



MARIN COUNTY

COMMUNITY DEVELOPMENT AGENCY

ALEX HINDS, DIRECTOR

STAFF REPORT TO THE PLANNING COMMISSION GUSTAVSON APPEAL OF THE COMMUNITY DEVELOPMENT AGENCY'S CONDITIONAL APPROVAL OF THE KING DESIGN REVIEW

Item No:	7.	Application No:	DR 05-9
Applicant:	David Holscher	Appellant:	Mark Gustavson
Property Address:	334 Dolan Ave., Mill Valley	Assessor's Parcel:	050-181-46
Hearing Date:	April 25, 2005	Planner:	Larisa Roznowski

RECOMMENDATION:	Deny the Appeal and Sustain the King Design Review Approval
APPEAL PERIOD:	Ten calendar days to the Marin County Board of Supervisors
LAST DATE FOR ACTION:	April 25, 2005

SUMMARY RECOMMENDATION

Staff recommends that the Planning Commission deny the Gustavson appeal and sustain the Community Development Agency's (CDA) conditional approval of the King Design Review allowing the construction of a 1,930 square foot single-family residence, a 480 square foot attached garage, and a 6-foot tall retaining wall in the rear yard of a 6,944 vacant lot in Mill Valley. The approval includes conditions requiring revised plans showing windows in the master bedroom at the southeast corner of the residence located at 6 feet above the finished floor elevation for privacy, requiring increasing landscaping from 5-gallon to 15-gallon shrubs on the southern side of the residence to provide additional privacy relief, requiring a revised landscaping plan to show a 2:1 replacement ratio for the coast live oak proposed for removal in the form of one 24-inch boxed coast live oak and one other 15-gallon tree, requiring increased fern and shrub container sizes in the front yard to the north and south of the driveway to provide for increased screening, requiring submittal of an Erosion and Siltation Control Plan, and requiring plans to be reviewed and approved by Registered Civil Engineer with soils engineering expertise or a Registered Geotechnical Engineer.

PROJECT DESCRIPTION

The project is a proposal to construct a new 1,930 square foot single-family residence, an attached 480 square foot two-car garage, and a 6-foot tall retaining wall in the rear yard of a 6,944 square foot vacant lot. As proposed, the 1,930 square foot residence will result in a floor area ratio (FAR) of 27.8 percent. The residence will attain a maximum height of 23.3 feet from finished grade (21.0 feet from natural grade) and will maintain the following setbacks from corresponding property lines: 9 feet from the western front property line, 5 feet from the northern side property line, 24.1 feet from the eastern rear property line, and 5 feet from the southern side property line. A concrete paver patio will be located in the rear yard and new landscaping will be installed around the perimeter of the residence and in the front yard. The residence would be finished with a sablewood color composition shingle tile roofing, dark green window, door, and exterior trim, and natural wood color shingle siding.

Design Review is required because the lot contains less than half the minimum required lot area pursuant to Marin County Code Section 22.82.050.C (lot slope ordinance).

GENERAL INFORMATION

Countywide Plan: SF-6 (Single Family, 4 to 7 units per acre)
Zoning: R-1:B-1 (Single-Family Residential, 6,000 square feet minimum lot area)
Lot size: 6,944 square feet
Adjacent Land Uses: Single-family residential
Vegetation: Native and introduced vegetation
Topography and Slope: Approximately 34% upslope to the northeast

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 of the CEQA Guidelines because it proposes the construction of one single-family residence on a legal lot served by existing utilities that would not result in significant adverse impacts to the environment and because hydrological and geotechnical reports have been provided by the applicant indicating that the site is suitable for single-family residential development.

PUBLIC NOTICE

The Community Development Agency has provided public notice of the appeal hearing identifying the applicants and appellants, describing the project and its location, and giving the earliest possible decision date in accord with California Government Code requirements. This notice has been mailed to all property owners within 300 feet of the subject property.

PLAN CONSISTENCY

The proposed project, as modified by conditions of approval, is consistent with the goals and policies of the Marin Countywide Plan, the Tamalpais Community Plan Title 22 (Zoning), and Title 24 (Development Standards) of the Marin County Code. Please refer to the plan consistency findings contained in the attached resolution.

ZONING CONSISTENCY

The project is consistent with principally-permitted uses and the R1:B1 zoning district development standards relative to height/setback/floor area ratio.

