

MARIN COUNTY PLANNING COMMISSION WORKSHOP MINUTES

March 22, 2004

Marin County Civic Center, Room #328 - San Rafael, California

Commissioners Present: Allan Berland, Chairman
Steve Thompson, Vice
Hank Barner
Don Dickenson
Wade Holland
Jo Julin

Commissioners Absent: Ray Buddie

Staff Present: Alex Hinds, Agency Director
Brian Crawford, Deputy Director
Megan Basinger, Assistant Planner
Alexandra Morales, Planning Commission Secretary

Minutes Approved on: **August 16, 2004**

Convened at 1:00 p.m.
Adjourned at 4:00 p.m.

1. ROUTINE TRANSACTIONS

a. Incorporate Staff Reports into Minutes - None

b. Continuances - None

2. COMMUNICATIONS - None

3. OPEN TIME FOR PUBLIC EXPRESSION, LIMITED TO THREE MINUTES PER SPEAKER

There were no public comments.

4. APPEAL OF THE COMMUNITY DEVELOPMENT AGENCY'S RESCISSION OF THE ROBINSON VARIANCE: ROBINSON (PLIMACK/SPURR) MB

Appeal of an administrative determination to rescind a 1967 Variance that allowed a residential addition to encroach into the required rear yard setback subject to conditions that prohibited second story additions and conversion of the garage into living area. The administrative rescission requires the removal of the 256 square foot portion of the 450 square foot addition that encroaches into the 19.5-foot rear yard setback and submittal of confirmation from a licensed surveyor that the residence complies with the required rear yard setback, before a building permit could be processed for any additional construction on the lot. The rescission would eliminate the above conditions of approval that were imposed through the 1967 Variance approval, thereby allowing second story additions to the existing residence as well as conversion of the garage to living area only if these improvements comply with all applicable development standards, including but not limited to setback, building height and floor area ratio requirements of the governing R-1: B-2 zoning district that apply to the surrounding neighborhood in addition to other applicable land use, parking and building standards. The subject property is located at **4 Corte Los Sombras, Greenbrae**, and is further identified as **Assessor's Parcel 070-181-04**.

Megan Basinger, project planner, presented the staff report, summarized the merits of the proposed project, the bases of the appeal, and the responses to the issues raised in the appeal as set forth in the staff report. She concluded her presentation by responding to Commissioners' questions regarding the accuracy of the site plan.

The hearing was opened to public comment.

Neighboring property owners expressed concerns over the potential visual and privacy impacts of the proposed second story and the ability of the property owners to reverse the 1967 decision and conditions of approval.

Questions were raised regarding the required on-site parking spaces. Eric Steger, Department of Public Works, stated that the on-site parking has been reviewed and is adequate.

The Commissioners reviewed the resolution and made the following changes to the conditions of approval:

1. Revise condition #1 to state that "the property owner shall apply for and receive a demolition permit for any portion of the residence above 18 inches that is located within the 19 foot, 6 inch rear yard setback."
2. Revise condition #2 to state "all work authorized by the demolition permit shall be completed prior to the issuance of any second story addition to the residence or the garage."
3. Revise condition #3 to state "following the completion of the work included in the demolition permit, the property owner shall submit a signed and stamped letter from a licensed surveyor providing written verification that the residence meets the required rear yard setback of 19 feet, 6 inches."
4. Remove recommended condition #4
5. Renumber recommended condition #5 as #4
6. The statement following the recommended conditions shall be condition #5, which states that "once the above requirements have been completed and reviewed by the Community Development Agency Director, the applicant may submit for a Building Permit for new construction that complies with the governing standards in the R-1: B-2 zoning district and required on-site parking is provided."

M/s, Dickenson/Holland and passed unanimously of those present, to ratify the draft Resolution approving the Robinson Variance based on the findings set forth therein and as modified during the Commission's discussions. Motion passed 5/1/0 (Commissioner Buddie not present).

M/s Dickenson/Holland, with recommended changes to the conditions.

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. PC 04-005

A RESOLUTION DENYING THE PLIMACK/SPURR APPEAL AND SUSTAINING THE
COMMUNITY DEVELOPMENT AGENCY'S RESCISSION OF THE ROBINSON VARIANCE
4 CORTE LOS SOMBRAS, GREENBRAE
ASSESSOR'S PARCEL 070-181-04

