

MARIN COUNTY PLANNING COMMISSION HEARING MINUTES

January 10, 2005

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

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

Commissioners Absent: None

Staff Present: Alex Hinds, Director, Community Development Agency
Brian Crawford, Deputy Director of Planning Services
Thomas Lai, Principal Planner
Curtis Havel, Planner
Eric Steger, Department of Public Works, Senior Engineer
Jessica Woods, Recording Secretary

Minutes Approved on: **January 24, 2005**

Convened at 1:00 p.m.
Adjourned at 4:10 p.m.

ROUTINE TRANSACTIONS

- a. Incorporate Staff Reports into Minutes

M/s, Julin/Barner, and passed unanimously to incorporate the staff reports into the Minutes. Motion passed 7/0.

- b. Continuances – None

- c. Approval of Minutes –

M/s, Holland/Thompson, to approve the Minutes of December 6, 2004 as amended. Motion passed 6/0/1. (Commissioner Julin abstained).

M/s, Holland/Greenberg, to approve the Minutes of December 13, 2004 as amended. Motion passed 5/0/2. (Vice Chairman Thompson and Commissioner Julin abstained).

2. ELECTION OF OFFICERS

Chairman Berland asked for a motion.

M/s, Julin/Thompson, to nominate Chairman Allan Berland to continue as Chairman of the Planning Commission for 2005.

Commissioner Dickenson believed it is important and appropriate to continue the rotation. Commissioner Barner and Commissioner Greenberg concurred.

Motion failed 3/4 (Commissioners Barner, Dickenson, Greenberg and Holland opposed).

Chairman Berland asked for another motion.

M/s, Berland/Dickenson, to nominate Vice Chairman Steve Thompson as Chairman of the Planning Commission for 2005. Motion passed 6/0/1. (Vice Chairman Thompson abstained).

M/s, Thompson/Berland, to nominate Commissioner Jo Julin as Vice Chairperson of the Planning Commission for 2005.

Commissioner Dickenson reiterated the importance of rotation and recommended that the Commission nominate Commissioner Wade Holland as Vice Chairman of the Planning Commission for 2005.

Motion passed 5/1/1. (Commissioner Dickenson opposed and Commissioner Julin abstained).

3. COMMUNICATIONS

The Commission acknowledged several pieces of correspondence for their review.

4. DIRECTOR'S ORAL REPORT

- a. Update on Board of Supervisors Actions

January 11, 2005: Oakview Project; Contract Amendment – Sorroko Environmental Assessment

January 25, 2005: Vermef Design Review Clearance Appeal (Bel Marin Keys); Lamar Design Review Appeal (Kent Woodlands)

- b. Report on On-Going/Pending Development Projects - None

Deputy Director Crawford provided the Commission with a brief update on the Sea Drift Appeal in regard to jurisdiction for their consideration.

5. OPEN TIME FOR PUBLIC EXPRESSION (LIMITED TO THREE MINUTES PER SPEAKER) - None
6. FUTURE AGENDA DISCUSSION ITEMS, FIELD TRIPS

Update on Planning Commission Actions

January 24, 2005

- Moritz Coastal Permit, Use Permit, Design Review: *Continued hearing from the August 23, 2004 for new single-family residence and legalization of guesthouse and agriculture worker housing. (Horseshoe Hill Road, Bolinas).*

February 14, 2005

- Kircos Design Review/Tidelands Permit: *Reconstruction of a boathouse accessory to an existing single-family residence*

February 28, 2005

- Development Code Technical Amendments: *Public hearing to consider recommending adoption of technical corrections and other minor revisions to the Development Code (Countywide).*

March 7, 2005 (Special Hearing)

- Single-Family Residential Design Guidelines: *Public hearing to consider recommending adoption of Draft Single-Family Residential Design Guidelines (Countywide).*

Public hearing to consider an appeal filed by Kenneth Harth of the Community Development Agency's administrative denial of the Canon Variance. 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. Variance approval is required because (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 appellant sets forth the following bases of appeal: 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 due to 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 because the community character is defined by various degrees of structural encroachments into yard areas along North Almenar Drive. The subject property is located at **224 N. Almenar Drive, Greenbrae**, and is further identified as **Assessor's Parcel 070-095-05**.

Curtis Havel, Planner, summarized the staff report and recommended that the 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.

In response to Commissioner Holland's question about whether or not the general encroachment problem could be corrected in the Greenbrae area, Deputy Director Crawford responded that the matter has not been studied in depth. However, Deputy Director Crawford noted that staff is beginning to explore alternatives to resolve zoning issues in Greenbrae, including rezoning the Greenbrae community to a planned district zone, or alternatively creating a specialized quasi-conventional zoning district to allow minor yard encroachments through a building permit process. Staff indicated that statements in the staff report refer to issuance of a community wide Variance that was eventually rescinded because the County determined that the issuance of mass Variances was at odds with changes in state zoning and planning laws.

The hearing was opened to the public.