BACKGROUND

The vacant, 6,944 square foot property is located approximately 125 feet north of the intersection of Dolan Avenue and Morningsun Avenue in Mill Valley and was legally created as Lots 2 and 3 of Block 5 within Marin Heights, Subdivision B, in 1916. The hillside property slopes upward from the street to the northeast with a maximum slope of approximately 34 percent. Existing vegetation at the project site consists of grasses, scotch broom, a 12-inch pine, and a 16-inch coast live oak. The lot areas within a 600-foot vicinity of the subject property range from 2,000 square feet to 14,000 square feet, with an average size of 6,434 square feet based upon current Assessor's Records (Attachment 7).

The 6,944 square foot property meets the 6,000 square foot minimum lot size requirements of the R-1:B-1 zoning district. However, Design Review is required because the lot contains less than 50 percent of the required lot area pursuant to the lot-slope requirements of Marin County Code Section 22.82.060.D. It is important to note that the code sections listed above do not prohibit development, but rather trigger discretionary review for a project that would otherwise qualify for a ministerial building permit.

The proposed single-family dwelling would be located within the building envelope prescribed by the R-1:B-1 zoning district and would require the removal of the 16-inch coast live oak due to the construction impacts within the root zone of the tree.

The Design Review application was approved administratively on February 18, 2005 based upon staff's findings that the proposal, with several modifications, complied with all of the mandatory findings for Design Review approval. The administrative approval was preceded by a recommendation of approval from the Tam Design Review Board.

ANALYSIS OF APPEAL

Mark Gustavson, the neighbor to the south at 313 Greene Street, submitted a Petition of Appeal on February 28, 2005 identifying several bases for appeal of staff's administrative approval of the Design Review, including: (1) the close proximity of the proposed house and garage to the northern property line will result in view impacts, major loss of sun exposure, and shadow casting on the master and guest bedrooms of his residence; (2) the proposed development is inconsistent with development in neighborhood; (3) the construction of the residence will impact his foundation due to soil disruption; and (4) opposition to the hours of construction due to the unconventional work schedules of the owners of 313 Green Street (please refer to attached appeal). Below is staff's response to the issues raised by the appellant:

1. *The close proximity of the proposed house and garage to the northern property line will result in view impacts, major loss of sun exposure, and shadow casting on the master and guest bedrooms of 313 Green Street residence.*

Response to Appeal:

The structure is located 5 feet from the northern property line, consistent with the governing R-1:B-1 zoning district, and would have a maximum height of 23.3 feet from finished grade (21.0 feet from natural grade) where 30 feet is allowed. The project is downslope from the appellant's property, and the garage is the lowest element of the proposed residence. Additionally, the project incorporates design elements to minimize impacts on views, light, air, and privacy. These elements include varied roof heights, substantial step back from the front of the property, and grading into the slope to minimize visible height of the structure. Minimal placement of windows on the northern side of the structure limit views to the neighbor, thereby minimizing impacts on privacy. Staff conducted a site visit to the neighboring property to the north, and concluded that the design and siting of the project, as well as substantial landscaping on the 313 Greene Street property, provides a sufficient buffer between the two residences, taking into consideration the size of the project site. Those mature trees and other vegetation also currently filter much of the available sunlight, minimizing light impacts. The applicant also submitted a landscape plan that includes landscaping along the northern side of the residence between the applicant's and appellant's structures. Finally, the Tamalpais Design Review Board approved the project citing that the project design is compatible with the neighborhood and is sensitive to preserving views from the adjacent neighbor's windows and deck.

- The proposed development is inconsistent with development in neighborhood.*

Response to Appeal:

Lot areas within a 600-foot vicinity of the subject property range from 2,000 square feet to 14,000 square feet, with an average size of 6,434 square feet. Homes sizes, including garages, range from 819 square feet to 4,511 square feet, with an average size of 2,124 square feet. The median home size 1,876 square feet. The proposed project has a home and garage size of 2,410 square feet on a 6,944 square foot lot, consistent with neighboring lots within a 600-foot vicinity. The proposed dwelling would have a floor area ratio of 27.8 percent, where a maximum of 30 percent is allowed, and the placement of the residence would meet all the yard setback requirements of the governing R-1:B-1 zoning district. The project design is stepped into the hillside and articulated, with varying roof heights. Conditions of approval ensure that the project will not adversely impact neighboring residences. Staff finds that the proposed single-family dwelling is appropriate for the project site for these reasons. (Attachment 7 provides additional analysis regarding comparisons between lot areas and home sizes in the vicinity.)