SECTION I: FINDINGS

- I. WHEREAS Bevan and Anna Robinson are requesting that the Variance issued to the property in 1967 be rescinded. The rescission would require the applicant to remove the portion of the 450 square foot addition that encroaches into the 19.5-foot rear yard setback. The 1967 Variance included conditions of approval that prevented the property owner from constructing a second story addition in the future or converting garage space into living space. Subsequent to the rescission of the 1967 Variance, completion of the demolition, confirmation that the residence complies with the required rear yard setback, the applicant has the right to apply for a Building Permit. The Building Permit will be processed and issued as a ministerial permit, which would not require public notification, as long as the improvements conform to the development standards of the governing R-1: B-2 zoning district, which includes those that govern second story additions. The subject property is located at 4 Corte Los Sombras, Greenbrae and is further identified as Assessor's Parcel 070-181-04.
- II. WHEREAS on January 22, 2004, the Community Development Agency issued a rescission of the Robinson Variance requiring the following items be completed to ensure that the demolition brings the residence into conformance with the zoning requirements: (1) apply for and receive a demolition permit for the area of the addition that is located within the 19 foot, 6 inch rear yard setback; (2) all work authorized by the demolition permit shall be completed; (3) submit a signed and stamped letter from a licensed surveyor providing written verification that the residence meets the required rear yard setback of 19 feet, 6 inches; and (4) the Notice of Variance Rescission will be recorded in the Marin County Recorder's Office upon completion of all the requirements necessary to affect the rescission of the Variance.
- III. WHEREAS, a timely appeal of the Community Development Agency's rescission of the Variance has been jointly filed by Michael Plimack, Ardith Plimack, and Jeffrey Spurr, neighboring property owners, asserting that: 1) the granting of the rescission is unsupported by any findings or evidence and is incorrectly characterized as a ministerial permit; 2) the granting of the rescission is a circumvention of the Planning Commission's October 6, 2003 denial of the Robinson Variance Amendment; 3) conditions of approval for the 1967 Variance represent a burden on the title of the property; 4) the rescission would allow for construction of a second story that would severely and negatively impact adjoining properties; 5) the Variance rescission does not contain conditions of approval, allowing the property owners free reign for future development; 6) the rescission of the Variance would set a bad precedent; 7) the rescission is based on flawed reasoning and an assumption that the 1967 Variance was for the presence of an addition within the setback; and 8) a reconfiguration of the property would create an additional burden on neighboring property owners.
- IV. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on March 22, 2004, to consider the merits of the project and appeal, and hear testimony in favor of, and in opposition to, the project.
- V. WHEREAS the Marin County Planning Commission finds that pursuant to Section 15268 of the California Environmental Quality Act (CEQA) Guidelines, CEQA does not apply to the rescission of a variance because it is a ministerial permit.

- VI. 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 SF5 (Single-family Residential, two to four 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.
- 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 retain the residential character that is representative of the Kentfield and Greenbrae communities;
 - B. The proposed project would maintain the current density of the property (SF5, two to four units per acre); and
 - C. The project would provide adequate on-site parking as determined by the Department of Public Works.
- VIII. WHEREAS the Marin County Planning Commission finds that the bases for the Plimack/Spurr appeal cannot be sustained and that the Community Development Agency acted appropriately in issuing the Variance Rescission due to the following factors:
- A. *The granting of the rescission to the Variance is unsupported by any findings or evidence and is incorrectly characterized as a ministerial permit.*

Response to Appeal: The action to rescind a Variance is ministerial in nature because it does not require discretionary findings or conditions of approval other than compliance with the conventional zoning standards and other adopted and/or codified standards and procedures that are implemented by the County on a ministerial basis. Additionally, should the County deny the request, thereby leaving the Variance intact, such action would be tantamount to treating the Variance as an irrevocable covenant on the use of the land. County Counsel has advised staff that should the property owner obtain a ministerial demolition permit to remove the portion of the residence which gave rise to the original condition of Variance approval, the County may be enjoined legally from enforcing the terms of a Variance that could limit the ability of the property to be developed in a manner similar to other properties with identical zoning in the neighborhood.

- B. *The granting of the rescission is a circumvention of the Planning Commission's October 6, 2003 denial of the Robinson Variance Amendment.*

Response to Appeal: The request for a Variance rescission by the property owner is not circumvention of the Planning Commission's October 6, 2003 determination because it is a different request. The October 6, 2003 determination denied the property owner's request to amend the existing Variance to construct a second story and retain the rear yard addition. The rescission of the Variance is based on substantially different circumstances that involve removing the encroaching portion of the residence, which results in the residence having the same status as the appellants' properties and all other properties in the surrounding neighborhood that comply with the applicable zoning regulations.

- C. *The conditions of approval for the 1967 Variance represent a burden on the title of the property.*

Response to Appeal: Conditions of approval that are established by a discretionary permit do not constitute a deed restriction or covenant against the title of the property. Conditions of approval are not necessarily binding if the circumstances present on the property that necessitated said conditions no longer exist. By way of example, if the residence were destroyed, the County would consider the 1967 Variance to be void and the conditions of approval no longer applicable to rebuilding of the residence, which would have to meet current site development standards.