Fred Divine, applicant/architect, stated planning staff is now reviewing this project differently due to changes in department policies. He believes that the project promotes the public health, safety and welfare as demonstrated by the neighborhood support for the project. He pointed out that the bedroom addition has dimensions of 2 feet, 8 inches by 10 feet 6 inches, which is very modest in scope. He indicated that his client is willing to modify the project by aligning the porch with the existing living room. Additionally, he felt the Commission should grant a variance in order to preserve the oak tree because the proposed project is located in the only flat developable area of the property. In closing, he noted that in all his years being an architect and serving on a local Planning Commission, he has never heard of Variances being denied because adjacent neighbors may have similar site conditions. He also pointed out that other Variance applications had been approved in the vicinity based on a variety of different special circumstances.

Deputy Director Crawford discussed how variance findings are made and explained that over time there may be some differences in the degree to which the findings are applied to individual properties. In this particular case, staff is concerned that there is no special circumstance present at the subject property because other properties in the area have similar site conditions. If a variance were granted in this case, then it would be difficult for staff to deny other variance requests in the vicinity with similar site conditions. Granting variances "down the line" in the same neighborhood is not an appropriate way to address site planning issues.

Alex Hinds, Agency Director, noted that if the Commission wished to grant the variance, then the Commission must establish the grounds to do so based on a special circumstance. Staff stated that variances are the proper vehicle for exceptions under very limited circumstances. Staff added that over time and precedents set by court cases, the findings to grant variances have become more difficult to affirmatively make. Staff expressed concern about what is occurring on the ground and there is a better process than granting ad hoc variances for each project.

Commissioner Dickenson pointed out that the County is not treating this property any differently than other properties in the area, particularly because the County has approved of so few front yard setback variances in the vicinity.

Commissioner Barner pointed out that in his view there is no indication of an unnecessary hardship. Mr. Divine disagreed and believed a 9 by 10 bedroom is a hardship.

Michael Harlock, Corte Madera resident/architect, discussed Novato's Zoning Ordinance to provide the Commission with a different understanding of a variance. He believed the purpose of the front yard setback is to provide an adequate front yard and separation of homes facing each other and the median adds that further distance, so in his view Greenbrae presents many unique circumstances. Also, in Corte Madera there was an overlay zoning district adopted about 8 years ago as part of the Christmas Tree Hill General Plan Overlay that provided flexibility to front yard setbacks, recognizing that new garages and new additions were encouraged in the front yard rather than building behind the homes, which would be more disruptive to the existing neighbors. He believed the Commission could consider an overlay-zoning district to provide more flexibility or case-by-case flexibility in considering front yard setbacks in Greenbrae.

Annamarie Lechner, Greenbrae resident, supported the project and encouraged the Commission to approve the variance, which would greatly improve the character of the house.

Jeff Kroot, San Anselmo resident, supported the variance and believed Mr. Divine's improvements would make this home more attractive. He further hoped neighbors in Greenbrae would have some opportunity to upgrade their older homes.

Judy Mesinger, Greenbrae resident, noted that she applied for a variance request and was given strong indication by staff that her variance would be approved. She pointed out that Greenbrae is an older neighborhood and there are restrictions on homeowners to upgrade their properties, which is a problem. She believed Greenbrae residents should be allowed some flexibility to expand or upgrade their older homes in a very minor fashion. She further supported this variance, which in her view would improve the neighborhood.

Eva Long, Greenbrae resident, provided photographs to the Commission to better understand the character of the existing neighborhood. She noted her opposition to the variance due to safety concerns, her desire to preserve the existing character of the neighborhood and that no community review occurred. She further supported staff's recommendation to deny the variance. Francis Rouda, Greenbrae resident, concurred.

In response to a question from the Commission, planner Havel announced that there are no proposed alternations to the width of the right-of-way.

Ted Canon, owner of property in question, explained that Greenbrae has 17 different versions of the CC&R's. He explained the current Architectural Review Committee reviews all development proposals to determine consistency with the CC&R's and that there are several different sets of CC&R's with different setback requirements based upon the site constraints. He pointed out that neighbors in the surrounding area received a written letter from him, and a public notice from the County. He indicated that the canopy for the entry is designed similarly to others in the neighborhood, which would be an enhancement to the neighborhood. He also stated that the Greenbrae Architectural Review Committee Chair reviewed the matter and had no objection to the project. He further urged support from the Commission in order to enhance the aesthetics of the neighborhood.

Mr. Divine pointed out that Mr. Canon erected story poles in response to the neighbors' desire to view the proposed project. Also, he explained that a second story addition is not feasible due to the location of the heritage oak tree to the rear of the residence and provided photographs of the story poles and tree location.

The public hearing was closed.