- The construction of the residence will have impact on 313 Green Street residence foundation due to soil disruption.*

Response to Appeal:

The Marin Countywide Plan, Marin County Development Code, and Title 23 of the Marin County Code all require that construction activities minimize erosion, maximize soil stability, and minimize alterations to existing drainage patterns. During the review of a development proposal for a hillside environment, it is common practice for the County to require a geotechnical report to assess the feasibility of the proposed project. The applicant's geotechnical engineer (SalemHowes Associates, Inc.) provided a geotechnical report that was reviewed and accepted by Department of Public Works staff for compliance with Titles 23 and 24 of the Marin County Code.

The report prepared by SalemHowes Associates, Inc. indicates that the project can be safely constructed without adversely impacting the slope stability or changing the drainage in any measurable manner, i.e., it should not adversely affect the foundation of the neighboring residence. With respect to allegations regarding the methodology and findings of the geotechnical investigation by SalemHowes Associates, Inc., no current studies prepared by a qualified professional have been provided by the appellant to refute the findings of the SalemHowes study. Department of Public Works staff has reviewed the report and found it to adequately address their concerns regarding the feasibility of locating a single-family residence on the property.

Furthermore, the Department of Public Works is requiring the submittal of an Erosion and Siltation Control Plan as a condition of approval. Staff is also recommending that this condition of approval be modified to include a revegetation plan that includes erosion resistant vegetation on all slopes to reduce the potential for sloughing and erosion (Refer to Attachment 1, Condition 21).

- Opposition to the hours of construction due to the unconventional work schedules of the owners of 313 Green Street.*

Response to Appeal:

The appeal letter appears to be requesting no construction after 1:00 pm or on Fridays. In subsequent conversations not documented, the appellant indicated that he is requesting no construction after 4 pm. Condition number 6 limits construction hours to 7:00 a.m. and 5:00 p.m., Monday through Friday, and 9:00 a.m. and 4:00 p.m. on Saturday, and no construction shall be permitted on Sundays or holidays. This condition is generally consistent with construction limitations of other discretionary approvals throughout the County. It would be unusual for the County to impose the restrictive construction hours as requested by the appellant. Furthermore, such limited hours would extend the duration of time to complete construction of the project.

CONCLUSION

The project is consistent with policies and programs in the Countywide Plan because the project involves the construction of a new single-family residence, that complies with the SF-6 (Single Family, 4 to 7 units per acre) land use designation, and is a principally-permitted use under the governing R-1:B-1 zoning district. The Department of Public Works has indicated that the proposed project would provide adequate parking on site, and concurs with the applicant's geotechnical engineer's assessment that the proposed siting is appropriate because it is the most stable location on the property, and minimizes grading and site disturbance. Additionally, the project has been designed to minimize surface runoff and drainage alterations, as verified by Department of Public Works staff.

The single-family residence will be situated solely on the subject property and will result in a structure of height, mass and bulk appropriate to the 6,944 square foot site. The single-family residence has been sited within the approved building envelope and will provide adequate setbacks from property lines and other buildings on surrounding properties. The project incorporates architectural characteristics and building forms that are consistent with other development in the area and minimizes the apparent overall mass and bulk of the structure. Finally, the single-family residence would be constructed using materials and colors that are non-reflective and subdued in nature, to blend with the surrounding natural environment as well as the built environment.

RECOMMENDATION

Staff recommends that the Planning Commission review the administrative record, conduct a public hearing, and adopt the attached resolution: (1) denying the Gustavson Appeal; and (2) sustaining the Community Development Agency's conditional approval of the King Design Review.

- Attachments:
1. Proposed Resolution Denying the Gustavson Appeal and Sustaining the Community Development Agency's conditional approval of the King Design Review
 2. Gustavson Petition for Appeal, received 2/28/05
 3. Categorical Exemption
 4. Location Map
 5. Assessor's Parcel Map
 6. Reduced Plans (including site plan, floor plans, building elevations, and cross section, cut/fill diagram, landscape plan, and topographic survey)
 7. Lot and Home Sizes in 600-Foot Radius
 8. Marin County Code Sections 22.82.050 and 22.42.030
 9. Southern Marin Fire Protection District letter, dated 9/3/04
 10. Marin Municipal Water District letter, dated 9/14/04
 11. Tam Design Review Board minutes, dated 9/15/04
 12. Department of Public Works memorandum, dated 11/18/04

13. Letter from Marin County Arborists, dated 12/1/04
14. Letter from M. John Gustavson, dated 1/26/05
15. King Design Review 05-9 Notice of Decision, dated 2/18/05
16. Geotechnical Investigation from SalemHowes Associates Inc., dated 1/9/04

