

MARIN COUNTY PLANNING COMMISSION

RESOLUTION _____

A RESOLUTION SUSTAINING THE HARTH APPEAL AND OVERTURNING
THE COMMUNITY DEVELOPMENT AGENCY’S ADMINISTRATIVE
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 covered entry 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, on September 15, 2004, the Community Development Agency denied the administrative Variance request because staff was unable to make findings related to special circumstance, special privilege, and detriment according to Marin County Code Section 22.54.040.A, C, and D. In support of the denial, agency staff found that the application materials had not sufficiently demonstrated that development of the property was constrained by a unique circumstance that would preclude the property owners from accommodating further residential development within the building envelope as established by the governing R-1:B-2 zoning district. The grant of a Variance without a prerequisite special circumstance would constitute a special privilege, and as such, this finding could not be made. Finally, agency staff found that 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.

- III. WHEREAS, on September 27, 2004, a timely appeal of the Community Development Agency’s administrative denial of the Canon Variance was filed by Kenneth Harth, Architect, on behalf of the property owners, Ted and Janet Canon, asserting the following bases of appeal: 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.

- IV. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on January 10, 2005, to consider the merits of the Harth appeal of the Community Development Agency’s administrative denial of the Canon Variance, hear testimony in favor of, and in opposition to, the project.

V. WHEREAS, after considering the Harth appeal and testimony provided at the January 10, 2005 hearing, the Marin County Planning Commission finds that the project, as modified by conditions of approval herein, is consistent with the mandatory findings to grant a Variance (Section 22.54.050 of the Marin County Code and California Government Code Section 65906) and as such overturns the Community Development Agency's denial of the Canon Variance.

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.

The existence of a heritage oak to the rear of the existing residence and within the permitted rear yard area constitutes a special circumstance that denies the property owner privileges enjoyed by other property owners in the vicinity because the size and location of the heritage oak tree are unique physical features to the subject property that deprive the property owners the ability to locate development within the rear yard envelope as prescribed by the R-1:B-2 zoning district. In support of this finding, it is noted that Countywide Plan Policy EQ 3.14 encourages the preservation of heritage and other significant trees. This finding of special circumstance is particular to the subject property and this project only insofar as other properties in the surrounding neighborhood that are also subject to the same zoning do not have heritage oak trees in the permitted rear yard area that constrain development consistent with the zoning.

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 does not change the existing 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.

The granting of a Variance for the property does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity under an identical zoning district because, as explained in Finding V.A above, development on the property is constrained by the presence of a large heritage oak tree that is a unique physical feature. Therefore, the grant of a Variance for a minor encroachment into the front yard for a front porch addition and small addition does not constitute a special privilege in comparison to other properties in the surrounding community that are not constrained by heritage oaks within permitted yard areas and in close proximity to existing building footprints. In addition, the expansion of the existing residence allowed by this Variance does not result in a disproportionately large building when viewed in the context of the surrounding neighborhood.

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 proposed project is not 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 because it does not result in impacts to light, air,

privacy and views to surrounding properties. The proposed covered porch and bedroom addition would be located on the westerly side of the existing residence, would utilize materials and colors that are compatible with the surrounding natural and built environments, and not project beyond existing building lines that already encroach into the front yard setbacks. The proposed addition is small in scale and would provide adequate separation from adjacent residences without resulting in adverse impacts with respect to light, air, privacy and views to surrounding properties.

- VI. 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 because it entails construction of an addition on a residentially developed property that would not result in grading or other adverse environmental impacts.
- VII. WHEREAS the Marin County Planning Commission finds that the proposed project is consistent with the Marin Countywide Plan and the Kentfield/Greenbrae Community Plan because the project authorizes the construction of a residential addition onto an existing single family residence which is consistent with the SF5 (Single Family, 2 to 4 units per acre) land use designation. Additionally, the project would comply with governing development standards related to roadway construction, parking, grading, drainage, flood control and utility improvements as verified by the Department of Public Works.

SECTION II: CONDITIONS OF PROJECT APPROVAL

NOW, THEREFORE, BE IT RESOLVED that the Marin County Planning Commission hereby sustains the Harth Appeal and overturns the administrative denial of the Canon Variance application subject to the following conditions:

Marin County Community Development Agency, Planning Division

1. Pursuant to Marin County Code Sections 22.54.050, AND AS MODIFIED BY THESE CONDITIONS OF APPROVAL, the Canon Variance 04-37 is approved for the construction of a new covered entry porch and bedroom addition that encroach into the required front yard setbacks. The subject property is located at **224 N. Almenar Drive, Greenbrae**, and is further identified as **Assessor's Parcel 070-095-05**.
2. EXCEPT AS MODIFIED BY THESE CONDITIONS OF APROVAL, plans submitted for a building permit shall substantially conform to plans on file in the Marin County Community Development Agency and identified as "Exhibit A," entitled, "APN# 070-095-05," consisting of 1 sheet, prepared by Fredric Divine Associates, Architects, date stamped August 3, 2004. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall submit one complete set of revised plans to the Director for review and approval, and incorporated as Exhibit A-1, that indicate the following modifications:
 - a. Location of the columns of the covered porch to be in the same horizontal building plane of the existing master bedroom (as indicated by hand drawn revisions on "Exhibit A"); and,
 - b. Location of the bedroom addition along the same horizontal building plane of the existing living room (as indicated by hand drawn revisions on "Exhibit A").
3. The 37-inch oak identified on "Exhibit A" and located to the rear of the existing residence shall be preserved to the maximum extent and time possible. Removal of the tree is only permitted if its health is adversely affected to the extent that the continued survival of the tree is not possible as determined by a qualified arborist. Minor pruning, consistent with proper arboricultural practices, is allowed for safety purposes and/or for the continued health of the tree. BEFORE ISSUANCE OF