In response to testimony regarding staff comments about the variance process, Deputy Director Crawford explained that there are two general procedures for processing and making decisions on variances. The first is a public hearing process, which would go before the Deputy Zoning Administrator, or perhaps the Planning Commission, for a noticed public hearing. The second process is an administrative variance procedure that is applied to minor variances. The administrative process is more straightforward than the public hearing process in the sense the fees and processing time are less. Staff stated that if applicants inquire about the variance process, there is nothing unusual or inappropriate about staff informing the public that if a project is limited to administrative thresholds that it would be an easier permit process. That should not be misconstrued, however, as meaning that a variance should be approved simply because of the differences in administrative processing steps.

Vice Chairperson Julin disagreed with staff's recommendation and indicated that a special circumstance finding could be made based on Mr. Divine's letter of September 24, 2004. She added that most other homes in the neighborhood encroach into the front yard setbacks, which in her view creates a special circumstance for the subject property. Also, denial of this variance would prevent the property owner from enjoying privileges enjoyed by neighboring residents. Thus granting of the variance would not constitute a grant of special privilege.

Commissioner Dickenson disagreed with Commissioner Julin's comments. He stated that California Government Code Section 65906 indicates that a Variance may be granted when there are special physical circumstances that distinguish the project site from its surroundings. In this instance, the only special circumstance is the tree. The lot-slope and right-of-way width are very similar to other properties in the neighborhood and therefore are not special circumstances. Also, California Government Code Section 65906 indicates that unique circumstances would create an unnecessary hardship for the applicant if the usual zoning standards were imposed. He pointed out that the house already has an entry porch, and that a front porch is allowed to encroach up to 6 feet into the required front yard. He noted what is shown on the plans is very attractive, but it is 22 feet high. He noted that he had problems making the required connection between how the oak tree in the back yard area constrains development in the front yard. He further noted that he could not make the findings necessary to support a variance.

Commissioner Greenberg believed the oak tree is the special circumstance because it is unique to this lot and it greatly limits what could be done in terms of making any modifications to the home. Further, she pointed out that it is not reasonable to add another story because it would likely impact the oak tree. She felt the elements are too vertical, but would be very modest in overall scope and believed it would be an improvement to the neighborhood. She further noted her support for the variance.

Commissioner Barner stated that Findings "A" and "C" cannot be made in his view because of the clause of "*unnecessary hardship*." Also, in terms of the entryway there is still the possibility of making a larger entryway, but just not as large as desired. He further indicated that he cannot support the variance and explained that making the home more attractive is not an unnecessary hardship, so he would support staff's recommendation.

Commissioner Holland pointed out that the phrase "*unnecessary hardship*" is not included in the findings that must be made to support the variance. He believed the improvements are minor, but the Commission is up against very restrictive circumstances of State law. He agreed with Commissioner Greenberg's comments in regard to the oak tree being a special circumstance and would support the variance. He further hoped the general problem in Greenbrae could be resolved.

Commissioner Berland concurred with Commissioner Julin and Commissioner Greenberg's comments. He added that the relevant special circumstance is the oak tree and this property owner is prevented from adding a second or

third story to the home due to the location of the oak tree. He noted that he could make the findings necessary to support a variance. He further desired to develop a uniform overlay district for the Greenbrae subdivision in the near future.

Chairman Thompson concluded that if the Commission reorganized the way Greenbrae acts in terms of zoning, the Commission would never remove extensions of buildings already located in the front yards. He stated that, as an architect and designer, a 9-foot encroachment into the front yard by the far end of the house would be a good line to use for the front of the porch as with the extension of the bedroom. He desired those changes before approving the variance. The Commission and staff agreed. Mr. Divine agreed to make the bedroom 2'8" to match the living room and to align the front porch posts with the master bedroom.

Chairman Thompson asked for a motion.

M/s, Julin/Holland, that the Planning Commission uphold the Harth Appeal and overturn the Community Development Agency's denial of the Canon Variance with the condition that the two architectural changes as offered into the record by Chairman Thompson be incorporated into the application.

Planner Havel agreed to take what the Commission discussed and incorporate that information into findings affirmatively supporting the project. Commissioner Holland recommended eliminating the use of the word "patio" and use the word "porch" throughout the document. Planner Havel responded in the affirmative.

Chairman Thompson recommended matching the overhang with the existing bedroom. Planner Havel responded in the affirmative.

Deputy Director Crawford desired clarification by the Commission in regard to the special circumstance finding as to whether the Commission's rationale is based solely on the oak tree, or if it also includes additional factors that have been raised in the appeal with respect to the slope in the rear of the property and width of the roadway. Staff further recommended adding a condition of approval requiring preservation of the oak tree until such time that it is in such poor health or affected by disease that it can no longer live.

Commissioner Greenberg believed the oak tree is the special circumstance for this project and agreed with staff's suggested condition of requiring preservation of the oak tree. Vice Chairperson Julin agreed.

Commissioner Barner expressed concern for staff being able to relate the oak tree to the entry in regard to special circumstances. Chairman Thompson responded that the Commission would view this again in its final form and that matter would be resolved. Staff concurred.

Motion passed 5/2 to uphold the appeal. (Commissioner Dickenson and Commissioner Barner opposed).

Chairman Thompson adjourned the Planning Commission meeting at 4.10 p.m.