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. _____

A RESOLUTION DENYING THE GUSTAVSON APPEAL AND SUSTAINING THE
COMMUNITY DEVELOPMENT AGENCY'S APPROVAL OF THE KING DESIGN REVIEW 05-9
334 DOLAN AVENUE, MILL VALLEY
ASSESSOR'S PARCEL 050-181-46

SECTION I: FINDINGS

- I. WHEREAS David Holscher, on behalf of the property owners, Brendan and Michael King, is requesting Design Review approval for the construction of a 1,930 square foot single-family residence, an attached 480 square foot two car garage, and a 6-foot tall retaining wall in the rear yard of a 6,944 square foot vacant lot. As proposed, the 1,930 square foot residence on the 6,944 square foot parcel will result in a floor area ratio (FAR) of 27.8 percent. The residence will attain a maximum height of 23.3 feet from finished grade (21.0 feet from natural grade) and will maintain the following setbacks from corresponding property lines: 9 feet from the western front property line, 5 feet from the northern side property line, 24.1 feet from the eastern rear property line, and 5 feet from the southern side property line. A concrete paver patio will be located in the rear yard and new landscaping will be installed around the perimeter of the residence and in the front yard. The residence would be finished with a sablewood color composition shingle tile roofing, dark green window, door, and exterior trim, and natural wood color shingle siding. The property is located at 334 Dolan Ave. in Mill Valley, and is further identified as Assessor's Parcel 050-181-46.

- II. WHEREAS on February 18, 2005, the Community Development Agency issued a conditional approval of the King Design Review granting authorization for the construction of 1,930 square foot single-family residence, a 480 square foot attached garage, and a 6-foot tall retaining wall in the rear yard of a 6,944 vacant lot in Mill Valley. The approval includes conditions requiring revised plans showing windows in the master bedroom at the southeast corner of the residence located at 6 feet above the finished floor elevation for privacy, requiring increasing landscaping from 5-gallon to 15-gallon shrubs on the southern side of the residence to provide additional privacy relief, requiring a revised landscaping plan to show a 2:1 replacement ratio for the coast live oak proposed for removal in the form of one 24-inch boxed coast live oak and one other 15-gallon tree, requiring increased fern and shrub container sizes in the front yard to the north and south of the driveway to provide for increased screening, requiring submittal of an Erosion and Siltation Control Plan, and requiring plans to be reviewed and approved by Registered Civil Engineer with soils engineering expertise or a Registered Geotechnical Engineer.

- III. WHEREAS, a timely appeal of the Community Development Agency's approval of the King Design Review has been filed by Mark Gustavson asserting the following issues: (1) the close proximity of the proposed garage to the northern property line will result in view impacts, major loss of sun exposure, and shadow casting on the master and guest bedrooms of 313 Green Street residence; (2) the proposed development is inconsistent with development in neighborhood; (3) the construction of the residence will have impact on 313 Green Street residence foundation due to soil disruption; and (4) opposition to the hours of construction due to the unconventional work schedules of the owners of 313 Green Street.

- IV. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on April 25, 2005, 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 of the CEQA Guidelines because construction of the single-family residence would not result in any potentially significant impacts to the environment.
- VI. WHEREAS the Marin County Planning Commission finds that the proposed project is consistent with the Marin Countywide Plan for the following reasons:
- A. The project is consistent with the Countywide Plan and Tamalpais Community Plan’s SF-6 land use designation.
 - B. The project would comply with Marin County standards for flood control, geotechnical engineering, and seismic safety, and include improvements to protect lives and property from hazard.
 - C. 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.
 - D. The project would not cause significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation, or other services.
- VII. WHEREAS the Marin County Planning Commission finds that the proposed project is consistent with the Tamalpais Community Plan because the residence is graded into the hillside to reduce visual bulk, the residence has a maximum height of 21.0 feet from natural grade where a maximum of 30 feet above natural grade is allowed, the project has been designed with varying roof lines and wall articulations that reduce mass, the project is consistent with the Tamalpais Area maximum adjusted floor area ratio for sloped lots that exceed 25 percent slope, and the size and architectural style of the residence is compatible with other homes in the surrounding neighborhood.
- VIII. WHEREAS the Marin County Planning Commission finds that the proposed project, is consistent with all of the mandatory findings to approve the King 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 proposed residence, as amended, would conform with property development standards applicable to the R1:B1 zoning district including principally-permitted structures, uses, setbacks, and maximum building height conditions. As proposed, the residence is located 9 feet from the western front property line due to the allowed encroachment for parking structures on sloped lots, 5 feet from the northern side property line, 24.1 feet from the eastern rear property line, and 5 feet from the southern side property line. The proposed residence steps into the sloped lot, resulting in a reduced visual bulk and mass. The structure is compatible with the site and other properties in the vicinity with respect to screening, and incorporates characteristics of architectural design, and exterior color and building materials that are compatible with the surrounding area.
 - 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 will not impact view, light, air, and privacy of surrounding residences or public areas due to the following reasons: (1) proposed vegetation on the subject property and additional landscaping as part of the conditions of approval as discussed above will provide adequate visual screening and privacy buffering between the proposed residence and off-site locations; (2) the stepped design of the proposed residence, with a two raised windows in the master bedroom will preserve privacy; (3) the height of 23.3 feet does not exceed the 30-foot height limit for the governing R1:B1 zoning district; and (3) proposed design and modifications to the front entryway stairs/retaining wall as part of the conditions of approval as discussed above will create appropriate building height, bulk, and mass that will preserve the use and enjoyment of surrounding properties, will protect views from the hillside from off-site locations, and will be reasonable and appropriate given the size, configuration, and topography of the subject property.

