

Marin County Community Development Agency

Alex Hinds, Director

STAFF REPORT TO THE PLANNING COMMISSION SPURGEON APPEAL OF THE PELLIGRA FLOATING HOME ARCHITECTURAL DEVIATION

Item No:	6
Applicant:	Ralph Pelligra
Property Address:	52 Liberty Dock, Waldo Point Harbor
Hearing Date:	August 23, 2004
Application No:	FA 04-3
Owners:	Ralph Pelligra
Assessor's Parcel:	901-020-51
Planner:	Jeremy Tejririan
RECOMMENDATION:	Deny the Spurgeon Appeal and approve the Pelligra Architectural Deviation
APPEAL PERIOD:	10 working days to the Board of Supervisors
LAST DATE FOR ACTION:	August 23, 2004

PROJECT DESCRIPTION:

The applicant proposes to construct a 152 square-foot roof deck with a 3.75-foot high open railing and an exterior spiral staircase to the deck below. The railing for the deck would reach a maximum height of 18.5 feet above the waterline and would maintain minimum setbacks of at least 10 feet from the adjacent floating homes. The existing height of the floating home is 14.75 feet above the waterline and the existing floor area is 1,225 square feet.

The zoning for the subject property is BFC-RF (Bay Front Conservation, Floating Homes).

ENVIRONMENTAL REVIEW:

The Environmental Coordinator has determined that this project is Categorically Exempt from the requirements of the California Environmental Quality Act pursuant to Section 15301, Class 1 of the CEQA Guidelines because it entails the construction of a roof deck on a floating home in an existing berth with no potentially significant impacts on the environment.

PUBLIC NOTICE:

The Community Development Agency has provided public notice identifying the applicant, describing the project and its location, and stating the public hearing date in accord with California Government Code requirements. This notice has been mailed to all property owners within 300 feet of the subject property and published in the Marin Independent Journal.

PROJECT ANALYSIS:

PC Staff Report
AUGUST 23, 2004

Item No. 6,

The subject property is located on the northern edge of Liberty Dock in Waldo Point Harbor. The surrounding area is characterized by one and two story floating homes with various sizes and architectural styles. The subject floating home is a single story with an open deck on the main level. The proposed development includes the construction of a spiral staircase leading up to a small portion of the roof at the rear of the houseboat, which would be converted into a roof deck by installing railings. The height of the roof and the existing setbacks to adjacent houseboats would not be affected by the proposed development.

Architectural Deviation approval is required for the construction of architectural features that exceed a height of 16 feet above waterline for concrete hulled houseboats. The findings required for Architectural Deviation approval focus on whether the development would excessively increase the height or mass and bulk of the houseboat in relation to other houseboats, and any effects the development would have on views enjoyed from the dock or other houseboats in the surrounding area.

Floating home marinas exhibit several distinguishing characteristics of physical development. First, tidal action and water displacement affect the height above waterline of floating homes. Second, the privacy enjoyed by residents is generally not comparable to the privacy enjoyed by residents on land because the setbacks required between floating homes is minimal and the opportunities for screening windows are scarce. Third, views are at a premium because of the marinas' locations, and are a major concern for the residents of the docks.

County records indicate that several other houseboats on Liberty Dock have been permitted to exceed the height normally allowed for floating homes. The houseboats located in berths 11, 16, 17, 18, 24, 25, 26, 27, and 37 have all received authorization to exceed a height of 16 feet above the waterline, and other legal non-conforming houseboats may exceed the height limits because they were constructed prior to the height limits being imposed. The houseboats that have received Architectural Deviation approval from the County to exceed the height limit are all between 18 and 20 feet above the waterline. Therefore, the proposed development is consistent with the heights of many of the surrounding houseboats.

Although the appellant has not raised the issue of view impacts to his residence, this issue was considered by staff prior to approving the project. The proposed roof deck would be located above the windows of the appellant's new houseboat, and would not impede the appellant's primary views of the Bay. As modified by the conditions of approval, the development would not substantially affect the views from surrounding houseboats or the dock because of the roof deck's small size and open railings. Therefore, the design of the roof deck provides the applicant with opportunities to enjoy the primary views from his houseboat toward the Bay without impeding the views from the dock or surrounding area.

Basis of Appeal

Staff has received comments in response to the public notice from several community members, including the appellant. The objections to the project reflected in these comments are primarily related to adverse effects on the light and privacy available to the appellant, who is the adjacent neighbor to the south, and views enjoyed from the dock. The appellant asserts that the railings would serve as an armature to support plants, deck chairs, and other items that would have an adverse affect on the light to his houseboat, despite the condition that the railings must be open. However, the findings necessary for Architectural Deviation are very specific and limited to view impacts and technical standards. The mandatory findings necessary for approval of an Architectural Deviation do not address potential light or privacy impacts, and therefore these concerns do not support a denial of the application. Further, the appellant is currently in the process of constructing a houseboat with a 24-foot long set of windows that directly face the applicant's houseboat and the 7 feet of open railing facing the appellant's window would not appreciably reduce the light entering his residence.

