



MARIN COUNTY COMMUNITY DEVELOPMENT AGENCY

ALEX HINDS, DIRECTOR

STAFF REPORT TO THE MARIN COUNTY PLANNING COMMISSION HARTH APPEAL OF THE COMMUNITY DEVELOPMENT AGENCY'S DENIAL OF THE CANON VARIANCE

Item No:	7.	Recommendation:	Deny the appeal
Application No:	VR 04-37	Owner:	Ted and Janet Canon
Applicant:	Kenneth Harth, AIA	Appellant:	Kenneth Harth, AIA
Property Address:	224 N. Almenar, Greenbrae	Assessor's Parcel No:	070-095-05
Hearing Date:	January 10, 2005	Planner:	Curtis Havel

Countywide Plan Designation:	SF5 (Single Family, 2 to 4 units per acre)
Community Plan Area:	Kentfield/Greenbrae Community Plan
Zoning:	R-1:B-2 (Residential, Single Family, 10,000 square feet minimum lot area)
Lot Size:	10,160 square feet (per most recent Assessor's Records)
Environmental Determination:	Not Applicable - Section 15270 because CEQA does not apply to projects which a public agency rejects or disapproves.

RECOMMENDATION: Deny the Harth Appeal and Sustain the Community Development Agency's Denial of the Canon Variance Application

APPEAL PERIOD: Ten calendar days to the Marin County Board of Supervisors

LAST DATE FOR ACTION: January 10, 2005

SUMMARY RECOMMENDATION:

Staff recommends that the Planning Commission deny the Harth appeal and sustain the Community Development Agency's (CDA) denial of the Canon Variance because the finding cannot be made that the property is affected by a special circumstance that would preclude the location of the proposed addition elsewhere on the property. Therefore, the granting of a Variance for the project would be a special privilege as other properties in the area are subject to similar site conditions with respect to street width and topography.

SUMMARY OF THE HARTH APPEAL:

On September 27, 2004, Kenneth Harth, Architect, on behalf of the property owners, Ted and Janet Canon, filed a timely appeal of the CDA's denial of the Canon Variance asserting the following issues: 1) the finding for special circumstances can be made due to the existence of a large tree and steep slope in the rear yard, and the overall width of North Almenar Drive; 2) the project would not constitute a special privilege because other single family dwellings have similar encroachments; and 3) the project does not result in detriment to the community because the community character is defined by various degrees of structural encroachments into yard areas along North Almenar Drive.

PROJECT DESCRIPTION:

The project is a proposal to construct a new covered entry porch and approximately 118.5 square feet of additions onto the existing 2,433 square foot single-family dwelling (per Marin County Assessor's Records). Variance approval is required for the following reasons: (1) the porch would encroach 10 feet, 8 inches into the 25-foot front yard setback, where a 6-foot encroachment would otherwise be permitted; and (2) the 31.5 square foot bedroom addition would be located 22 feet, 4 inches from the westerly front property line - an encroachment of 2 feet, 8 inches into the required 25-foot front yard setback.

DISCUSSION:

Setting

The subject property is located on the easterly side of North Almenar Drive approximately 430 feet north of the intersection of Almenar and Los Cerros Drives. North Almenar Drive travels along an approximately north/south axis. The roadway slopes upwards from the south to the north, although the southerly portion of North Almenar Drive is less steeply sloped than the northerly portion. A hillside runs along the easterly rear portion of the properties along North Almenar Drive, sloping upward from the west to the east, and becoming more steeply sloped to the north. That topographical feature (the hillside) affects all the properties located along the easterly side of that portion of North Almenar Drive, including the subject property.

Variances

The purpose of Variances, as defined by Marin County Code Section 22.54.010, are to provide procedures for the adjustment from the development standards of the Marin County Development Code only when, because of special circumstances applicable to the property, including location, shape, size, surroundings, or topography, the strict application of the Development Code denies the property owner privileges enjoyed by other property owners in the vicinity and under identical zoning districts. Any Variance granted is subject to conditions that will ensure that the Variance does not constitute a granting of special privilege(s) inconsistent with the limitations upon other properties in the vicinity and zoning district in which the property is situated.

According to state law, a Variance must be limited solely to the physical circumstances of the property and is only for use in unusual, individual circumstances creating an unnecessary hardship for the applicant if the usual zoning standards were imposed. A Variance is granted to bring the disadvantaged property up to the level of use enjoyed by nearby properties in the same zone. However, court cases have held that the past grant or denial of variances for other properties in the area does not mandate similar action on the part of the hearing body.

