

**STAFF REPORT TO THE PLANNING COMMISSION**

**NEFF APPEAL OF THE COMMUNITY DEVELOPMENT AGENCY'S CONDITIONAL APPROVAL OF THE HIGGINS DESIGN REVIEW (DR 03-57)**

|                   |                              |                     |                               |
|-------------------|------------------------------|---------------------|-------------------------------|
| Item No:          | 5.                           | Application No:     | AA 04-21                      |
| Appellant:        | T. J. Neff                   | Owner/Applicant:    | William and Elizabeth Higgins |
| Property Address: | 373 Grandview Avenue, Novato | Assessor's Parcels: | 157-132-15, 16 & 17           |
| Hearing Date:     | July 26, 2004                | Planner:            | Anna M. Camaraota             |

**RECOMMENDATION:** Deny the Neff Appeal and Sustain the Community Development Agency's Conditional Approval of the Higgins Design Review

**APPEAL PERIOD:** 10 Calendar Days to the Marin County Board of Supervisors

**LAST DATE FOR ACTION:** July 26, 2004

**SUMMARY RECOMMENDATION:**

Staff recommends that the Planning Commission deny the Neff Appeal and sustain the Community Development Agency's (CDA) conditional approval of the Higgins Design Review to allow construction of a 28.5-foot high, 1,440 square foot single-family residence and associated site improvements, including a two-car parking deck and an on-site sewage disposal system.

**PROJECT DESCRIPTION:**

The applicants, William and Elizabeth Higgins, have requested Design Review approval to construct a 28.5-foot high, approximately 1,440 square foot single-family residence, representing a 14.4 percent floor area ratio (FAR) on the 10,000 square foot property. In addition, the applicants have requested Design Review approval to construct a two-car parking deck and an on-site sewage disposal system to serve the proposed residence. The proposed residence would meet the following minimum setbacks from corresponding property lines: 8 feet from the north (left side) property line, 43 feet from the south (right side) property line, 32.5 feet from the east (rear) roadway easement line (following the required 7.5-foot wide right-of-way dedication), and 30 feet from the front property line. The proposed two-car parking deck would meet the following minimum setbacks from corresponding property lines: 3 feet from the north (right side) property line, 3.5 feet from the south (right side) property line, 145 feet from the east (rear) roadway easement line (following the required 7.5-foot wide right-of-way dedication), and 13 feet from the west (front) roadway easement line (following the 7.5-foot wide right-of-way dedication). The project is subject to Design Review because it is located on a property with a lot area that is less than 50 percent of the minimum lot size required by the governing A-2 (Agricultural, Limited District, two-acre minimum lot size) zoning district. (See Marin County Code §22.42.030.)

## **SUMMARY OF THE NEFF APPEAL:**

On May 12, 2004, the CDA granted a conditional approval of the Higgins Design Review to allow construction of the proposed residence, a two-car parking deck, and an on-site sewage disposal system. On May 24, 2004, Mr. T. J. Neff, the owner of the adjacent property to the north, located at 363 Grandview Avenue, Novato (Assessor's Parcel 157-132-47), filed a timely appeal of the CDA conditional approval of the Higgins Design Review with the assertions summarized below:

- (1) The septic design is not adequate.
- (2) The proposed parking facilities are inappropriate and are out of character with the neighborhood. The parking structure has been designed to accommodate storage and/or allow the applicant to increase number of bedrooms.
- (3) The requirements from the Novato Fire Department are inadequate to ensure fire safety.
- (4) The County cannot adequately guarantee that additional bedrooms would not be illegally added.
- (5) Any change to the structure should be subject to Design Review if approval is granted.
- (6) The structure would block views of green lands from the properties located above.
- (7) The proposed size, shape, and use of the residence are incompatible with the neighborhood.
- (8) The proposed development will not properly and adequately perform or satisfy its functional requirements and will be unsightly and/or create incompatibility and disharmony with the surrounding neighborhood. The proposed development will impair, substantially interfere with the development, use or enjoyment of other property in the vicinity and will adversely affect light, air, privacy and view or the orderly development of the neighborhood as a whole, including the public lands and rights-of-way. The proposed development will impair, inhibit, or limit further investment or improvements in the vicinity, including public lands and rights-of-way. The proposed development will not be properly or adequately landscaped and trees and other natural features will not be used or conserved.
- (9) The proposed development will not meet Planned District Development Standards (Marin County Code, Chapter 22.16) because the size, shape, and location of the proposed structure will be a visual blight to the neighborhood. The proposed development will have negative physical and visual effects resulting from improperly planned and inappropriate development.
- (10) The project is inconsistent, with existing land uses in the vicinity and approval would be detrimental to the public interest.
- (11) The Notice of Decision included 32 conditions of approval which the County cannot effectively enforce.

## **GENERAL INFORMATION:**

|                        |   |
|------------------------|---|
| Countywide Plan:       | AG3 (Agricultural, one unit per one to nine acres)              |
| Zoning:                | A-2 (Agricultural, Limited District, two acre minimum lot size) |
| Lot size:              | 10,000 square feet  |
| Adjacent Land Uses:    | Residential   |
| Vegetation:            | Oak/Bay woodland  |
| Topography and Slope:  | Moderate, east-facing slope                                     |
| Environmental Hazards: | None Identified   |

## **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 15303, Class 3(a) of the CEQA Guidelines because it entails construction of a single family residence with no potentially significant impacts on the environment.

## **PUBLIC NOTICE:**

The Community Development Agency has provided public notice of the Neff Appeal of the Higgins Design Review, identifying applicants and the appellant and describing the project and its location. This notice has been mailed to all property owners within 600 feet of the subject property and to all interested persons identified on the *Interested Parties* list maintained in the project file.

## **PLAN CONSISTENCY:**

The proposed project is generally consistent with the goals and policies of the Marin Countywide Plan, and Title 22 (Zoning) and Title 24 (Development Standards) of the Marin County Code. Please refer to the plan consistency findings discussed in the Project Analysis below and contained in the attached resolution.

## **PROJECT ANALYSIS:**

### Background

The subject property is comprised of historic lots 315, 316, 317, and 239 as shown upon that certain map entitled, "Grandview Map 'B', East Part of Division 'D', Rancho De Novato, Marin County California" filed for record November 13, 1905 in Volume 2 of Maps, Page 41, Marin County Records. Conditions of project approval would require the applicant to file a Merger application to assemble the historic lots into one 10,000 square foot lot because the lots individually do not meet the minimum lot size requirements under the A-2 Zoning. The property has frontage on Hemlock Avenue and Grandview Avenue. Vehicular access is proposed to be taken from Grandview Avenue, which is currently improved as a private road. Portions of Hemlock Avenue consist of partially improved dirt roads that do not meet County standards.

The proposed improvements include a 28.5-foot high, approximately 1,440 square foot single-family residence, representing a 14 percent floor area ratio (FAR) on the 10,000 square foot property. Additional improvements include an on-site septic system, which has been reviewed in accordance with Marin County Code §18.06 (Individual Sewage Disposal Systems) and approved by the Department of Environmental Health, and a two-car parking deck. The proposed residence would be located on a wooded hillside on a moderate east-facing slope that is approximately 70-feet east (downslope) from the nearest adjacent residence. The location and design of the structure would result in an elevation differential of approximately 18.8 feet between the proposed roofline and the existing road above, leaving unobstructed views over the residence. The driveway and car deck would be located immediately off of Grandview Avenue in a pattern that is typical along the east (downsloping) side of Grandview Avenue. The driveway was designed with a 16.5 percent downslope in order to reduce the height of the parking deck, thereby minimizing the appearance of the structure from the roadway and from the neighboring residence to the north. On-grade paths would provide pedestrian access from the roadway to the residence, which would be located approximately 135 feet downslope from the edge of the roadway.