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 residence is a principally-permitted use in the R1:B1 zoning district in which the property is located. The discussion contained in Findings A and B is also supportive of 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 residence has been designed to be compatible with the site and surrounding built environment. The proposed (and conditioned) vegetation will soften the appearance of the structure when viewed from off-site locations. A condition of approval will require the applicant to replace the diseased coast live oak proposed for removal with a 24-inch boxed coast live oak to be planted in the front yard, and one other 15-gallon tree to be selected by the applicant. In addition, 1-gallon *Polystichum munitum* ferns are to be modified to 5-gallon and the 5-gallon *Merium* oleander shrubs are to be modified to 15-gallon size in the front yard to the north and south of the driveway.

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

Proposed building materials and colors would compliment the surrounding natural and built environment and would be consistent with the surrounding community character. Exterior walls are composed of series of smaller horizontal and vertical planes that break up the visual bulk and massing of the building and reflect the sloped hillside terrain. A 2:1 replacement ratio for the coast live oak proposed for removal is being required as a condition of approval to retain natural vegetation on the project site. Finally, the residence will attain a maximum height of 23.3 feet from finished grade where 30 feet maximum height from finished grade is allowed.

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 1,930 square foot single-family residence with a 480 square foot attached garage is compatible in size, height, materials, and scale with surrounding development. The design will have a maximum height of 23.3 feet above grade and steps up the hillside. A condition of approval will require that the front foundation/retaining wall to be broken in to a series of smaller components or steps to effectively reduce the visual massing of the entryway as viewed from the street level.

2. Drainage systems and appurtenant structures;

The drainage system has been reviewed and accepted by the Department of Public Works.

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

As proposed, the improvements have been sited on a hillside that will require cut and fill in order to allow the residence is be placed within the hillside. A condition of approval will mitigate the visual appearance of the front entryway foundation/retaining wall.

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

The development on the property will not interfere with the containment, movement, or circulation of animals, conveyances, or persons.

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

The siting of the residence is at a lower elevation than the northerly neighbor and will not eliminate or substantially reduce the sun and/or light exposure on adjacent properties, and the design and the wall as conditioned will not result in the elimination of views, vistas, or privacy.

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

The residence will be required to meet Title 24 of the California Code of Regulations, which requires minimum energy efficiency standards for single-family residences. The Building and Safety Division will verify compliance with Title 24 upon submittal of a Building Permit application.

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.

The proposal to construct a single-family residence is consistent with the Marin Countywide Plan designation of SF-6, residential, 4 to 7 units per acres and with the governing R1: B1 zoning district. The structures have been designed to be compatible with the natural environment and will not be detrimental to the surrounding properties. The project has been recommended for approval by the Tam Design Review Board.

IX. WHEREAS the Marin County Planning Commission finds that the bases for the Gustavson appeal cannot be sustained and that the Community Development Agency acted appropriately in issuing the King Design Review due to the following factors:

1. *The close proximity of the proposed house and garage to the northern property line will result in view impacts, major loss of sun exposure, and shadow casting on the master and guest bedrooms of 313 Green Street residence.*

Response to Appeal:

The structure is located 5 feet from the northern property line, consistent with the governing R-1:B-1 zoning district, and would have a maximum height of 23.3 feet from finished grade (21.0 feet from natural grade) where 30 feet is allowed. The project is downslope from the appellant's property, and the garage is the lowest element of the proposed residence. Additionally, the project incorporates design elements to minimize impacts on views, light, air, and privacy. These elements include varied roof heights, substantial step back from the front of the property, and grading into the slope to minimize visible height of the structure. Minimal placement of windows on the northern side of the structure limit views to the neighbor, thereby minimizing impacts on privacy. Staff conducted a site visit to the neighboring property to the north, and concluded that the design and siting of the project, as well as substantial landscaping on the 313 Greene Street property, provides a sufficient buffer between the two residences, taking into consideration the size of the project site. Those mature trees and other vegetation also currently filter much of the available sunlight, minimizing light impacts. The applicant also submitted a landscape plan that includes landscaping along the northern side of the residence between the applicant's and appellant's structures. Finally, the Tamalpais Design Review Board approved the project citing that the project design is compatible with the neighborhood and is sensitive to preserving views from the adjacent neighbor's windows and deck.

