



MARIN COUNTY

COMMUNITY DEVELOPMENT AGENCY

ALEX HINDS, DIRECTOR

**STAFF REPORT TO THE MARIN COUNTY PLANNING COMMISSION
ZERULL APPEAL OF THE DEPUTY ZONING ADMINISTRATOR'S DENIAL OF THE ZERULL
USE PERMIT AND DESIGN REVIEW**

Item No:	7.	Application No:	UP 05-37/DR 05-52
Applicant/Appellant:	Brent and Susan Zerull	Owners:	Brent and Susan Zerull
Property Address:	233 Bayview Drive, San Rafael	Assessor's Parcels:	186-071-06 and -07
Hearing Date:	November 28, 2005	Planner:	Curtis Havel

RECOMMENDATION:	Deny the Zerull Appeal and Sustain the Deputy Zoning Administrator's Denial of the Zerull Use Permit and Design Review
APPEAL PERIOD:	10 calendar days to the Marin County Board of Supervisors
LAST DATE FOR ACTION:	November 28, 2005

SUMMARY RECOMMENDATION:

Staff recommends that the Planning Commission deny the Zerull appeal and sustain the Deputy Zoning Administrator's (DZA) denial of the Zerull Use Permit and Design Review based on findings that the proposed project is inconsistent and out of scale with the prevailing community character, architecturally incompatible with existing development on the property, and visually disruptive from off-site locations as the project relates to the hillside environment.

PROJECT DESCRIPTION:

The project is a proposal to construct a new, two-story, 3,321 square foot detached accessory structure on an approximately 1.4-acre lot within the Bayside Acres Subdivision in San Rafael. The proposed detached accessory structure would have a maximum height of 28 feet and would maintain the following minimum setbacks from corresponding property lines: 40 feet, 6 inches from the northeasterly front property line (along Bayview Drive); 96 feet, 6 inches from the southeasterly side property line; and 40 feet, 4 inches from the southwesterly rear property line. The detached accessory structure is proposed to be used as a garage and work/art studio and is proposed to be constructed using concrete barrel tile roofing and stucco siding to match the existing 5,824 square-foot single-family dwelling on the property. The 1.4-acre property is comprised of Lots 75, 76, 77, and 78 that were merged into one legal lot of record in January of 2005.

SUMMARY OF THE ZERULL APPEAL:

On September 15, 2005, the DZA denied the Zerull Use Permit and Design Review applications. On September 26, 2005, the property owners, Brent and Susan Zerull, filed a timely appeal of the DZA’s decision asserting the following bases of appeal: (1) the Single-Family Residential Design Guidelines should not apply to the project since it was accepted as complete before the adoption of said guidelines; (2) neither staff nor the DZA provided the Zerulls with an opportunity to modify the proposed project; (3) the findings denying the application are subjective in nature and not based on factual information; (4) the denial does not take into account the size and configuration of the property with respect to other properties in the area; and (5) the project is not visually prominent or disruptive as viewed from off-site locations.

GENERAL INFORMATION:

Countywide Plan: SF3 (Single Family, 1 unit per 1 to 5 acres)
Zoning: R-1:B-4 (Residential, Single-Family, 1 acre minimum lot size)
Lot size: 1.4 acres
Adjacent Land Uses: Single-family residential
Vegetation: Native and introduced species
Topography and Slope: Moderate to steep slopes
Environmental Hazards: None identified

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 entails construction of a detached accessory structure on a residentially-developed property that would not result in significant impacts on the environment.

PUBLIC NOTICE:

The Community Development Agency has provided public notice identifying the applicant, describing the project and its location, and giving the earliest possible decision date in accord with California Government Code requirements. This notice has been mailed to all property owners within 600 feet of the subject property.

PLAN CONSISTENCY:

The proposed project is inconsistent with the goals and policies of the Marin Countywide Plan and the Marin County Single-family Residential Design Guidelines. Please refer to the plan consistency findings contained in the attached resolution.

BACKGROUND:

The project is a proposal to construct a new, two-story, 3,321 square foot, 28-foot tall detached accessory structure on an approximately 1.4-acre lot. The property is developed with a 5,824 square foot single-family dwelling and is situated upon a localized ridge which separates the Bayside Acres Subdivision to the east and the Loch Lomond Highlands subdivision to the west.

The Marin County Single-family Design Guidelines, adopted by the Board of Supervisors on July 19, 2005, provide guidance regarding appropriate home size with respect to maintaining neighborhood compatibility. The Guidelines state that in general, “...the floor area of the proposed development should not substantially exceed the median home size in the surrounding neighborhood, taking into consideration site-specific factors, such as lot size, bulk and mass, topography, vegetation, and the visibility of the proposed development.”

The average size of homes in the neighborhood is 2,902 square feet and the average size of garages in the neighborhood is 609 square feet. The average building area in the neighborhood is 3,396 square feet. The largest garage in the area is 1,480 square feet and the largest home in the area is 4,966 square feet.

The proposed detached accessory structure would be 419 square feet larger than the average residence, and 2,712 square feet larger than the average garage/accessory structure. The proposed detached accessory structure would be 114% larger than the average home size in the area, and 545% larger than the average garage size in the area (please refer to Attachment 15 for a detailed analysis of structure sizes in the area).