The project was approved administratively with modifications to the proposed parking deck<sup>1</sup> and adjoining driveway to further reduce the overall size of the structure while maintaining parking accommodations for four cars in compliance with the minimum parking standards (two resident and two guest spaces) required by Marin County Code §24.04.340 (Minimum Required Parking Spaces). The parking structure would be limited to a platform with open railings. Seven trees would be removed to allow construction of the project: three to allow construction of the car deck, one to allow construction of the residence, and three to comply with the required vegetation management plan. Replacement trees would consist of two Buckeyes along the southerly property line. A hedgerow of Pittosporum and Tobira would provide additional screening between the proposed residence and the appellant's property to the north. Remaining trees and proposed trees and landscaping would further obscure the residence from adjacent properties located upslope and Condition 3 would require that exterior colors be revised to utilize dark earth tones that would blend with the natural wooded environment. The proposed residence and parking deck comply with the minimum setbacks required by the governing A-2 zoning district.

### Development Issues

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<sup>1</sup> The Higgins Design Review Notice of Decision approved the project with the requirement that the overall depth of the parking deck be reduced by six feet (111 square feet), however the corresponding Condition was inadvertently omitted from the enumerated Conditions of Approval. Therefore, Condition 3 has been added to the attached Resolution to ensure fulfillment of the agreed upon modification.

Although the subject property is conventionally zoned, the project is subject to Design Review in accordance with Marin County Code §22.42.030 (Substandard Building Sites) because the lot size of 10,000 square feet is less than 50 percent of the minimum size required by the governing A-2 (Agricultural, Limited District, two acre minimum lot size) zoning district. Although the underlying setback required by the A-2 zoning could be waived under Marin County Code §22.42.030, the proposed residence meets or exceeds the 25-foot front and rear yard setbacks and the 6-foot side yard setbacks. In addition, the parking deck is in compliance with required setbacks established under Marin County Code 22.20.090 (Setback Requirements and Exception), which allows for a minimum 3-foot front or side yard setback for parking structures when the slope of the first one-half of the parcel is 20 percent or greater.

## **ANALYSIS OF THE APPEAL:**

T. J. Neff submitted a Petition for Appeal on May 24, 2004, which outlined 16 bases for appeal of the Administrative approval of the Higgins Design Review. In the ensuing section, bases of appeal have been summarized in italics and consolidated into 11 topics, with responses by staff provided following each of the topics. The appeal submitted by Mr. Neff has been included in its entirety as Attachment 2.

1. *The septic design is not adequate, due to poor or marginal percolation tests on the subject property. The septic permit was not properly issued, and the septic plans and soils reports fail to meet the requirements of Marin County Code §18.06. In the test report submitted, 9 of 15 holes failed. In addition, two of the remaining 6 were “n/a” – not applicable. [Fourteen] other holes were not used, because they were outside of the proposed drain field. In notes to the 3/21/01 Site Review by “E. J.”, it was noted that there was “water in 2 profile holes.” The admonition by J. Dietrich Stroeh, the engineer that an “intercept trench” be required to mitigate “high seasonal groundwater” and “water seepage” has not been incorporated into the conditions for approval of the septic system or the development. In addition, the leach field is on an area averaging 34 degree slope, line #4 appears to be less than ten feet from the structure, and 5 of the 6 lines are within fifteen feet of the structure.*

### Response to Appeal:

The Department of Environmental Health (EHS) has found that the proposed septic system design is in compliance with rules and regulations governing septic systems and the permit to construct was properly issued. There is no evidence to support claim that the approved septic design is inadequate because: (1) the appellant’s assertion that there were failing tests on the site are true, however the location of the approved septic system is not contained within the area of failing percolation tests; (2) the appellant’s assertion that there is no intercept trench proposed is incorrect, as an intercept and a “V” ditch are included in the approved design; (3) although the site is located on a moderate slope, existing regulations do not place limitation on slope; (4) the appellant’s assertion that leach field trench #4 and leach field lines #5 and #6 do not meet the required minimum setback are incorrect because the minimum setback is 10 feet and leach field trench #4 and leach field lines #5 and #6 are located with setbacks of 10 and 14 feet, respectively. Finally, it should be noted that the required length of disposal field is 72 lineal feet and the approved design has a length of 132 feet—almost double the requirement.

2. *The proposed parking facilities are inappropriate and are out of character with the existing neighborhood. The design and size of the parking structure, notwithstanding the claim that it complies with parking standards established by the Marin County Code, suggests that it will be used improperly for storage, or to aid the applicant in using the residence for more than its one-bedroom approved plan. The conditions imposed are inadequate to compensate for the excessive bulk of the parking structure.*

### Response to Appeal:

The applicant has proposed a parking deck with open railing, rather than an enclosed garage, to meet County requirements. The applicant’s proposed driveway and parking deck would accommodate four on-site spaces. The proposed parking deck was required to be reduced in size by 111 square feet through conditions of project approval so that it would reflect the *minimum* dimensions necessary to comply with Marin County Code §24.04.340 (Minimum Required Parking Spaces) and to reduce the overall height of the structure in order to minimize the appearance from the roadway and from the neighboring residence to the north. Because the approved parking does not include plans for an enclosed garage, it would result in the least amount of bulk feasible given the existing slope. Additionally, the enclosure of the understory area is necessary to comply with the Fire District’s requirement to prevent penetration of burning brands and embers in the event of a fire. The appellant’s assertion that the parking structure would be used for “improper” storage or would lead to illegal conversion from a one-bedroom to a two- (or more) bedroom residence is unfounded.

3. *The purported accommodations to the lack of defensible space zone are inadequate to ensure the fire safety of the proposed structure.*

Response to Appeal:

The Novato Fire Protection District has reviewed and approved the project based upon the fulfillment of conditions designed to compensate for limitations posed by the proximity of the proposed residence to neighboring property lines. These conditions include (but are not limited to) installation of an automatic fire sprinkler system, which must be installed throughout the entire residence including those areas typically exempted by NFPA Standards 13D and 13R, the use of non-combustible construction materials, and a requirement that the undersides of all decks, roof eaves, and parking overhangs be boxed in to prevent penetration of burning brands and embers in the event of a fire.

4. *The County's overview of illegal conversions is inadequate to guarantee that the residence will not be converted to a two-bedroom residence.*

Response to Appeal:

The appellant's assertion implies intent on the part of the applicant to violate the Marin County Code and is speculative. The applicant is proposing construction of a one-bedroom, single-family residence and has submitted plans that reflect a one-bedroom design. Due to limitations of the approved septic system, the residence would be restricted to one bedroom unless septic system upgrades were approved and constructed to accommodate additional bedrooms. As with all substantiated violations within the jurisdiction of the County of Marin, illegal conversions of approved structures would be subject to Code Enforcement action in accordance with Marin County Code §22.122 (Enforcement of Development Code Provisions).

5. *Any change to the structure should be subject to Design Review if approval is granted.*

Response to Appeal:

In accordance with Marin County Code §22.42.0.0 (Substandard Building Sites), all subsequent development and physical improvements proposed on the subject property would be subject to Design Review.

6. *The design as conditionally approved blocks the view of green lands from the properties above. The view would not be “unobstructed” as claimed in the Notice of Decision.*

Response to Appeal:

The proposed 28.5-foot high residence would be located on a wooded hillside approximately 135 feet down slope from the edge of Grandview Avenue on a moderate, east-facing slope. The proposed residence would be located approximately 70-feet east (downslope) of the nearest adjacent residence. The location and design of the structure would result in an elevation differential of approximately 18.8 feet between the proposed roofline and the existing road above, leaving unobstructed views over the residence. The driveway and car deck would be located immediately off of Grandview Avenue in a pattern that is typical along the east (downsloping) side of the roadway. The driveway was designed with a 16.5 percent downslope in order to keep the structure as low as possible, thereby minimizing its appearance from the roadway and from the neighboring residence located north of the parking deck. In addition, the parking structure would be limited to a platform with open railings to minimize the appearance of the mass and bulk. The subject property is comprised of four historic legal lots of record. The proposal currently under review meets the mandatory Design Review Findings necessary to grant a development permit.