If the project site cannot be distinguished from those on surrounding lots, it eliminates a special physical circumstance for a Variance. Furthermore, the standard of hardship with regard to a Variance relates to the property, not the property owner. Financial hardship, self-induced hardship, community benefit, or the worthiness of the project are not considerations in determining whether to grant a Variance. If development within a particular area is commonly leading to requests for consideration of Variances, then the permitting jurisdiction should reassess the standards of the applicable zoning district and, if necessary, change them.

ANALYSIS OF APPEAL:

Kenneth Harth, Architect, on behalf of the property owners, Ted and Janet Canon, submitted a Petition of Appeal on September 27, 2004 identifying the bases of appeal of the Community Development Agency's administrative denial of the Canon Variance (Attachment 2) including: 1) the finding for special circumstances can be made because of the existence of a large tree and steep slope in the rear yard, and due to the restrictive overall width of North Almenar Drive; 2) the project would not constitute a special privilege because other single family dwellings enjoy similar encroachments; and 3) the project does not result in detriment to the community because the community character is defined by various degrees of structural encroachments into the front yard areas along North Almenar Drive. Below is staff's response to the issues raised by the appellant:

1. *The property is affected by several special circumstances including steep slope, street width, and a large tree.*

Response to Appeal:

Special Circumstance

The appellant asserts that the property experiences a number of unique circumstances that deprive the property owner the full use and enjoyment of the property. In particular, development on the property is constrained by the location of large oak tree and steep slope to the rear of the existing dwelling. Additionally, the width of the right of way results in approximately 4 feet of the apparent area of the property being located within the right of way. The appellant claims these constraints result in special circumstances that justify further encroachments into the front yard setback.

As discussed above, Variances are intended for unusual, individual circumstances applicable to the subject property where those unique circumstances would create an unnecessary hardship for the applicant if the usual zoning standards were imposed. If the circumstances are not *unique to the subject property*, then the special circumstance finding to grant a Variance cannot be made.

While the hillside to the rear of the property does present an obstacle to development, hillside development is very common in Marin County and an addition could be accommodated to the rear of the dwelling without the need for a Variance. Furthermore, the hillside to the rear of the residence does not constitute a special physical circumstance because it affects all the properties along that particular portion of North Almenar Drive.

The width of Almenar Drive does not constitute a special circumstance for similar reasons. All the properties along North Almenar Drive are equally affected by the width of the right of way, and therefore the width of the street does not uniquely impact the subject property. Additionally, as discussed above, self-imposed hardships do not constitute a special circumstance. So while an argument could be made that the location of the house on the property with respect to the location of the front property line is a special circumstance, it is a condition that was created by development and does not unfairly restrict development on the property.

The tree could be considered a special circumstance if it effectively curtailed development potential in the rear yard area. However, the proposed project includes some construction in the existing level areas to the rear of the residence without impacting the existing oak tree. While it may be inconvenient for development on the property to meet the required yard setbacks due to changes in the floor plan or cost, these do not constitute special circumstances.

Finally, it should be noted that the proposed patio could be accommodated without the need for Variance approval. Pursuant to Marin County Code Section 22.20.090.E, a porch or deck may encroach up to 6 feet into a required yard setback without Variance approval. Based on this, a porch addition can still be

accomplished without the need for Variance approval so long as the porch maintains a setback of at least 19 feet from the front property line.

2. *The project would not be a special privilege because it would be consistent with other development in the area.*

Response to Appeal:

Special Privilege

The appellant asserts that the project would not result in a special privilege because others along North Almenar Drive have similar encroachments into the front yard setbacks due to similar site conditions. The appellant also points out that the porch and stairway already encroach into the front yard setback and that the proposed bedroom addition would not extend beyond the footprint of the existing porch.

The development history in this area of Greenbrae (including previous Variances granted) does lend itself to an argument that the proposed addition would be consistent with, and therefore not a special privilege in relation to, other development. However, the original blanket Variances approved in Greenbrae were set aside as legally unsupportable. The community has had ample opportunity to request or initiate changes in zoning regulations, but has not done so to date.

The proposal includes the construction of a bedroom and patio addition along the westerly portion of the dwelling. The majority of the westerly building elevation of the existing residence maintains a 25-foot setback from the front property line with the exception of a 17-foot long by 8.5-foot wide bedroom area located in the northwesterly area of the residence. The encroachment of the northerly corner of the dwelling into the required front yard does not create an entitlement or justification for additional encroachments into the front yard. Furthermore, Section 22.20.090.E of the Marin County Code allows a porch or deck to encroach up to 6 feet into a required yard setback without Variance approval.

