privacy and views of the surrounding neighbors, and to the overall public welfare with a view to the property.

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.

The finding cannot be made. 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 inconsistent 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 finding cannot be made. The proposed residence is inharmonious and incompatible with its locale and the surrounding neighborhood. In addition to being

substantially larger than any nearby house, the design and location of the proposed structure maximizes its visibility at the expense of neighboring structures. The site layout involves excessive grading and retaining walls. The encroachment of the as-built residence into the front yard setback results in adverse visual impacts on the adjacent neighbor to the north. A second-story roof deck adversely affects the privacy of a downhill neighbor. The light color of the residence and dearth of downslope landscape screening also present substantial visual impacts from Highway 101 and nearby neighborhoods.

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;

The finding cannot be made. The development will impair the use and enjoyment of other property in the vicinity with respect to views and privacy. The uphill neighbor has bay views adversely affected by the expanse of second story roof massing that was moved closer to the neighboring residence without County authorization. The closest downhill neighbor experiences an adverse impact on privacy from a second story deck overlooking their yard.

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 of trees and other natural features and will conserve non-renewable energy and natural resources;

The finding cannot be made. The applicants have submitted a revised landscaping plan that provides a considerable amount of trees and shrubs between themselves and the uphill neighbors. However, it would be unreasonable to expect that the overall mass and bulk of the residence and its incompatibility with the surrounding neighborhood can be adequately and reliably mitigated by introduced landscaping.

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 finding cannot be made. The area, height, mass, materials, and scale of the structure are incompatible with and produce adverse visual impacts on the neighborhood. Both the first and second floors of the residence feature ceiling heights (12 and 9 feet, respectively) that contribute to excessive building height and mass. The design of the structure features unbroken vertical walls from grade to the roof parapet. The constructed area, 7,496 gross square feet (a net County-counted area of 6,706 square feet) substantially exceeds the size of any immediately neighboring homes. County Ridge and Upland Greenbelt standards stipulate that development be placed in the least visible location from adjacent properties and view corridors. The structure in its proposed (constructed) location presents adverse view and privacy impacts to uphill and downhill neighbors, and to the traveling public on Hwy 101. The light color of the house (including trim) and retaining walls increases visual impacts. The amount of additional cut and fill involved with the proposed design results in a development that does not conform to the natural terrain and contains excessive retaining walls and bulkheads.

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 finding cannot be made. The proposed project is inconsistent with the Countywide Plan for reasons stated in Finding Y above. In addition findings for the

variance cannot be made, resulting in a project that does not comply with the applicable zoning district regulations.

SECTION II: DECISION

NOW, THEREFORE BE IT FURTHER RESOLVED that the Ghazi Variance VR 04-11 and Design Review DM 04-23 is **denied** in accordance with the Planning Commission's action taken at the meeting of January 12, 2004.

SECTION III: 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 February 5, 2004.**

SECTION IV: 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:

ALLAN BERLAND, CHAIR
MARIN COUNTY PLANNING COMMISSION

Attest:

Alexandra Morales
Planning Commission Secretary