7. *The structure is inconsistent with the size, shape, and uses in the neighborhood. Although purportedly only a one-bedroom structure, the height, mass, and location of the structure, as well as its boxlike shape, are inconsistent with the neighborhood and its current uses and values.*

Response to Appeal:

The proposed height, mass, and location of the structure are consistent with the site development standards required by the governing A-2 (Agricultural, Limited District, two-acre minimum lot size) zone district. In addition, the proposed residence falls within the range of existing house sizes, and is smaller than the average and median size and floor area ratio (FAR) of homes located within a 600-foot radius of the subject property. This is supported by the data provided in the table on the following page.

| Address           | Living Area | Garage Area | Land Area | Adjusted Floor Area Ratio (excludes up to 540 s.f. of existing garage area) |
|-------------------|-------------|-------------|-----------|---|
| 330 GRANDVIEW AVE | 1913        | 0           | 7500      | 25.5%   |
| 324 GRANDVIEW AVE | 1034        | 198         | 7500      | 13.8%   |
| 329 GRANDVIEW AVE | 1840        | 0           | 5000      | 36.8%   |
| 327 GRANDVIEW AVE | 2050        | 0           | 17500     | 11.7%   |
| 331 GRANDVIEW AVE | 2396        | 0           | 7500      | 31.9%   |

|                   |                   |     |                    |              |
|-------------------|-------------------|-----|--------------------|--------------|
| 335 OAK AVE       | 1132              | 440 | 15000              | 7.5%         |
| 360 GRANDVIEW AVE | 2539              | 377 | 7500               | 33.9%        |
| 340 GRANDVIEW AVE | 1328              | 0   | 5000               | 26.6%        |
| 348 GRANDVIEW AVE | 968               | 500 | 10000              | 9.7%         |
| 354 GRANDVIEW AVE | 1002              | 296 | 15000              | 6.7%         |
| 358 GRANDVIEW AVE | 1432              | 0   | 12500              | 11.5%        |
| 396 GRANDVIEW     | 2330              | 659 | 32500              | 7.5%         |
| 359 GRANDVIEW AVE | 968               | 420 | 7500               | 12.9%        |
| 355 GRANDVIEW AVE | 1915              | 0   | 10000              | 19.2%        |
| 341 GRANDVIEW AVE | 1907              | 504 | 7500               | 25.4%        |
| 349 GRANDVIEW AVE | 1428              | 0   | 20000              | 7.1%         |
| 383 GRANDVIEW AVE | 1946              | 336 | 20000              | 9.7%         |
| 340 OAK AVE       | 1632              | 0   | 17500              | 9.3%         |
| 144 OAK AVE       | 1850              | 0   | 100000             | 1.9%         |
| 341 OAK AVE       | 2036              | 0   | 5000               | 40.7%        |
| 345 OAK AVE       | 1568              | 480 | 27500              | 5.7%         |
| 368 LAUREL AVE    | 3444              | 733 | 22500              | 16.2%        |
| 428 GRANDVIEW AVE | 1220              | 0   | 12500              | 9.8%         |
| 410 GRANDVIEW AVE | 1797              | 400 | 7500               | 24.0%        |
| 420 GRANDVIEW AVE | 2050              | 572 | 7500               | 27.8%        |
| 438 GRANDVIEW AVE | 1909              | 380 | 12500              | 15.3%        |
| 435 GRANDVIEW AVE | 2714              | 470 | 15000              | 18.1%        |
| 421 GRANDVIEW AVE | 1204              | 0   | 7500               | 16.1%        |
| 202 SAN RAFAEL ST | 2456              | 440 | 13206              | 18.6%        |
| 427 GRANDVIEW AVE | 1802              | 440 | 10000              | 18.0%        |
| 445 GRANDVIEW AVE | 2044              | 613 | 25000              | 8.5%         |
| 447 GRANDVIEW AVE | 2846              | 489 | 15000              | 19.0%        |
| 410 LAUREL AVE    | 2372              | 626 | 51836              | 4.7%         |
| <b>Median</b>     | <b>1,907 s.f.</b> |     | <b>12,500 s.f.</b> | <b>15.3%</b> |
| <b>Average</b>    | <b>1,851 s.f.</b> |     | <b>16,895 s.f.</b> | <b>16.7%</b> |

\*Information is based on the most reliable data available through the County of Marin Assessor's Office.

8. *The proposed development will not properly and adequately perform or satisfy its functional requirements and will be unsightly, and/or create incompatibility and disharmony with the surrounding neighborhood. The proposed development will impair, or substantially interfere with the development, use or enjoyment of other property in the vicinity and will adversely affect light, air, privacy and view or the orderly development of the neighborhood as a whole, including the public lands and rights-of-way. The proposed development will impair, inhibit, or limit further investment or improvements in the vicinity, including public lands and rights-of-way. The proposed development will not be properly or adequately landscaped and trees and other natural features will not be used or conserved.*

Response to Appeal:

The points set out above in Item 8 reflect many of the findings for Design Review from the Marin County Code. For the reasons discussed under the background section of this report, staff finds that the proposed development will not result in negative impacts because (1) the proposed structure would be located downslope from existing residences and would maintain adequate setbacks from all adjacent property lines and would not block light or air from other properties in the vicinity; (2) existing and new trees, and proposed landscaping would obscure the residence from off-site views and would provide privacy for both, the

occupants of the proposed residence and for neighboring residents; (3) the building's height, bulk, and mass would be proportionate to the site and the building locations would not obstruct views; (4) finally, the proposed single-family residence would be located on an in-fill site within an existing residential neighborhood and would be compatible with existing uses in the vicinity and with the existing character of the neighborhood.

9. *The proposed development will not meet Planned District Development Standards (Marin County Code, Chapter 22.16) because the size, shape, and location of the proposed structure will be a visual blight to the neighborhood. The proposed development will have negative physical and visual effects resulting from improperly planned and inappropriate development.*

Response to Appeal:

Although the appellant has asserted that the project will not comply with the Planned District Development Standards contained in Marin County Code, Chapter 22.16, he has not submitted or presented any additional information to support this belief. Staff finds that the project is consistent with the required finding cited above because the proposed single-family residence would result in a structure of a height, mass and bulk proportionately appropriate to the site and would provide adequate setbacks from property lines and other buildings on the subject and surrounding properties. Construction of the proposed single-family residence would conform to a principal permitted use in the zoning district which governs the subject property and would be situated solely on the subject property. Landscaping proposed by the applicant and additional planting required by conditions of project approval would adequately screen the structure from off-site locations, would stabilize and prevent the erosion of graded soils around the structure, and would enhance the privacy of the occupants of the subject and surrounding properties. The proposed single-family residence would minimize drainage alterations, grading and excavation, tree removal and other adverse physical effects on the natural environment. Finally, the design of the proposed single-family residence would be compatible with that of other houses in the vicinity, would respect the surrounding natural environment, and would not adversely affect views of other properties in the vicinity.

10. *The design, location, size, and operating characteristics of the proposed use are not consistent, nor compatible with the existing land uses in the vicinity. It would be detrimental to the public interest of the County. Hemlock is not a developed street and should not be and the proposed development is essentially the first development on Hemlock, although its vehicle access is from Grandview.*

Response to Appeal:

The property consists of a double-frontage lot that is located between Grandview Avenue (a developed street) and Hemlock Avenue (a partially improved, dirt road). The property would be accessed by way of Grandview Avenue and would not require improvements to Hemlock Avenue. The modest size, simple design, and low profile roof of the two-level residence would result in a structure of a height, mass, and bulk proportionately appropriate to the site and would provide adequate setbacks from property lines and other buildings on the subject and surrounding properties. Construction of the proposed single-family residence would conform to a principally permitted use in the A-2 zoning district, which governs the subject property and would be situated solely on the subject property.

11. *The Notice of Decision has cited 32 conditions of approval (including some items with numerous sub-parts) and the Petitioner submits that it will be critical, but difficult, to supervise and enforce compliance with the conditions if this project receives approval. Accordingly it is necessary to establish with some clarity and certainty the means by which enforcement of conditions will be available and paid for by the applicant. The County has demonstrated that it has neither the supervisory personnel nor the will to scrutinize the proposed development to the degree necessary, because of the sensitivity of the site, and especially with the numerous conditions imposed that must be carefully overseen.*

Response to Appeal:

The County has established procedures for signing off on all phases of construction. These procedures include periodic inspections by Building Inspection staff throughout the development process. Final Inspection of the project will require that all conditions of project approval are met. In addition, in the event that Zoning or Building Code violations are discovered, the property owner would be subject to code enforcement action under the provisions of Marin County Code, Chapter 22.122. Additionally, the CDA has recently adopted construction compliance guidelines that provide staff with greater oversight on construction projects to ensure that they are built in accordance with the approved plan.