2. *The proposed development is inconsistent with development in neighborhood.*

Response to Appeal:

Lot areas within a 600-foot vicinity of the subject property range from 2,000 square feet to 14,000 square feet, with an average size of 6,434 square feet. Homes sizes, including garages, range from 819 square feet to 4,511 square feet, with an average size of 2,124 square feet. The median home size 1,876 square feet. The proposed project has a home and garage size of 2,410 square feet on a 6,944 square foot lot, consistent with neighboring lots within a 600-foot vicinity. The proposed dwelling would have a floor area ratio of 27.8 percent, where a maximum of 30 percent is allowed, and the placement of the residence would meet all the yard setback requirements of the governing R-1:B-1 zoning district. The project design is stepped into the hillside and articulated, with varying roof heights. Conditions of approval ensure that the project will not adversely impact neighboring residences. Staff finds that the proposed single-family dwelling is appropriate for the project site for these reasons. (Attachment 7 provides additional analysis regarding comparisons between lot areas and home sizes in the vicinity.)

3. *The construction of the residence will have impact on 313 Green Street residence foundation due to soil disruption.*

Response to Appeal:

The Marin Countywide Plan, Marin County Development Code, and Title 23 of the Marin County Code all require that construction activities minimize erosion, maximize soil stability, and minimize alterations to existing drainage patterns. During the review of a development proposal for a hillside environment, it is common practice for the County to require a geotechnical report to assess the feasibility of the proposed project. The applicant's geotechnical engineer (SalemHowes Associates,

Inc.) provided a geotechnical report that was reviewed and accepted by Department of Public Works staff for compliance with Titles 23 and 24 of the Marin County Code.

The report prepared by SalemHowes Associates, Inc. indicates that the project can be safely constructed without adversely impacting the slope stability or changing the drainage in any measurable manner, i.e., it should not adversely affect the foundation of the neighboring residence. With respect to allegations regarding the methodology and findings of the geotechnical investigation by SalemHowes Associates, Inc., no current studies prepared by a qualified professional have been provided by the appellant to refute the findings of the SalemHowes study. Department of Public Works staff has reviewed the report and found it to adequately address their concerns regarding the feasibility of locating a single-family residence on the property.

Furthermore, the Department of Public Works is requiring the submittal of an Erosion and Siltation Control Plan as a condition of approval. Staff is also recommending that this condition of approval be modified to include a revegetation plan that includes erosion resistant vegetation on all slopes to reduce the potential for sloughing and erosion (Refer to Attachment 1, Condition 21).

4. *Opposition to the hours of construction due to the unconventional work schedules of the owners of 313 Green Street.*

Response to Appeal:

The appeal letter appears to be requesting no construction after 1:00 pm or on Fridays. In subsequent conversations not documented, the appellant indicated that he is requesting no construction after 4 pm. Condition number 6 limits construction hours to 7:00 a.m. and 5:00 p.m., Monday through Friday, and 9:00 a.m. and 4:00 p.m. on Saturday, and no construction shall be permitted on Sundays or holidays. This condition is generally consistent with construction limitations of other discretionary approvals throughout the County. It would be unusual for the County to impose the restrictive construction hours as requested by the appellant. Furthermore, such limited hours would extend the duration of time to complete construction of the project.

SECTION II: PROJECT APPROVAL

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

Marin County Community Development Agency - Planning Division

1. Plans submitted for a Building Permit shall substantially conform to plans identified as "Exhibit A," entitled, "King Residence, 334 Dolan Ave., Mill Valley California," consisting of 10 sheets prepared by David John Holscher, dated December 6, 2004, and one sheet entitled "Topographic Survey, 334 Dolan Ave./A.P. 50-181-46", prepared by Lawrence P. Doyle, and on file with the Marin County Community Development Agency, except as modified by the conditions listed herein.
2. Approved exterior building materials and colors shall substantially conform to the color/materials sample board which is identified as "Exhibit B," entitled "Material Board, 334 Dolan Ave., Mill Valley, VA, APN: 50-181-46", dated August 12, 2004, and on file with the Marin County Community Development Agency including:

Siding: natural wood color shingle siding

Roof: sablewood color composition shingle tile roofing

Trim: dark green

All flashing, metal work and trim shall be treated or painted an appropriately subdued, nonreflective color.