A BUILDING PERMIT for the approved work identified in Conditions 1 and 2 above, the applicant shall install temporary construction fencing around the dripline of the existing 37-inch oak tree to prevent damage to the tree from any grading, and/or construction, materials storage, soil stockpiling, or other construction activity. The fencing is intended to protect the tree during construction and shall remain until all construction activity is complete. The applicant shall submit a copy of the temporary fencing plan and site photographs confirming installation of the fencing to the Community Development Agency.

4. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall revise site plan or other first sheet of the office and job site copies of the Building Permit plans to list these Variance 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. The Building Plans shall include specifications (cut sheet) for all exterior lights.
6. BEFORE FINAL INSPECTION AND UPON VESTING OF THIS PROJECT, the Community Development Agency shall file this Notice of Decision, including all conditions of project approval, with the Marin County Recorder's Office to advise future property owners of the property development restrictions, particularly with respect to the preservation of the heritage oak tree located to the rear of the existing residence.
7. It shall be the responsibility of the applicant to store all construction materials and equipment at the site (or secured at an approved off-site location) in such a manner as to permit safe passage for vehicular traffic at all times. Every effort shall be made by the holder of the building permit to strictly limit the number of vehicles used to transport workers and materials to the site to the minimum number necessary. Work at the site shall be limited to the hours of 7:00 AM and 5:00 PM, Monday through Friday, and 9:00 AM to 4:00 PM Saturday. No work shall be permitted on Sundays or holidays.
8. BEFORE FINAL INSPECTIONS, the applicant shall submit a report by a qualified arborist that assesses the health of the 37-inch heritage oak tree located to the rear of the existing residence as indicated on "Exhibit A." The report shall include recommendations to ensure the continued health and livelihood of the subject tree, particularly those that may have been impacted by construction activity.
9. Any changes or additions to the project shall be submitted to the Community Development Agency in writing for review and approval before the contemplated modifications may be initiated. Construction involving modifications that do not substantially comply with the approval, as determined by the Community Development Agency staff, may be required to be halted until proper authorization for the modifications are obtained by the applicant.

Department of Public Works, Land Development

10. Improvements in the right-of-way shall be at grade.

11. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall provide pertinent design information as specified below.
- a. The site/driveway retaining walls, drainage, and grading plans must be designed by a Registered Civil Engineer. Plans must have his/her signature and wet stamp.
 - b. A separate Building Permit is required for site/driveway retaining walls with a height more than 4 feet (or 3 feet when backfill area is sloped or has a surcharge).
 - c. The above plans must be reviewed and approved by a Registered Soils Engineer. Certification shall be either by the engineer's stamp and signature on plans, or by stamp and signed letter.
 - d. Provide a drainage plan for the project.
 - e. An Encroachment Permit will be required for construction within the road Right-Of-Way.
 - f. Clearly show and label all easements on site plan. Label the 5-foot public utilities easement along the easterly and northerly property lines.
 - g. Submit Erosion and Siltation Control Plans. Plans shall indicate total acreage of site disturbance.
 - h. Note on the plans that the Design Engineer/Architect shall certify to the County in writing that all grading, drainage and retaining wall construction was done in accordance with plans and field directions. Also note that driveway, parking and other site improvements shall be inspected by a Department of Public Works engineer.

SECTION III: VESTING, PERMIT DURATION, AND APPEAL RIGHTS

NOW, THEREFORE BE IT FURTHER RESOLVED that the applicant must vest this Canon Variance 04-37 approval by obtaining a Building Permit for the approved work and substantially completing all work before January 24, 2007, 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 Agency Director approves it. An extension of up to four years may be granted for cause pursuant to Section 22.56.050.B.3 of the Marin County Code.

The Building Permit approval expires if the building or work authorized is not commenced within one year from the issuance of such permit. A Building Permit is valid for two years during which construction is required to be completed. All permits shall expire by limitation and become null and void if the building or work authorized by such permit is not completed within two years from the date of such permit. Please be advised that if your Building Permit lapses after the vesting date stipulated in the Variance approval (and no extensions have been granted), the Building Permit and Variance approvals may become null and void. Should you have difficulty meeting the deadline for completing the work pursuant to a Building Permit, the applicant may apply for an extension to the Variance at least 10 days before the expiration of the Variance approval.

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 **February 3, 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 24th day of January, 2005, by the following vote to wit:

AYES:

NOES:

ABSENT:

STEVE THOMPSON, CHAIRPERSON
MARIN COUNTY PLANNING COMMISSION

Attest:

Jessica Woods
Recording Secretary