## **CONCLUSION:**

Based upon the findings contained in the May 12, 2004 Notice of Decision and based upon the Analysis of the Appeal (above), staff is recommending denial of the Neff Appeal because the appellant has not provided sufficient bases to overturn the Community Development Agency's Conditional Approval of the Higgins Design Review. The project meets all of the zoning district requirements and the findings for approval of a Design Review.

## **RECOMMENDATION:**

Staff recommends that the Planning Commission review the administrative record, conduct a public hearing, and adopt the attached Resolution denying the Neff Appeal and approving with conditions the Higgins Design Review.

### Attachments:

1. Proposed Resolution denying the Neff Appeal and sustaining the Community Development Agency's conditional approval of the Higgins Design Review.
2. Neff Petition for Appeal, received May 24, 2004
3. Higgins Design Review Notice of Decision
4. Categorical Exemption
5. Location Map
6. Assessor's Parcel Map
7. Site Plan (Sheet 1)
8. Crawl Space Areas (Sheet 1-A)
9. Floor Plans (Sheet 2)
10. Section (Sheet 3)
11. Exterior Elevations (Sheet 4)
12. Landscape Plan (L-1)
13. Fire Marshal Notes (F-1)
14. Vegetation Fuels Management Plan (F-2)
15. Department of Public Works Memorandum, December 3, 2003
16. Department of Environmental Health Services Memorandum, April 14, 2003
17. Department of Environmental Health Services Memorandum, February 6, 2004
18. Novato Fire Protection District Memorandum, April 23, 2003
19. Novato Fire Protection District Memorandum, November 24, 2003
20. Novato Fire Protection District Memorandum, January 16, 2004
21. North Marin Water District Letter, April 11, 2003
22. Curtis Letter (March 15, 2004)
23. Knecht Letter (March 11, 2004)
24. Neff Letter (March 15, 2004)
25. Neff Letter (March 10, 2004)
26. Rollison Letter (March 10, 2004)
27. Visconte Letter (March 15, 2004)
28. Joslin Letter (March 15, 2004)
29. Ewing Letter (March 15, 2004)
30. Teicher Letter (March 15, 2004)
31. Hause Letter (March 15, 2004)
32. Moon Letter (March 22, 2004)
33. McCrohan Letter (March 15, 2004)
34. Shatos-Ford Letter (March 15, 2004)
35. Rollison Letter (March 15, 2004)
36. Bruns Letter (March 15, 2004)
37. Pickett-Dummer Letter (March 15, 2004)
38. DiPrete Fax (March 23, 2004)
39. Mary Letter (March 20, 2004)
40. Georgeson Letter (on behalf of T. J. Neff) (April 6, 2004)
41. Georgeson Letter (on behalf of T. J. Neff) (April 16, 2004)

42. Higgins Letter (April 26, 2004)
43. Adamont N. Georgeson Letter (July 15, 2004)
44. Adamont N. Georgeson Letter (July 15, 2004)
45. Environmental Health Services Memorandum (July 15, 2004)
46. Higgins Letter (Received July 16, 2004)

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION DENYING THE NEFF APPEAL AND SUSTAINING THE  
COMMUNITY DEVELOPMENT AGENCY’S CONDITIONAL APPROVAL OF THE HIGGINS DESIGN REVIEW  
373 GRANDVIEW AVENUE, NOVATO  
ASSESSOR'S PARCELS 157-132-15, 16 & 17

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*SECTION I: FINDINGS*

I. WHEREAS William and Elizabeth Higgins are requesting Design Review approval to allow construction of a 28.5-foot high, 1,440 square foot single-family residence, representing a 14.4 percent floor area ratio (FAR) on the 10,000 square foot property and to allow construction of a two-car parking deck and an on-site sewage disposal system. The proposed residence would maintain the following minimum setbacks from corresponding property lines: 8 feet from the north (left side) property line, 43 feet from the south (right side) property line, 32.5 feet from the east (rear) roadway easement line (following the 7.5-foot wide right-of-way dedication), and 30 feet from the front property line. The proposed two-car parking deck would maintain the following minimum setbacks from corresponding property lines: 3 feet from the north (right side) property line, 3.5-feet from the south (right side) property line, 145 feet from the east (rear) roadway easement line (following the 7.5-foot wide right-of-way dedication), and 13 feet from the west (front) roadway easement line. The subject property is identified as 373 Grandview Avenue, Novato and is further identified as Assessor’s Parcels 157-132-15, 16 and 17.

II. WHEREAS on May 12, 2004, the Community Development Agency issued a Notice of Decision on the Higgins Design Review granting conditional approval for construction of the 28.5-foot high, 1,440 square foot single-family residence, two-car parking deck and an on-site sewage system.

III. WHEREAS, a timely appeal of the Community Development Agency’s approval of the Higgins Design Review was been filed by T. J. Neff, owner of the adjacent property to the northwest located at 363 Grandview Avenue, Novato (Assessor’s Parcel 157-132-47), which includes the following assertions:

- (12) The septic design is not adequate.
- (13) The proposed parking facilities are inappropriate and are out of character with the neighborhood. The parking structure has been designed to accommodate storage and/or allow the applicant to increase number of bedrooms.
- (14) The requirements from the Novato Fire Department are inadequate to ensure fire safety.
- (15) The County cannot adequately guarantee that additional bedrooms would not be illegally added.
- (16) Any change to the structure should be subject to Design Review if approval is granted.
- (17) The structure would block views of green lands from the properties located above.
- (18) The proposed size, shape, and use of the residence are incompatible with the neighborhood.
- (19) The proposed development will not properly and adequately perform or satisfy its functional requirements and will be unsightly and/or create incompatibility and disharmony with the surrounding neighborhood. The proposed development will impair, or substantially interfere with the development, use or enjoyment of other property in the vicinity and will adversely affect light, air, privacy and view or the orderly development of the neighborhood as a whole, including the public lands and rights-of-way. The proposed development will impair, inhibit, or limit further investment or improvements in the vicinity, including public lands and rights-of-way. The proposed development will not be properly or adequately landscaped and trees and other natural features will not be used or conserved.
- (20) The proposed development will not meet Planned District Development Standards (Marin County Code, Chapter 22.16) because the size, shape, and location of the proposed structure will be a visual blight to the neighborhood. The proposed development will have negative physical and visual effects resulting from improperly planned and inappropriate development.

- (21) The project is inconsistent, with existing land uses in the vicinity and approval would be detrimental to the public interest.
  - (22) The Notice of Decision included 32 conditions of approval which the County cannot effectively enforce.
- IV. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on July 26, 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 this project is Categorically Exempt from the requirements of the California Environmental Quality Act pursuant to Section 15303, Class 3(a) of the CEQA Guidelines because it entails construction of a single family residence with no potentially significant impacts on the environment.
- VI. WHEREAS the Marin County Planning Commission finds that the proposed project is consistent with the Countywide Plan policies because it would.
- A. Contribute to the diversity of housing stock within the Blackpoint Community without adversely affecting agricultural areas or public open space in the project vicinity;
  - B. Comply with Marin County standards for flood control, geotechnical engineering, and seismic safety, and include improvements to protect lives and property from hazard;
  - C. Result in development which conforms to the governing standards related to building height, size and location;
  - D. Comply with governing development standards related to parking, grading, drainage, and utility improvements as verified by the Department of Public Works;
  - E. Not cause significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation, or their services;
  - F. Minimize soil disturbance and maximize protection of natural vegetation; and
  - G. Minimize potential hazards to the public from private construction.
- VII. WHEREAS the Marin County Planning Commission finds that the proposed project, is consistent with all of the mandatory findings to approve the Higgins 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 design of the proposed project would adequately perform the functional requirements of one-bedroom residence, including the provision of adequate parking for residents and guest and on-site sewage treatment, and would result in a structure that is appropriate for the site and compatible with existing development within the surrounding neighborhood. The proposed improvements include a 28.5-foot high, approximately 1,400 square foot single-family residence, representing a 14.4 percent floor area ratio (FAR) on the 10,000 square foot property. Additional improvements include an on-site septic system, which has been reviewed in accordance with Marin County Code §18.06 (Individual Sewage Disposal Systems) and approved by the Department of Environmental Health, and a two-car parking deck. As modified herein, the proposed parking deck and adjoining driveway would allow parking for four cars and would meet the minimum parking standards (two resident and two guest spaces) required by Marin County Code §24.04.340 (Minimum Required Parking Spaces). On-grade paths would provide pedestrian access from the roadway to the residence which would be located approximately 135 feet downslope from the edge of the roadway. The