3. 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 conditions of approval as notes.
4. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall submit either: 1) 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 have been met; or 2) a letter from the Marin Municipal Water District or North Marin Water District indicating that the proposed landscaping complies with all conditions of the District's Water Conservation Ordinance.
5. Exterior lighting shall be located and/or shielded so as not to cast glare on nearby properties.
6. All construction activities shall comply with the following standards:
 - A. Except for such low-noise generating activities, including but not limited to, painting, sanding, and sweeping, 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 shall be permitted on Sundays or the following holidays (New Year's Day, Martin Luther King Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving, Christmas). If the holiday falls on a weekend, the prohibition on noise-generating construction activities shall apply to the ensuing weekday during which the holiday is observed. At the applicant's request, the Community Development Agency staff may administratively authorize minor modifications to these hours of construction.
 - B. It shall be the responsibility of the applicant to ensure that all construction materials and equipment are stored on-site (or secured at an approved off-site location) and that all contractor vehicles are parked in such a manner as to permit safe passage for vehicular, pedestrian, and bicycle traffic at all times.
7. All utility connections and extensions (including but not limited to electric, communication, and cable television lines) serving the development shall be undergrounded from the nearest overhead pole from the property, where feasible as determined by the Community Development Agency staff.
8. The applicant/owner hereby agrees to defend, indemnify, and hold harmless the County of Marin and its agents, officers, attorneys, or employees from any claim, action, or proceeding, against the County or its agents, officers, attorneys, or employees, to attack, set aside, void, or annul an approval of the King Design Review 05-9, for which action is brought within the applicable statute of limitations. This indemnification shall include, but not be limited to, damages, fees, and/or costs awarded against the County, if any, and the cost of suit, attorney's fees, and other costs, liabilities, and expenses incurred in connection with such proceedings, whether incurred by the applicant/owner, the County, and/or the parties initiating or bringing such proceeding.
9. BEFORE FINAL INSPECTION, the applicant shall submit a Statement of Completion, signed by a certified or licensed landscape design professional, verifying that all approved and required landscaping has been installed in accordance with the approved landscape plan and Chapter 23.10 of the Marin County Code, where applicable.
10. 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.

11. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall revise plans to show windows in the master bedroom at the southeast corner of the residence to be located at 6 feet above the finished floor elevation. The 5-gallon *Melaleuca 'Mesophila'* shrubs indicated on the proposed landscape plans on the southern side of the residence are to be revised to 15-gallon *Melaleuca 'Mesophila'* shrubs to expedite the timeframe to maturity and provide additional privacy relief. Alternatively, a signed letter from the owner at 332 Dolan Avenue approving the elevation of the master bedroom windows at an elevation 3 feet above the finished floor elevation as shown on submitted plans would be acceptable.
12. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall revise plans to show redesigned front entryway foundation/retaining wall be broken in to a series of smaller components or steps to effectively reduce the visual massing of the entryway as viewed from the street level.
13. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall revise plans to show a 2:1 replacement ratio for the coast live oak proposed for removal in the form of one 24-inch boxed coast live oak to be planted in the front yard, and one other 15-gallon tree to be selected by the applicant. In addition, the proposed 1-gallon *Polystichum munitum* ferns are to be modified to 5-gallon size and the 5-gallon *Merium oleander* shrubs are to be modified to 15-gallon size in the front yard to the north and south of the driveway. Final landscape plans shall consist of at least 50 percent drought tolerant, fire resistant, native species.
14. BEFORE FOUNDATION INSPECTION, the applicant shall have a licensed land surveyor or civil engineer with proper certification conduct a survey of the both side property lines and install property line markers that can be readily verified by the Building and Safety Inspection staff to verify building setbacks and submit a written (stamped) confirmation, under penalty of perjury, to the Planning Division confirming that the staking of the property lines has been properly completed. In addition, it is recommended that prior to construction of the foundation, the required setback lines be clearly marked by stakes similar to batter boards that are installed at the foundation corners. The project shall not proceed beyond the foundation framing stage until all required building setbacks have been confirmed by Community Development Agency staff. The requirement for new survey markers may be waived if proper survey markers already exist at the site and can be verified and used by the Building and Safety Inspection staff to definitely measure building setbacks.
15. BEFORE FINAL INSPECTION, the applicant shall install all landscaping and an automatic drip irrigation system in accordance with the approved landscape plan. The applicant shall call for a Community Development Agency staff inspection of the landscaping at least five working days before the anticipated completion of the project. Failure to pass inspection will result in withholding of the Final Inspection and imposition of hourly fees for subsequent reinspections.
16. BEFORE FINAL INSPECTION AND UPON VESTING OF THE 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 special development restrictions relative to maintenance of the landscape plan for structure screening and visual buffer from off-site locations, maintenance of redesigned front entryway to reduce height and mass from the street level as a part of these conditions of approval.
17. BEFORE FINAL INSPECTION, the applicant shall enter into a landscape maintenance agreement with the Community Development Agency that is secured by a financial deposit that is equivalent to one and one-half times the value of the labor and materials for all new landscaping. The agreement shall be for a period of three years from the date of occupancy, during which time the applicant shall agree to maintain the landscaping in a healthy and vigorous condition. At the end of the three-year landscape maintenance period, any specimen which has not survived or is in poor or declining health, as determined by the Community Development Agency staff, shall be replaced with a specimen of a comparable size.