The subject property is subject to the same topographical conditions as other properties in the area. The street width is uniform and does not impact the subject property any differently than neighboring properties. As discussed above, there is no unique physical circumstance affecting the property, therefore the proposed patio and bedroom additions cannot be approved because doing so would constitute a special privilege.

3. *The project would not result in detriment to the community because it would be consistent with local development patterns.*

Response to Appeal:

Detriment

The appellant explains that the project would not result in detriment to the public health, safety, or welfare because the addition would be consistent with historic development patterns in the community.

Marin County Code Section 22.54.050.D states that to grant a Variance, the project cannot be detrimental to the public interest, health, safety, convenience, or welfare of the County, or injurious to the property or improvements in the vicinity and zoning district in which the real property is located.

The granting of the Variance would be detrimental to the public interest because it would allow a property owner to develop their property in a manner that is inconsistent with the development standards of the R-1:B-2 zoning district that has been adapted for this area. The zoning requirements, and the process that created them, are presumed to be valid. The proposed Variance would create an incremental disparity with

those property owners who comply with the development standards of the governing zoning district. As discussed above, similar development constraints affect the majority of the properties along the easterly side of North Almenar Drive. The granting of the Variance could erode the development constraints that are presumed to be reasonable and valid for the area.

Staff received letters from property owners at 231, 237 and 248 North Almenar Drive supporting staff's administrative determination and expressing concerns that the granting of a Variance would be an unfair deviation from the R-1:B-2 zoning development standards. While staff acknowledges that historic development patterns in Greenbrae are unusual and in many cases deviate from the development standards of the R-1:B-2 zoning district, neighbors perceive that the rules would not be applied fairly if the Variance were granted.

CONCLUSION:

Based upon analysis of the subject property, the finding cannot be made to support the existence of special physical circumstances (e.g. location, shape, size, surroundings, or topography) that distinguish the project site from neighboring properties, or to demonstrate that an unnecessary hardship would result from any such circumstances in the event that a variance was not approved. In other words, although physical constraints exist, they do not prevent the property owner from developing the site in a manner that complies with the zoning requirements. If any Variance finding cannot be made, a Variance cannot be granted.

The CDA is aware of the unusual development and regulatory history in Greenbrae. While it is a long-term goal of the CDA to adopt regulatory measures to address the frequency of Variances occurring within Greenbrae, the current regulatory standards apply. To that end, it may be possible for the applicant to phase the project so that the additions not requiring Variance approval are developed now and if new standards are adopted relaxing setbacks the portion of the project which new requires Variance approval occur in the future.

RECOMMENDATION

Staff recommends that the Planning Commission review the administrative record, conduct a public hearing, and move to adopt the attached resolution: (1) denying the Harth Appeal; and (2) sustaining the Community Development Agency's denial of the Canon Variance.

- Attachments:
1. Proposed Resolution Denying the Harth Appeal and Sustaining the Community Development Agency's denial of the Canon Variance
 2. Harth Petition for Appeal, received 9/27/04
 3. Location Map
 4. Assessor's Parcel Map
 5. Site Plan
 6. Letter from Dr. Eva Long, received 10/17/04
 7. Letter from Frances Rouda received 10/17/04
 8. Letter from William and Helena Watts received 9/24/04

The following attachments were provided to the Planning Commissioners only. They are available for public review at the Community Development Agency, Planning Division during regular business hours: Monday through Friday, 8:00 am to 4:00 pm.

9. Canon Variance 04-37 Notice of Administrative Decision 9/15/04
10. "The Variance," prepared by the Governor's Office of Planning and Research, July 1997 (on-line at <http://ceres.ca.gov/planning/var/variance.htm>)

MARIN COUNTY PLANNING COMMISSION

RESOLUTION _____

A RESOLUTION DENYING THE HARTH APPEAL AND SUSTAINING THE
COMMUNITY DEVELOPMENT AGENCY’S DENIAL OF THE CANON VARIANCE 04-37
ASSESSOR'S PARCEL 070-095-05
224 N. ALMENAR DRIVE, GREENBRAE

SECTION I: FINDINGS

- I. WHEREAS Kenneth Harth, AIA, on behalf of the property owners, Ted and Janet Canon, has submitted an application for Variance proposing to construct a new covered entry porch and approximately 118.5 square feet of additions onto the existing 2,433 square foot single-family dwelling (per Marin County Assessor’s Records). Variance approval is required for the following reasons: (1) the porch would encroach 10 feet, 8 inches into the front yard setback where a 6-foot encroachment would otherwise be permitted; and (2) the 31.5 square foot bedroom addition would be located 22 feet, 4 inches from the westerly front property line where a setback of 25 feet from the front property line would otherwise be required. The subject property is located at **224 N. Almenar Drive, Greenbrae**, and is further identified as **Assessor's Parcel 070-095-05**.
- II. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on January 10, 2005, to consider the merits of the project, and hear testimony in favor of, and in opposition to, the project.
- III. WHEREAS the Marin County Planning Commission finds that the proposed project is Categorically Exempt from the requirements of the California Environmental Quality Act, per Section 15270 because CEQA does not apply to project which a public agency rejects or disapproves.
- IV. WHEREAS the Marin County Planning Commission finds that the bases for the Harth appeal cannot be sustained and that the Community Development Agency acted appropriately in denying the Canon Variance due to the following factors:

- 1. *The property is affected by several special circumstances including steep slope, street width, and a large tree.*

Response to Appeal:

Special Circumstance

The appellant asserts that the property experiences a number of unique circumstances that deprive the property owner the full use and enjoyment of the property. In particular, development on the property is constrained by the location of large oak tree and steep slope to the rear of the existing dwelling. Additionally, the width of the right of way results in approximately 4 feet of the apparent area of the property being located within the right of way. The appellant claims these constraints result in special circumstances that justify further encroachments into the front yard setback.

Variations are intended for unusual, individual circumstances applicable to the subject property where those unique circumstances would create an unnecessary hardship for the applicant if the usual zoning standards were imposed. If the circumstances are not unique to the subject property, then the special circumstance finding to grant a Variance cannot be made.

While the hillside to the rear of the property does present an obstacle to development, hillside development is very common in Marin County and an addition could be accommodated to the rear of the dwelling without the need for a Variance. Furthermore, the hillside to the rear of the residence does not constitute a special physical circumstance because it affects all the properties along that particular portion of North Almenar Drive.

The width of Almenar Drive does not constitute a special circumstance for similar reasons. All the properties along North Almenar Drive are equally affected by the width of the right of way, and therefore the width of the street does not uniquely impact the subject property. Additionally, as discussed above, self-imposed hardships do not constitute a special circumstance. So while an argument could be made that the location of the house on the property with respect to the location of the front property line is a special circumstance, it is a condition that was created by development and does not unfairly restrict development on the property.

The tree could be considered a special circumstance if it effectively curtailed development potential in the rear yard area. However, the proposed project includes some construction in the existing level areas to the rear of the residence without impacting the existing oak tree. While it may be inconvenient for development on the property to meet the required yard setbacks due to changes in the floor plan or cost, these do not constitute special circumstances.

Finally, it should be noted that the proposed patio could be accommodated without the need for Variance approval. Pursuant to Marin County Code Section 22.20.090.E, a porch or deck may encroach up to 6 feet into a required yard setback without Variance approval. Based on this, a porch addition can still be accomplished without the need for Variance approval so long as the porch maintains a setback of at least 19 feet from the front property line.

2. *The project would not be a special privilege because it would be consistent with other development in the area.*

Response to Appeal:

Special Privilege

The appellant asserts that the project would not result in a special privilege because others along North Almenar Drive have similar encroachments into the front yard setbacks due to similar site conditions. The appellant also points out that the porch and stairway already encroach into the front yard setback and that the proposed bedroom addition would not extend beyond the footprint of the existing porch.

The development history in this area of Greenbrae, and previous Variations granted, does lend itself to an argument that the proposed addition would be consistent with, and therefore not a special privilege in relation to, other development. However, the original blanket Variations approved in Greenbrae were set aside as legally unsupportable. The community has had ample opportunity to request or initiate changes in zoning regulations, but has not done so to date.

The proposal includes the construction of a bedroom and patio addition along the westerly portion of the dwelling. The majority of the westerly building elevation of the existing residence maintains a 25-foot setback from the front property line with the exception of a 17-foot long by 8.5-foot wide bedroom area located in the northwesterly area of the residence. The encroachment of the northerly corner of the dwelling into the required front yard does not create an entitlement or justification for additional encroachments into the front yard. Furthermore, Section 22.20.090.E of the Marin County Code allows a porch or deck to encroach up to 6 feet into a required yard setback without Variance approval.

The subject property is subject to the same topographical conditions as other properties in the area. The street width is uniform and does not impact the subject property any differently than neighboring properties. As discussed above, there is no unique physical circumstance affecting the property, therefore the proposed patio and bedroom additions cannot be approved because doing so would constitute a special privilege.

3. *The project would not result in detriment to the community because it would be consistent with local development patterns.*

Response to Appeal:

Detriment

The appellant explains that the project would not result in detriment to the public health, safety, or welfare because the addition would be consistent with historic development patterns in the community.