proposed residence would be located on a wooded hillside on a moderate, east-facing slope that is approximately 70-feet east (downslope) from the nearest adjacent residence. The location and design of the structure would result in an elevation differential of approximately 18.8 feet between the proposed roofline and the existing road above, leaving unobstructed views over the residence. The driveway and car deck would be located immediately off of Grandview Avenue in a pattern that is typical along the east (downsloping) side of Grandview Avenue. The driveway was designed with a 16.5 percent downslope in order to reduce the height, thereby minimizing the appearance of the structure from the roadway and from the neighboring residence north of the parking deck. The parking structure would be limited to a platform with open railings. Seven trees would be removed to allow construction of the project: three to allow construction of the car deck, one to allow construction of the residence and three to comply with the required vegetation management plan. Replacement trees would consist of two Buckeyes along the southerly property line. A hedgerow of *Pittosporum Tobira* would provide additional screening between the proposed residence and the adjacent neighbor to the west. Remaining trees and proposed trees and landscaping would further obscure the residence from adjacent properties located upslope and Condition 7 would require that exterior colors be revised to utilize dark earth tones that would blend with the natural wooded environment. The proposed residence would meet the following minimum setbacks from corresponding property lines: 8 feet from the north (left side) property line, 43 feet from the south (right side) property line, 32.5 feet from the east (rear) roadway easement line, and 30 feet from the front property line. The proposed two-car parking deck would meet the following minimum setbacks from corresponding property lines: 3 feet from the north (right side) property line, 3.5-feet from the south (right side) property line, 145 feet from the east (rear) roadway easement line, and 13 feet from the west (front) roadway easement line. The setbacks meet the minimum setbacks required by the A-2 zoning district.

- 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 project would not substantially interfere with the development, use, or enjoyment of other property in the vicinity, or the orderly development of the neighborhood as a whole for the following reasons: (1) the proposed structure would be located downslope from existing residences and would maintain adequate setbacks from all adjacent property lines and would not block light or air from other properties in the vicinity; (2) existing and new trees, and proposed landscaping would obscure the residence from off-site views and would provide privacy for both, the occupants of the proposed residence and for neighboring residents; (3) the building's height, bulk, and mass would be proportionate to the site and the building locations would not obstruct views; (4) finally, the proposed single-family residence would be located on an in-fill site within an existing residential neighborhood and would be compatible with existing uses in the vicinity and with the existing character of the neighborhood.

- 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 discussion contained in findings A and B above support this finding.

- 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 proposed residence would be screened from adjoining properties and rights-of-way by existing mature trees and by proposed trees and landscaping. A condition of approval will require the applicant to install protective barriers around the driplines of all trees that are to be preserved in order to prevent construction impacts from construction staging, grading, stockpiling of materials, etc., and in order to preserve the long-term health and vigor of said trees. In order to ensure conservation of non-renewable energy, the structure will be subject to the requirements of Title 24 (California Energy Efficiency Standards). In addition, the applicant has proposed installation of 5 flush-mounted solar panels on the roof of the new residence.

**E. The proposed development will be in compliance with the design and locational characteristics listed in Chapter 22.16 (Planned District Development Standards).**

The project is consistent with the required finding cited above because the proposed single-family residence would result in a structure of a height, mass and bulk proportionately appropriate to the site and would provide adequate setbacks from property lines and other buildings on the subject and surrounding properties. Construction of the proposed single-family residence would conform to a principal permitted use in the zoning district which governs the subject property and would be situated solely on the subject property. Landscaping proposed by the applicant and additional planting required by conditions of project approval would adequately screen the structure from off-site locations, would stabilize and prevent the erosion of graded soils around the structure, and would enhance the privacy of the occupants of the subject and surrounding properties. The proposed single-family residence would minimize drainage alterations, grading and excavation, tree removal and other adverse physical effects on the natural environment. Finally, the design of the proposed single-family residence would be compatible with that of other houses in the vicinity, would respect the surrounding natural environment, and would not adversely affect views of other properties in the vicinity.

**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 structures;**

The discussion contained in findings A and B supports this finding.

**2. Drainage systems and appurtenant structures;**

The Department of Public Works has reviewed and accepted the application as complete. In addition, the Department of Public Works will review the project for compliance with Title 24 of the Marin County Code as part of the building permit process.

**3. Cut and fill or the reforming of the natural terrain, and appurtenant structures (e.g., retaining walls and bulkheads);**

Grading would be minimized to the extent feasible and the Department of Public Works will review the project for compliance with the requirements of Title 24 as part of the building permit process.

**4. Area, paths, and rights-of-way for the containment, movement or general circulation of animals, conveyances, persons, vehicles, and watercraft.**

Proposed construction would not be located within any historic paths or within existing rights-of-way located adjacent to Grandview Avenue (a developed roadway) or Hemlock Avenue (a paper street) and would not result in any adverse effects to the circulation of animals, conveyances, persons, or vehicles.

**5. Will not result in the elimination of significant sun and light exposure, views, vistas, and privacy to adjacent properties.**

The discussion contained in findings B above support this finding.

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

The proposed residence is moderate in size and would utilize photovoltaic solar electric panels. In addition, the project will be subject to the requirements of Title 24 (California Energy Efficiency Standards).

- 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.**

For all of the reasons outlined in sections A through G above, staff has determined that the project is consistent with this finding.

- VIII. WHEREAS the Marin County Planning Commission finds that the Neff appeal does not provide sufficient bases to overturn the Community Development Agency's Conditional Approval of the Higgins Design Review, based upon the assertions and responses below:

12. *The septic design is not adequate, due to poor or marginal percolation tests on the subject property. The septic permit was not properly issued, and the septic plans and soils reports fail to meet the requirements of Marin County Code §18.06. In the text report submitted, 9 of 15 holes failed. In addition, two of the remaining 6 were "n/a" – not applicable. [Fourteen] other holes were not used, because they were outside of the proposed drain field. In notes to the 3/21/01 Site Review by "E. J.", it was noted that there was "water in 2 profile holes." The admonition by J. Dietrich Stroeh, the engineer that an "intercept trench" be required to mitigate "high seasonal groundwater" and "water seepage" has not been incorporated into the conditions for approval of the septic system or the development. In addition, the leach field is on an area averaging 34 degree slope, line #4 appears to be less than ten feet from the structure, and 5 of the 6 lines are within fifteen feet of the structure.*

Response to Appeal:

The Department of Environmental Health (EHS) has found that the proposed septic system design is in compliance with rules and regulations governing septic systems and the permit to construct was properly issued. There is no evidence to support claims that the approved septic design is inadequate because: (1) the appellant's assertion that there were failing tests on the site are true, however the location of the approved septic system is not contained within the area of failing percolation tests; (2) the appellant's assertion that there is no intercept trench proposed is incorrect, as an intercept and a "V" ditch are included in the approved design; (3) although the site is located on a moderate slope, existing regulations do not place limitation on slope; (4) the appellant's assertion that leach field trench #4 and leach field lines #5 and #6 do not meet the required minimum setback are incorrect because the minimum setback is 10 feet and leach field trench #4 and leach field lines #5 and #6 are located with setbacks of 10 and 14 feet, respectively. Finally, it should be noted that the required length of disposal field is 72 lineal feet and the approved design has a length of 132 feet—almost double the requirement.