The appellant has indicated that the proposed development would not conform with the required 6-foot setbacks and that the setbacks are incorrectly shown on the plans for the project. The plans indicate that a distance of 10 feet would be maintained between the proposed roof deck and the adjacent houseboat of the appellant, in conformance with the required 6-foot setbacks. It should also be noted that the Building Permit plans for the appellant's new houseboat, located at 51 Liberty Dock and approved July 9, 2002, also indicate that the setbacks between the appellant's and the applicant's houseboats would be 10 feet. Evidence that would refute either of these measurements has not been submitted, and therefore staff determined that the proposed development would conform to the required setbacks.

The appellant also asserts that the roof deck would be another story of living space, which cannot be permitted by the Architectural Deviation findings. However, the definition of a story of living area provided by the zoning code is the portion of the superstructure, which is the area of the floating home above the lowest deck or lowest level of flotation, that is located between the surface of any floor or deck and the surface of the ceiling above. A roof deck is not considered a story according to this definition because it is not enclosed.

Finally, the appellant has referenced the findings necessary for Floating Home Adjustment approval as a justification for denying the application. However, the applicant has not requested a Floating Home Adjustment approval, which is required for development to exceed a height of 20 feet above waterline. Floating Home Adjustment applications are normally acted upon by the Deputy Zoning Administrator, and include a finding that the development would not result in any public detriment. This is a finding that is absent from the Architectural Deviation requirements, and cannot be used as a basis for a decision on Architectural Deviations applications.

Conclusion

Based on the evidence in the record, the proposed development would be consistent with the findings required for Architectural Deviation approval, such as maximum height, setbacks, and number of stories, and would not substantially impede the views enjoyed from surrounding locations.

RECOMMENDATION:

Staff recommends that the Marin County Planning Commission review the administrative record, conduct a public hearing, and approve with conditions the Pelligra Floating Home Architectural Deviation based on the findings and subject to the conditions contained in the attached Resolution.

Attachments:

1. Recommended Resolution conditionally approving the Pelligra Floating Home Architectural Deviation
2. "Exhibit A"
3. Spurgeon Petition for Appeal, received 5-24-04
4. Spurgeon comments, received 3-31-04
5. Caddy comments, received 6-10-04
6. Pelligra comments, received 5-12-04
7. Frisch comments, received 5-1-04
8. Barbarich comments, received 3-31-04

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO.

A RESOLUTION DENYING THE SPURGEON APPEAL AND APPROVING WITH CONDITIONS
THE PELLIGRA FLOATING HOME ARCHITECTURAL DEVIATION
ASSESSOR'S PARCEL NO. 901-020-51
52 LIBERTY DOCK, WALDO POINT HARBOR, SAUSALITO

SECTION I: FINDINGS

- I. WHEREAS the applicant, Ralph Pelligra, is requesting Architectural Deviation approval to construct a 152 square-foot roof deck with a 3.75-foot high open railing and an exterior spiral staircase to the deck below. The railing for the deck would reach a maximum height of 18.5 feet above the waterline and would maintain minimum setbacks of at least 10 feet from the adjacent floating homes. The subject property is located at 52 Liberty Dock, Waldo Point Harbor, Sausalito, and is further identified as Assessor's Parcel 901-020-51.
- II. WHEREAS the Marin County Planning Division approved the project with conditions on May 14, 2004. The conditions of approval modified the project to conform with the following project description: the construction a 152 square-foot roof deck with a 3-foot high open railing and an exterior spiral staircase to the deck below. The railing for the deck and staircase shall reach a maximum height of 18 feet above the waterline and shall have minimum setbacks of at least 10 feet from the adjacent floating homes. The railing shall incorporate either clear plexiglass or shall be at least 75 percent open.
- III. WHEREAS the appellant, David Spurgeon, filed a timely appeal of the Pelligra Architectural Deviation approval on May 23, 2004. The bases provided for the appeal include the height of the railings and the use of the deck.
- IV. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on August 23, 2004, to consider the merits of the project, and hear testimony regarding the project.
- V. WHEREAS the Marin County Planning Commission finds that the proposed project is Categorically Exempt from the requirements of the California Environmental Quality Act, per Section 15301, Class 1 of the CEQA Guidelines because it entails the construction of a roof deck and staircase on an existing floating home with no potentially significant impacts to the environment.
- VI. WHEREAS the Marin County Planning Commission finds that the proposed project would be consistent with the policies of the Marin Countywide Plan and Richardson Bay Special Area Plan listed below because the development would be consistent with the mandatory findings for Architectural Deviation approval.
 - A. Countywide Plan Policy CD-14.5 and Richardson Bay Special Area Plan Policy 1 (Residential Vessels and Floating Structures), which allow floating homes on the Bayfront Conservation Floating Home Marina land use designations, since the subject property would continue to be used as a residential floating home.
 - B. Countywide Plan Policy EQ-3.11 and Richardson Bay Special Area Plan Policy 10, (Public Access, Views, and Vistas,) which emphasize the consideration of visual qualities and view potential of the surrounding environment, since the proposed project would not result in the substantial loss of views and would not adversely affect the visual quality of the site.
- VII. WHEREAS the Marin County Planning Commission denies the Spurgeon Appeal and finds that the proposed project is consistent with the mandatory findings to approve a Floating Home Architectural Deviation, as established by Section 22.46.040 of Marin County Code, as follows:

- A. The deviation is comparable and compatible with the size of neighboring floating homes.

Floating homes in the area of the subject berth are various sizes, dimensions and heights. Several floating homes surrounding the subject berth, including the adjacent floating home to the north, exceed the maximum height normally allowed. The size of the existing floating home is consistent with the existing development patterns found in the marina because several other floating homes also exceed the maximum height limits, the floating home is less wide, less long and has greater setbacks than is allowed by the floating home regulations. The proposed roof deck and staircase would not increase the existing floor area of the subject floating home.

- B. The deviation results in adequate open space and view sheds both within and to the marina.

Architectural Deviation approval is required because the railing for the roof deck and staircase would exceed the height of 16 feet above waterline normally allowed for floating homes. The roof deck would be limited to a small portion of the roof located at the eastern end of the superstructure. The total area of the deck would not exceed 152 square feet, which would result in 7 linear feet of railing directly facing the neighbor to the south. Further, the design of the railing would be partially open to provide views from the surrounding area. The adjacent floating home to the south enjoys primary view corridors towards the Bay to the east. Further, views toward the sky from the adjacent floating home are not substantially impeded because the portion of the railing facing the neighbor is narrow. However, in order to minimize the height of the structure, a condition of project approval requires that the height of the railing be reduced to meet the minimum building and safety standards for railings.

- C. All features allowed by the deviation will not extend above 20 feet from the water line.

As modified by the conditions of approval, the maximum height of the improvements would not exceed 18 feet above the waterline.

- D. The deviation will not provide for an additional story of living or storage space.

The proposed roof deck would not be enclosed and therefore would not add another story of living or storage space.

- E. The deviation is consistent with the intent of Chapters 11.24 and 19.18 of the County Code.

The proposed improvements would be required to meet the mooring and construction standards of the Marin County Building and Safety Division, and would therefore be properly designed and fully engineered.

SECTION II: CONDITIONS OF PROJECT APPROVAL

NOW, THEREFORE, BE IT RESOLVED that the Marin County Planning Commission hereby denies the Spurgeon Appeal and approves the Pelligra Floating Home Architectural Deviation (FA 04-3) subject to the following conditions:

1. This Architectural Deviation approval authorizes the construction a 152 square-foot roof deck with a 3-foot high open railing and an exterior spiral staircase to the deck below. The railing for the deck and staircase shall reach a maximum height of 18 feet above the waterline and shall have minimum setbacks of at least 10 feet from the adjacent floating homes. The railing shall incorporate either clear plexiglass or shall be at least 75 percent open.

2. Except as modified herein, the plans submitted for a Building Permit shall substantially conform to plans identified as "Exhibit A," entitled "Addition to Roof Service" prepared by Paula Caddy, with final revisions dated March 22, 2004, and on file with the Community Development Agency, Planning Division.
3. Exterior finishes shall not be reflective, and exterior lighting for the approved development shall be downward directed and hooded.
4. Hours of construction shall be limited to 7:00 a.m. to 5:00 p.m., Monday through Friday, and 9:00 a.m. to 4:00 p.m. on Saturday. No construction shall be permitted on Sundays or holidays. The approved hours of construction must be noted on any subsequent development plans. At the applicant's request, the Director may administratively authorize minor modifications to these hours of construction.

SECTION III: VESTING AND APPEAL RIGHTS

NOW, THEREFORE BE IT RESOLVED that the owner must vest this Floating Home Architectural Deviation approval by no later than August 23, 2006, or all rights granted in this approval shall lapse unless the owner applies for an extension at least 30 days before the expiration date above and it is approved by the Agency Director. An extension to the entitlement may be approved for cause by the Planning Division based upon the submission of an extension application.

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 September 2, 2004.**

SECTION IV: VOTE

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 23rd day of August 2004, by the following vote to wit:

AYES:

NOES:

ABSENT:

ALLEN BERLAND, CHAIRMAN
MARIN COUNTY PLANNING COMMISSION

Attest:

Alexandra Morales
Planning Commission Secretary