Marin County Code Section 22.54.050.D states that to grant a Variance, the project cannot be detrimental to the public interest, health, safety, convenience, or welfare of the County, or injurious to the property or improvements in the vicinity and zoning district in which the real property is located.

The granting of the Variance would be detrimental to the public interest because it would allow a property owner to develop their property in a manner that is inconsistent with the development standards of the R-1:B-2 zoning district that has been adapted for this area. The zoning requirements, and the process that created them, are presumed to be valid. The Variance creates an incremental disparity with those property owners who comply with the development standards of the governing zoning district. As discussed above, similar development constraints affect the majority of the properties along the easterly side of North Almenar Drive. The granting of the Variance could erode the development constraints that are presumed to be reasonable and valid for the area.

Staff received letters from property owners at 231, 237 and 248 North Almenar Drive supporting staff's determination and expressing concerns that the granting of a Variance would be an unfair deviation from the R-1:B-2 zoning development standards. While staff acknowledges that historic development patterns in Greenbrae are unusual and in many cases deviate from the development standards of the R-1:B-2 zoning district, neighbors perceive that the rules would not be applied fairly if the Variance were granted.

- V. WHEREAS the Marin County Planning Commission finds that the proposed project is inconsistent with Variance findings A, C, and D below (Section 22.54.050 of the Marin County Code and California Government Code Section 65906).

- A. There are special circumstances applicable to the property (e.g., location, shape, size, surroundings, or topography), so that the strict application of this Development Code denies the property owner privileges enjoyed by other property owners in the vicinity and under identical zoning districts.**

There is no evidence to support the existence of special physical circumstances (e.g. location, shape, size, surroundings, or topography) that would deny the property owner privileges enjoyed by other property owners under the identical R-1:B-2 zoning district. The subject property is approximately 10,160 square feet which meets the minimum lot size requirements established by the R-1:B-2 zoning district (minimum lot size of 10,000 square feet). Additionally, the property has an approximately uniform size and shape with respect to adjacent properties (width of 80 feet and depth of 127 feet). These dimensions and proportions are similar, and in some cases greater than other adjacent properties. Special circumstances do not exist with respect to lot configuration because adjacent properties have similar configurations under the same zoning.

Properties north and south of the subject property along North Almenar Drive (particularly north) are constrained by the upsloping hillside to the east. The presence of the hillside does not constitute a special circumstance because the other properties along North Almenar Drive are subject to the same topographical constraints. Additionally, the proposed project includes some construction in the existing level areas to the rear of the residence without impacting an existing oak tree. While it may be inconvenient for development on the property to meet the required yard setbacks due to changes in the floor plan or cost, these do not constitute special circumstances. Based on the discussion above, there are no topographic or geological impediments specific to the property that impede development from occurring within the building envelope in a manner that complies with the zoning requirements.

- B. That granting the Variance does not allow a use or activity which is not otherwise expressly authorized by the regulations governing the subject parcel.**

The governing R-1:B-2 zoning district is a single-family designation. Granting a Variance for the proposed addition would not change the existing permitted single-family use of the property.

- C. That granting the Variance does not result in special privileges inconsistent with the limitations upon other properties in the vicinity and zoning district in which the real property is located.**

It is questionable whether this finding can be made. The subject property is subject to the same topographical conditions as other properties in the area. The street width is uniform and does not impact the subject property any differently than neighboring properties. As discussed above, there is no unique physical circumstance affecting the property, therefore the proposed patio and bedroom additions cannot be approved because doing so would constitute a special privilege.

- D. That granting the Variance will not be detrimental to the public interest, health, safety, convenience, or welfare of the County, or injurious to the property or improvements in the vicinity and zoning district in which the real property is located.**

The granting of the Variance would be detrimental to the public interest because it would allow a property owner to develop their property in a way that is inconsistent with the development

standards of the R-1:B-2 zoning district thereby creating an incremental disparity with those property owners who comply with the development standards of the governing zoning district, particularly because the granting of a Variance could be construed as a special privilege.

SECTION II: ACTION

NOW, THEREFORE BE IT RESOLVED that the Marin County Planning Commission denies the Harth Appeal and sustains the administrative denial of the Canon Variance application.

SECTION III: 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 \$700.00 filing fee must be submitted in the Community Development Agency - Planning Division, Room 308, Civic Center, San Rafael, no later than **4:00 p.m.** on **January 21, 2005**.

SECTION IV: VOTE

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 10th day of January, 2005, by the following vote to wit:

AYES:

NOES:

ABSENT:

ALAN BERLAND, CHAIRPERSON
MARIN COUNTY PLANNING COMMISSION

Attest:

Jessica Woods
Recording Secretary