13. *The proposed parking facilities are inappropriate and are out of character with the existing neighborhood. The design and size of the parking structure, notwithstanding the claim that it complies with parking standards established by the Marin County Code, suggests that it will be used improperly for storage, or to aid the applicant in using the residence for more than its one-bedroom approved plan. The conditions imposed are inadequate to compensate for the excessive bulk of the parking structure.*

Response to Appeal:

The applicant has proposed a parking deck with open railing, rather than an enclosed garage, to meet County requirements. The applicant's proposed driveway and parking deck would accommodate four on-site spaces. The proposed parking deck was required to be reduced in size by 111 square feet through conditions of project approval so that it would reflect the *minimum* dimensions necessary to comply with Marin County Code §24.04.340 (Minimum Required Parking Spaces) and to reduce the overall height of the structure in order to minimize the appearance from the roadway and from the neighboring residence to the north. Because the approved parking does not include plans for an enclosed garage, it would result in the least amount of bulk feasible given the existing slope. Additionally, the enclosure of the understory area is necessary to comply with the Fire District's requirement to prevent penetration of burning brands and embers in the event of a fire.

The appellant's assertion that the parking structure would be used for "improper" storage or would lead to illegal conversion from a one-bedroom to a two- (or more) bedroom residence is unfounded.

14. *The purported accommodations to the lack of defensible space zone are inadequate to ensure the fire safety of the proposed structure.*

Response to Appeal:

The Novato Fire Protection District has reviewed and approved the project based upon the fulfillment of conditions designed to compensate for limitations posed by the proximity of the proposed residence to neighboring property lines. These conditions include (but are not limited to) installation of an automatic fire sprinkler system, which must be installed throughout the entire residence including those areas typically exempted by NFPA Standards 13D and 13R, the use of non-combustible construction materials, and a requirement that the undersides of all decks, roof eaves, and parking overhangs be boxed in to prevent penetration of burning brands and embers in the event of a fire.

15. *The County's overview of illegal conversions is inadequate to guarantee that the residence will not be converted to a two-bedroom residence.*

Response to Appeal:

The appellant's assertion implies intent on the part of the applicant to violate the Marin County Code and is speculative. The applicant is proposing construction of a one-bedroom, single-family residence and has submitted plans that reflect a one-bedroom design. Due to limitations of the approved septic system, the residence would be restricted to one bedroom unless septic system upgrades were approved and constructed to accommodate additional bedrooms. As with all substantiated violations within the jurisdiction of the County of Marin, illegal conversions of approved structures would be subject to Code Enforcement action in accordance with Marin County Code §22.122 (Enforcement of Development Code Provisions).

16. *Any change to the structure should be subject to Design Review if approval is granted.*

Response to Appeal:

In accordance with Marin County Code §22.42.0.0 (Substandard Building Sites), all subsequent development and physical improvements proposed on the subject property would be subject to Design Review.

17. *The design as conditionally approved blocks the view of green lands from the properties above. The view would not be "unobstructed" as claimed in the Notice of Decision.*

Response to Appeal:

The proposed 28.5-foot high residence would be located on a wooded hillside approximately 135 feet down slope from the edge of Grandview Avenue on a moderate, east-facing slope. The proposed residence would be located approximately 70-feet east (downslope) of the nearest adjacent residence. The location and design of the structure would result in an elevation differential of approximately 18.8 feet between the proposed roofline and the existing road above, leaving unobstructed views over the residence. The driveway and car deck would be located immediately off of Grandview Avenue in a pattern that is typical along the east (downsloping) side of the roadway. The driveway was designed with a 16.5 percent downslope in order to keep the structure as low as possible, thereby minimizing its appearance from the roadway and from the neighboring residence located north of the parking deck. In addition, the parking structure would be limited to a platform with open railings to minimize the appearance of the mass and bulk. The subject property is comprised of four historic legal lots of record. The proposal currently under review meets the mandatory Design Review Findings necessary to grant a development permit.



18. *The structure is inconsistent with the size, shape, and uses in the neighborhood. Although purportedly only a one-bedroom structure, the height, mass, and location of the structure, as well as its boxlike shape, are inconsistent with the neighborhood and its current uses and values.*

Response to Appeal:

The proposed height, mass, and location of the structure are consistent with the site development standards required by the governing A-2 (Agricultural, Limited District, two-acre minimum lot size) zone district. In addition, the proposed residence falls within the range of existing house sizes, and is smaller than the average and median size and floor area ratio (FAR) of homes located within a 600-foot radius of the subject property. This is supported by the data provided in the table on the following page).

| <b>Address</b>    | <b>Living Area</b> | <b>Garage Area</b> | <b>Land Area</b>   | <b>Adjusted Floor Area Ratio<br/>(excludes up to 540 s.f. of existing garage area)</b> |
|-------------------|--------------------|--------------------|--------------------|--|
| 330 GRANDVIEW AVE | 1913               | 0                  | 7500               | 25.5%  |
| 324 GRANDVIEW AVE | 1034               | 198                | 7500               | 13.8%  |
| 329 GRANDVIEW AVE | 1840               | 0                  | 5000               | 36.8%  |
| 327 GRANDVIEW AVE | 2050               | 0                  | 17500              | 11.7%  |
| 331 GRANDVIEW AVE | 2396               | 0                  | 7500               | 31.9%  |
| 335 OAK AVE       | 1132               | 440                | 15000              | 7.5%   |
| 360 GRANDVIEW AVE | 2539               | 377                | 7500               | 33.9%  |
| 340 GRANDVIEW AVE | 1328               | 0                  | 5000               | 26.6%  |
| 348 GRANDVIEW AVE | 968                | 500                | 10000              | 9.7%   |
| 354 GRANDVIEW AVE | 1002               | 296                | 15000              | 6.7%   |
| 358 GRANDVIEW AVE | 1432               | 0                  | 12500              | 11.5%  |
| 396 GRANDVIEW     | 2330               | 659                | 32500              | 7.5%   |
| 359 GRANDVIEW AVE | 968                | 420                | 7500               | 12.9%  |
| 355 GRANDVIEW AVE | 1915               | 0                  | 10000              | 19.2%  |
| 341 GRANDVIEW AVE | 1907               | 504                | 7500               | 25.4%  |
| 349 GRANDVIEW AVE | 1428               | 0                  | 20000              | 7.1%   |
| 383 GRANDVIEW AVE | 1946               | 336                | 20000              | 9.7%   |
| 340 OAK AVE       | 1632               | 0                  | 17500              | 9.3%   |
| 144 OAK AVE       | 1850               | 0                  | 100000             | 1.9%   |
| 341 OAK AVE       | 2036               | 0                  | 5000               | 40.7%  |
| 345 OAK AVE       | 1568               | 480                | 27500              | 5.7%   |
| 368 LAUREL AVE    | 3444               | 733                | 22500              | 16.2%  |
| 428 GRANDVIEW AVE | 1220               | 0                  | 12500              | 9.8%   |
| 410 GRANDVIEW AVE | 1797               | 400                | 7500               | 24.0%  |
| 420 GRANDVIEW AVE | 2050               | 572                | 7500               | 27.8%  |
| 438 GRANDVIEW AVE | 1909               | 380                | 12500              | 15.3%  |
| 435 GRANDVIEW AVE | 2714               | 470                | 15000              | 18.1%  |
| 421 GRANDVIEW AVE | 1204               | 0                  | 7500               | 16.1%  |
| 202 SAN RAFAEL ST | 2456               | 440                | 13206              | 18.6%  |
| 427 GRANDVIEW AVE | 1802               | 440                | 10000              | 18.0%  |
| 445 GRANDVIEW AVE | 2044               | 613                | 25000              | 8.5%   |
| 447 GRANDVIEW AVE | 2846               | 489                | 15000              | 19.0%  |
| 410 LAUREL AVE    | 2372               | 626                | 51836              | 4.7%   |
| <b>Average</b>    | <b>1,851 s.f.</b>  |                    | <b>16,895 s.f.</b> | <b>16.7%</b>   |
| <b>Median</b>     | <b>1,907 s.f.</b>  |                    | <b>12,500 s.f.</b> | <b>15.3%</b>   |

\*Information is based on the most reliable data available through the County of Marin Assessor's Office.