18. Driveway curbs shall not be higher than 6'' and get tied into the existing asphalt curb on Dolan Ave. Also, site plan shows existing asphalt curb to be continuous along the adjacent property driveway. Revise plans to show the correct location of where the curb terminates.
19. Sheet L0.1, drain outlet proposed on south side of driveway encroaches into adjacent property and its frontage. No improvements are allowed outside of property lines. Revise plans to correct the encroachment.
20. The plans shall be reviewed and approved by Registered Civil Engineer with soils engineering expertise or a Registered Geotechnical Engineer. Certification, under penalty of perjury, shall be either by the engineer's stamp and signature on the plans, or by stamp and signed letter.
21. Submit an Erosion and Siltation Control Plan. A revegetation plan that includes erosion resistant vegetation on all slopes to reduce sloughing and erosion must be submitted as a part of the Erosion and Siltation Control Plan. Vegetation shall consist of at least 50 percent drought tolerant, fire resistant, native species.
22. An encroachment permit shall be required for work within the road right-of-way.
23. Applicant shall pay Public Transportation Facilities fees in accordance with Marin County Code Chapter 15.07.

Southern Marin Fire Protection District

24. Driveways off access roads serving dwelling units shall meet Marin County Standards related to dimensions, surfacing, and slope (no switchbacks).
25. For all new construction and all "substantial remodels", plans for fire sprinkler design shall be approved and reviewed by the Southern Marin Fire Protection District prior to installation.
26. The address shall be posted in accordance with requirements of the Uniform Building Code.
27. Smoke detectors shall be installed in accordance with the Uniform Building Code.
28. A remotely located, second means of egress shall be provided for each floor above the first.
29. Non-combustible roofing is required for all new construction.
30. Compliance must be provided with Public Resources Code 4291 relating to brush and weed clearance.
31. Prior to occupancy, a spark arrestor shall be installed in the chimney(s).

Marin Municipal Water District

32. Water service can be activated upon the request and the fulfillment of the following requirements:
 - A. Completion of a Standard Water Service Application;
 - B. Submittal of a copy of the building permit and payment of required fees;
 - C. Completion of the structure's foundation within 120 days of the date of application;
 - D. Compliance with the District's rules and regulations in effect at the time service is requested; and
 - E. Compliance with the District's landscape requirements (Ordinance 385) through submittal of working drawings for all planting and irrigation systems to the District prior to provision of water service for new landscape areas, or improved or modified landscape areas.

Tam Design Review Board

33. In order to enhance fire safety, the application shall install four (4) hose bibs prior to Final Inspection.

SECTION III: VESTING OF RIGHTS

The applicant must vest this approval by obtaining a Building Permit for the approved work and substantially completing the improvements in accordance with the approved permits by April 25, 2007 for all entitlements, or all rights granted in this approval shall lapse unless the applicant applies for an extension at least 10 days before the expiration date above and the Community Development Agency staff 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 Design Review approval (and no extensions have been granted), the Building Permit and Design Review 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 Design Review at least 10 days before the expiration of the Design Review approval.

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 \$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 May 5, 2005.**

SECTION V: VOTE

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 25th day of April, 2005, by the following vote to wit:

AYES:

NOES:

ABSENT:

STEVE C. THOMPSON, CHAIRMAN
MARIN COUNTY PLANNING COMMISSION

Attest:

Jessica Woods
Recording Secretary