- D. *The rescission would allow for construction of a second story that would severely and negatively impact adjoining properties.*

Response to Appeal: The Variance rescission would remove the portion of the residence that encroaches into the rear yard setback, bringing the property into conformance with the governing R-1: B-2 zoning district. The ability of the property owners to construct an addition that meets the zoning standards is a privilege that is enjoyed by all other conforming properties under identical zoning. Denial of the property owners' ability to remove the encroachment and construct a conforming addition could constitute a de facto rezoning of the property because it would burden the property with a development restriction that is different than that of similarly zoned properties. Additionally, the property owners are permitted under the terms and conditions of the 1967 Variance to increase the height of any portion of the residence to 30 feet under the R-1: B-2 zoning district and because the Variance conditions of approval prohibiting a second floor addition, not building height. While increasing the cubical volume would not be beneficial to the property owners in a manner that is equivalent to a second story addition, it could result in potentially more adverse visual impacts on neighboring properties than a second story addition.

- E. *The Variance rescission does not contain conditions of approval, allowing the property owners free reign for future development.*

Response to Appeal: The Variance rescission is a ministerial permit that does not provide for the creation or establishment of discretionary conditions of approval. The rescission would not be effective until the property owner obtains a demolition permit, removes the encroaching portion of the residence, and demonstrates compliance with other ministerial standards. Placing limitations on a conforming property, such as prohibiting the construction of a second story, would take away the property owners' ability to enjoy privileges that are extended to all other conforming properties with identical zoning. Second stories are permitted to exist on properties in the area as long as they meet the zoning standards. Specific denial of a future second story is inappropriate and would constitute spot zoning of the property.

F. *Rescission of the Variance would set a bad precedent*

Response to Appeal: The issuance of a rescission for a planning entitlement is not common. In this case, it allows the property owner to demolish a portion of the residence and conform to the governing zoning requirements, voiding the 1967 Variance. If the rescission were to be denied, that would set a negative precedent because it would deny the property owners' the ability to bring the property into conformance with the zoning standards and improve the property under such standards.

G. *The rescission is based on flawed reasoning and an assumption that the 1967 Variance was for the presence of an addition within the setback.*

Response to Appeal: The 1967 Variance allowed for the construction of an addition in the rear yard setback. If an encroachment had not been included in the proposal, Variance approval would not have been necessary. Demolition of the encroachment would then eliminate the circumstance that necessitated a Variance in the first place and would eliminate the conditions that had been applied to project.

H. *A reconfiguration of the property would create an additional burden on neighboring property owners.*

Response to Appeal: The neighboring property owners assert that they have grown accustomed to the existing rear yard encroachment and have planted landscaping along the rear property lines to provide screening of the structure that is located 6 feet from the rear property line. The appellants claim that a change in the existing development pattern on the property would place a further burden on their properties because it would impact their privacy by rendering their screening methods ineffective.

The removal of the portion of the residence that encroaches into the rear yard will bring the residence into compliance with the zoning requirements and is a right that is afforded to the property owner because it extends the same privileges that are enjoyed by other properties in the area that area also subject to the same or similar zoning. Denial of the ability to bring the property into conformance with the zoning standards and to construct conforming addition(s) in the future would be an unfair burden to the property owner because it would compromise their ability to enjoy the privileges that are extended through zoning by right of compliance.

SECTION II: ACTION

NOW, THEREFORE, BE IT RESOLVED that the Marin County Planning Commission hereby denies the Plimack/Spurr appeal and sustains the Community Development Agency's conditional approval of the Robinson Variance Rescission subject to the following conditions:

Marin County Community Development Agency, Planning Division

Based on the written request of the property owner, the Community Development Agency has rescinded the 1967 Variance. All rights and entitlements confirmed by the 1967 Variance will cease upon completion of the following requirements:

- 1) The property owner shall apply for and receive a demolition permit for any portion of the residence above 18 inches that is located within the 19 foot, 6 inch rear yard setback.
- 2) All work authorized by the demolition permit shall be completed prior to the issuance of any second story addition to the residence or the garage.

- 3) Following the completion of the work included in the demolition permit, the property owner shall submit a signed and stamped letter from a licensed surveyor providing written verification that the residence meets the required rear yard setback of 19 feet, 6 inches.
- 4) A copy of the Notice of Variance Rescission will be recorded in the Marin County Recorder's Office upon completion of all the requirements necessary to affect the rescission of the Variance.
- 5) Once the above requirements have been completed and reviewed by the Community Development Agency Director, the applicant may submit for a Building Permit for new construction that complies with the governing standards in the R-1: B-2 zoning district and required on-site parking is provided.

SECTION IV: APPEAL RIGHTS

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 April 1, 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 22nd day of March, 2004, by the following vote to wit:

AYES:

NOES:

ABSENT:

ALLEN BERLAND, CHAIR
MARIN COUNTY PLANNING COMMISSION

Attest:

Jessica Wood
Recording Secretary

5. DIRECTOR'S ORAL REPORT
 - a. Status report on Countywide Plan Update
 - b. General discussion of the County methodology for calculating transportation facilities fees for development projects.
6. APPROVAL OF MINUTES
7. UPDATE ON BOARD OF SUPERVISORS ACTIONS
8. FUTURE AGENDA DISCUSSION ITEMS, FIELD TRIPS

RECEPTION IN RECOGNITION OF ROSS HERBERTSON'S SERVICE ON THE PLANNING COMMISSION