19. *The proposed development will not properly and adequately perform or satisfy its functional requirements and will be unsightly and/or create incompatibility and disharmony with the surrounding neighborhood. The proposed development will impair, or substantially interfere with the development, use or enjoyment of other property in the vicinity and will adversely affect light, air, privacy and view or the orderly development of the neighborhood as a whole, including the public lands and rights-of-way. The proposed development will impair, inhibit, or limit further investment or improvements in the vicinity, including public lands and rights-of-way. The proposed development will not be properly or adequately landscaped and trees and other natural features will not be used or conserved.*

Response to Appeal:

The points set out above in Item 8 reflect many of the findings for Design Review from the Marin County Code. For the reasons discussed under the background section of this report, staff finds that the proposed development will not result in negative impacts because (1) the proposed structure would be located downslope from existing residences and would maintain adequate setbacks from all adjacent property lines and would not block light or air from other properties in the vicinity; (2) existing and new trees, and proposed landscaping would obscure the residence from off-site views and would provide privacy for both, the occupants of the proposed residence and for neighboring residents; (3) the building's height, bulk, and mass would be proportionate to the site and the building locations would not obstruct views; (4) finally, the proposed single-family residence would be located on an in-fill site within an existing residential neighborhood and would be compatible with existing uses in the vicinity and with the existing character of the neighborhood.

20. *The proposed development will not meet Planned District Development Standards (Marin County Code, Chapter 22.16) because the size, shape, and location of the proposed structure will be a visual blight to the neighborhood. The proposed development will have negative physical and visual effects resulting from improperly planned and inappropriate development.*

Response to Appeal:

Although the appellant has asserted that the project will not comply with the Planned District Development Standards contained in Marin County Code, Chapter 22.16, he has not submitted or presented any additional information to support this belief. Staff finds that the project is consistent with the required finding cited above because the proposed single-family residence would result in a structure of a height, mass and bulk proportionately appropriate to the site and would provide adequate setbacks from property lines and other buildings on the subject and surrounding properties. Construction of the proposed single-family residence would conform to a principal permitted use in the zoning district which governs the subject property and would be situated solely on the subject property. Landscaping proposed by the applicant and additional planting required by conditions of project approval would adequately screen the structure from off-site locations, would stabilize and prevent the erosion of graded soils around the structure, and would enhance the privacy of the occupants of the subject and surrounding properties. The proposed single-family residence would minimize drainage alterations, grading and excavation, tree removal and other adverse physical effects on the natural environment. Finally, the design of the proposed single-family residence would be compatible with that of other houses in the vicinity, would respect the surrounding natural environment, and would not adversely affect views of other properties in the vicinity.

21. *The design, location, size, and operating characteristics of the proposed use are not consistent, nor compatible with the existing land uses in the vicinity. It would be detrimental to the public interest of the County. Hemlock is not a developed street and should not be and the proposed development is essentially the first development on Hemlock, although its vehicle access is from Grandview.*

Response to Appeal:

The property consists of a double-frontage lot that is located between Grandview Avenue (a developed street) and Hemlock Avenue (a partially improved, dirt road). The property would be accessed by way of Grandview Avenue and would not require improvements to Hemlock Avenue. The modest size, simple design, and low profile roof of the two-level residence would result in a structure of a height, mass, and bulk proportionately appropriate to the site and would provide adequate setbacks from property lines and other buildings on the subject and surrounding properties. Construction of the proposed single-family residence would conform to a principally permitted use in the A-2 zoning district, which governs the subject property and would be situated solely on the subject property.

22. *The Notice of Decision has cited 32 conditions of approval (including some items with numerous sub-parts) and the Petitioner submits that it will be critical, but difficult, to supervise and enforce compliance with the conditions if this project receives approval. Accordingly it is necessary to establish with some clarity and certainty the means by which enforcement of conditions will be available and paid for by the applicant. The County has demonstrated that it has neither the supervisory personnel nor the will to scrutinize the proposed development to the degree necessary, because of the sensitivity of the site, and especially with the numerous conditions imposed that must be carefully overseen.*

Response to Appeal:

The County has established procedures for signing off on all phases of construction. These procedures include periodic inspections by Building Inspection staff throughout the development process. Final Inspection of the project will require that all conditions of project approval are met. In addition, in the event that Zoning or Building Code violations are discovered, the property owner would be subject to code enforcement action under the provisions of Marin County Code, Chapter 22.122. Additionally, the CDA has recently adopted construction compliance guidelines that provide staff with greater oversight on construction projects to ensure that they are built in accordance with the approved plan.

**SECTION II: PROJECT APPROVAL**

NOW, THEREFORE, BE IT RESOLVED that the Marin County Planning Commission hereby denies the Neff appeal and sustains the Community Development Agency's conditional approval of the Higgins Design Review subject to the following conditions:

Marin County Community Development Agency, Planning Division

1. Pursuant to Marin County Code Chapter 22.42, the Moran Design Review is approved to allow construction of a 28.5-foot high, 1,440 square foot single-family residence, representing a 14.4 percent floor area ratio (FAR) on the 10,000 square foot property. In addition, this approval permits construction of a two-car parking deck and an on-site sewage system. The residence is approved with the following minimum setbacks from corresponding property lines: 8 feet from the north (left side) property line, 43 feet from the south (right side) property line, 32.5 feet from the east (rear) roadway easement line (following the 7.5-foot wide right-of-way dedication), and 30 feet from the front property line. The two-car parking deck is approved with the following minimum setbacks from corresponding property lines: 3 feet from the north (right side) property line, 3.5-feet from the south (right side) property line, 145 feet from the east (rear) roadway easement line (following the 7.5-foot wide right-of-way dedication), and 13 feet from the west (front) roadway easement line. The subject property is identified as 373 Grandview Avenue, Novato and is further identified as Assessor's Parcels 157-132-15, 16 and 17.
2. Plans submitted for a building permit shall substantially conform to plans identified as "Exhibit A: Higgins Residence", prepared on March 12, 2003 with current revisions dated November 11, 2003, and on file in the Marin County Community Development Agency.
3. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall revise the site plan to reduce the overall length of the parking deck by six feet (111 square feet).

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 Design Review Conditions of Approval as notes.
5. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall revise the plans to depict the location and type of all exterior lighting for review and approval of the Director. Exterior lighting shall be permitted for safety purposes only, must consist of low wattage fixtures, and must be directed downward and hooded. Specification (cut sheets) for exterior lighting fixtures shall be provided.
6. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall file a Merger Determination Application (with applicable fees) for historic lots 315, 316, 317, and 239 as shown upon that certain map entitled, "Grandview Map 'B', East Part of Division 'D', Rancho De Novato, Marin County California" filed for record November 13, 1905 in Volume 2 of Maps, at Page 41, Marin County Records.
7. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall submit either: A) a Statement of Conformance, signed by a certified or licensed landscape design professional confirming that the landscape design requirements of Chapter 23.10 of the Marin County Code (attached) have been met; or B) a letter from the North Marin Water District indicating that the proposed landscaping complies with the District's current water conservation and landscape ordinance.
8. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall submit revised exterior paint color samples for review and approval by the agency director. Proposed colors shall consist of dark, earth-tone shades to blend with the natural wooded environment.
9. Construction activity is only permitted between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday, and 9:00 a.m. and 4:00 p.m. on Saturday. No construction activity shall be permitted on Sunday or Holidays. At the applicant's request, the Director may administratively authorize minor modifications to these hours of construction.
10. 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.
11. All soils disturbed by development of the project shall be reseeded with native grasses or wildflowers to control erosion.
12. The applicant shall be responsible for ensuring that all construction vehicles, equipment and materials are stored on-site and off the street so that pedestrian and vehicles can pass safely at all times.
13. The applicant shall be responsible for ensuring that the number of construction vehicles shall be limited to the minimum number necessary to complete the project.
14. All utility connections and extensions serving the project shall be installed underground.
15. All flashing, metal work and trim shall consist of an appropriately subdued, non-reflective color.
16. Only those trees shown on the site plan as proposed to be removed, if any, may be removed. No other existing trees on the subject property shall be removed except to comply with local and State fire safety regulations, to prevent the spread of disease as required by the State Food and Agriculture Department, and to prevent reasonably safety hazards to people and property.
17. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall construct temporary fencing around the outer dripline of all trees on the property which are located adjacent to the approved construction site and yard areas that are subject to site grading. The fencing shall remain until all construction, including utilities, is completed. No construction activity (including grading, access, materials storage, and soil stockpiling) shall occur within the dripline of all protected trees. If utility lines must be located within the dripline, the trenches must be cut by hand and all roots

one inch or greater in diameter must be protected and if necessary, sawn but not torn or ripped. If construction access, storage or stockpiling must be located within the dripline, then at least a 6-inch mulch layer must first be installed. At the end of construction, the area shall be aerated and the tree fertilized. Any tree accidentally damaged during construction shall be inspected and treated by an arborist. In the event the tree is removed or permanently damaged, it shall be replaced with similar tree species on a two to one basis, unless express approval to waive replacement is granted by the Director. Proof that the temporary fencing has been installed can be made to the Community Development Agency by photographs.

18. BEFORE FINAL INSPECTION, the applicant shall install all proposed landscaping and a drip irrigation system to serve it. The applicant shall call for a Community Development Agency staff inspection of the landscaping and irrigation at least five working days before the anticipated completion of the project. Failure to pass inspection will result in withholding of the occupancy certificate and imposition of hourly fees for subsequent reinspections.
19. PRIOR TO FINAL INSPECTION, the applicant shall submit a "Statement of Completion," signed by a certified or licensed landscape design professional, which confirms that the approved landscaping was installed as designed, or written proof from the North Marin Water District that the installed landscaping has been planted in conformance with the plans approved by the district.
20. BEFORE FINAL INSPECTION, the applicant shall record a deed restriction whereby property owners, on behalf of themselves, their heirs, assigns, and successors, stipulate that the residence approved herein shall limited to one bedroom. Any deviation from the recorded deed restriction shall be subject to Enforcement as outlined under Section 22.122 (Enforcement of Development Code Provisions) of the Marin County Code. This condition should not be construed to prohibit future consideration of zoning and/or land use permit applications in accordance with the provision of the Marin County Code in effect at that time.
21. 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.

Marin County Department of Public Works, Land Use and Water Resources Division

22. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall provide the following information as specified below:
  - a. Improvement plans shall conform to Title 24 of the Marin County Code and as required by the Department of Public Works and by the Novato Fire Protection District.
  - b. Improvement plans shall be prepared, signed and stamped by a registered Civil Engineer or Architect.
  - c. The applicant shall submit a Stability Report prepared by a registered Civil Engineer with geotechnical expertise or a certified Geotechnical Engineer. The report must attest to the suitability and geological feasibility of placing a building on the site and identifying any drainage or soils problems that the design of the project must accommodate.
  - d. Plans shall be reviewed and approved by the soils engineer. Certification shall be either by the engineer's signature and stamp on the plans or a signed and stamped letter.
  - e. Engineer's calculations for site/driveway retaining walls signed and stamped by the structural engineer shall be submitted
  - f. Separate building permits are required for site/driveway retaining walls with a height of more than four feet, or three feet when backfill area is sloped or has a surcharge.
  - g. Erosion and siltation control plans shall be submitted. Erosion control and siltation control measures must be installed along slope contours.

- h. The plans shall include a note that the Design Engineer shall certify to the County of Marin in writing (include signature and stamp) that all grading, and drainage work was done in accordance with approved plans and field directions. All field changes shall be described. Revised drawings shall be resubmitted for review and approval by the Department of Public Works. The plans shall note that prior to final inspection, driveway, parking, and site improvements shall be inspected by the Department of Public Works engineer.
- i. 7.5-foot wide right-of-way dedication to the County of Marin for roadway and utility purposes along the frontages of Grandview Avenue and Hemlock Avenue shall be processed and recorded.
- j. Site plans shall be revised to locate walkway steps no closer to the roadway than the existing right-of-way line.
- k. Show on the Site Plan where the Typical Driveway Section and Drainage Swale detail are applicable.
- l. Obtain an encroachment permit from the Department of Public works for all work within the road right-of-way.

North Marin Water District

- 23. BEFORE FINAL INSPECTION, the applicant shall make all financial arrangements and complete installation of new domestic water service from the existing water main.

Marin County Community Development Agency—Environmental Health Services Division

- 24. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall provide a will serve letter from the North Marin Water District.
- 25. An onsite sewage disposal system is to be constructed in accordance with the approved permit, issued on February 11, 2004, and on file in the Department of Environmental Health Services.

Novato Fire Protection District

- 26. PRIOR TO INSTALLATION OF FIRE SPRINKLER SYSTEM, plans and hydraulic calculations shall be submitted to the Fire Marshall for review. An automatic fire sprinkler system is required to be installed throughout the entire residence including those areas exempt by NFPA Standards 13D and 13R. The applicant must contact the North Marin Water District for an application to upgrade domestic meter size to a minimum required to deliver the required demand for the sprinkler system
- 27. Fire hydrants capable of supplying 1,750 gallons per minute minimum will be required to be installed so that the maximum distance to the residence does not exceed 300 feet. The fire hydrant shall be spotted by the Fire Marshal and contain at least one 4 ½” and one 2 ½” outlet. Installation shall conform to the specifications of the North Marin Water District.
- 28. The existing fire hydrants nearest the structure and located by the Fire Marshal shall have the body upgraded to have at least one 4 ½” and one 2 ½” outlet. Contact the North Marin Water District for hydrant specifications and installation.
- 29. Fire hydrants shall be installed, tested, and operational prior to framing.
- 30. Roadways shall not be less than 20 feet wide capable of accommodating a 60,000 GVW and driveways not less than 16 feet wide capable of accommodating a 40,000 GVW, consisting of all weather surface (AC paving or concrete), and unobstructed. Improvements to roadways and driveways shall be installed prior to framing.
- 31. The address shall be posted, clearly visible from the street with illuminated numerals and contrasting with their background conforming to Fire Protection Standard 205.

32. PRIOR TO FINAL INSPECTION, an irrigated "greenbelt" vegetation management plan (VMP)-Fuels Management Plan conforming to the standards of the Novato Fire Protection District shall be prepared and implemented at the site. The VMP-Fuels Management Plan shall conform to Fire Protection Standard 220. The VMP submitted on December 31, 2003 appears to comply with NFPD standard 220. The plan shall be incorporated into the landscape plan for the project and submitted to the Fire Marshal along with an executive summary style description of the plan prior to implementation.
33. Due to the fact that the required defensible space zone can not be met due to property line proximity, and the inability to meet the required fire flow, only non-combustible construction will be allowed on the structure in areas that cannot meet the defensible space zones. This means only non-combustible exterior siding will be required throughout and "fire lite" window assemblies (or equal) will be required on the sides of the residence that cannot meet the VMP zones due to the property line limitations. In addition, all decks, eaves, and parking overhangs shall be boxed to prevent penetration of burning brands and embers, and the underside of decks and eaves shall be enclosed and deck surfaces shall be of non-combustible or approved fire resistant materials.

### **SECTION III: VESTING OF RIGHTS**

The applicant must vest this Design Review approval by securing a Building Permit for all of the approved work and substantially completing all approved work by July 26, 2006, 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 Director approves it. Design Review extensions to a total of not more than four (4) years may be granted for cause pursuant to Marin County Code Section 22.56.050.

### **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 August 5, 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 26<sup>th</sup> day of July, 2004, by the following vote to wit:

AYES:

NOES:

ABSENT:

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ALLAN BERLAND, CHAIR  
MARIN COUNTY PLANNING COMMISSION

Attest:

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Alexandra Morales  
Recording Secretary