Staff recommended a reduction in the overall floor area of the proposed detached accessory structure at the Deputy Zoning Administrator's hearing of September 15, 2005. Staff determined that a 2,000 square foot structure would be compatible with the prevailing size and scale of development in the area. Although this size may be up to 30 percent larger than the largest garage in the area, staff found that it would nonetheless be compatible with the surrounding community character due to such site-specific factors as the large lot area and setbacks from surrounding structures and roadways.

At the hearing the applicants were unwilling to modify the project, as recommended by staff, and instead, requested that a decision be rendered denying the application rather than continuing the hearing for a project redesign. (Please refer to Attachments 3 and 4 for the minutes and resolution from the DZA's hearing.) Based on this, the DZA denied the project on grounds that Use Permit and Design Review findings could not be made because the structure would be visually incompatible with the existing development on the property as well as the surrounding community.

ANALYSIS OF APPEAL:

Brent and Susan Zerull submitted a Petition of Appeal on September 26, 2005 identifying ten bases of appeal of the Deputy Zoning Administrator's denial of the Zerull Use Permit and Design Review. Staff has summarized the appeal under the following five main bases of appeal: (1) the Single-Family Residential Design Guidelines should not apply to the project since it was accepted as complete before the adoption of said guidelines; (2) neither staff nor the Deputy Zoning Administrator provided the Zerull's with an opportunity to modify the proposed project; (3) the findings denying the application are subjective in nature and not based on factual information; (4) the denial does not take into account the size and configuration of the subject property with respect to other properties in the area; and (5) the project is not visually prominent or disruptive as viewed from off-site locations. The following provides an analysis to the bases for appeal.

1. *The Single-Family Residential Design Guidelines should not apply to the project since it was accepted as complete before the adoption of said guidelines.*

Response to Appeal:

The appellant asserts that the Zerull application was deemed complete prior to the adoption of the Single-Family Residential Design Guidelines and therefore should not be relied upon or made reference to in the determination regarding the Zerull Use Permit and Design Review application. The proposed project is subject to Use Permit approval because the detached accessory structure exceeds a height of 15 feet. Design Review approval is required because the total building area on the property exceeds 4,000 square feet.

The findings to approve a Design Review (specifically Section 22.42.060.E of the Marin County Code) state, in part, that "The proposed development will be in compliance with the design and locational characteristics listed in Chapter 22.16 (Planned Districts Development Standards)." Furthermore, findings to approval a Use Permit (specifically Section 22.48.040.D of the Marin County Code) states, "The design, location, size, and operating characteristics of the proposed use are compatible with existing and future land uses in the vicinity." Please refer to Attachments 16 and 17 for a complete listing of Marin County Code Sections 22.42.060 (Decision and Findings for Design Review) and 22.48.040 (Decision and Findings for Use Permit).

The Single-Family Residential Design Guidelines (Guidelines) reaffirms the development standards established by the code sections listed above. Unlike an ordinance, the Guidelines are not binding but instead serve to expand and clarify existing provisions of the Marin County Code. The Marin County Community Development Agency (CDA) utilizes these design principles when applying these standards to ensure that development occurs in an orderly fashion throughout the County. The adoption of the Design Guidelines represents an effort by the County to more clearly describe and explain preferred design solutions for residential development throughout the County. The Guidelines are an extension of the County's long standing Design Review requirements and Planned District design standards.

Regardless of whether the Design Guidelines had been adopted before or after the Zerull application being deemed complete, the proposed project would still be inconsistent with the findings to approve a Use Permit and Design Review. In this case, the Deputy Zoning Administrator found that the detached accessory structure is visually incompatible with proposed development on the subject parcel due to differences in architectural styles, and is incompatible with development on surrounding parcels due to its excessive size and scale compared to the average building sizes in the area. For more detailed analysis of the project, please refer to the ensuing response to basis of Appeal 3 below.

2. *Neither staff nor the DZA provided the Zerull's with an opportunity to modify the proposed project.*

Response to Appeal:

The appellants assert in points 2, 3, and 6 of the appeal that they were not given an opportunity to address project deficiencies prior to or at the Deputy Zoning Administrator's hearing. The appellants explain that the staff did not alert them to the project inconsistencies with the findings to approve a Use Permit and Design Review; that they were not given an opportunity to modify the project in response to project inconsistencies; and that they were placed in a position before the Deputy Zoning Administrator where they were forced to choose between project denial or a modified project.

The appellants were provided with a staff report prior to the August 25, 2005 Deputy Zoning Administrator's hearing where staff raised concerns about the project's conformance with Design Review and Use Permit requirements, and staff recommended a reduction in overall floor area for the detached accessory structure in order to address the project inconsistencies with Design Review and Use Permit requirements. At the public hearing, the Hearing Officer gave the appellants a choice between requesting a continuance to allow time for a redesign, or receiving a denial of the project so the appellants could appeal the decision to the Planning Commission. The appellants chose to appeal the decision.

Staff maintains that the appellants were given an opportunity to redesign the project to bring it into compliance with the required findings for Use Permit and Design Review.

3. *The findings denying the application are subjective in nature and not based on factual information.*

Response to Appeal

The appellants assert that the Deputy Zoning Administrator's action to deny the Zerull Use Permit and Design Review is based on conclusions drawn by the Hearing Officer and not based on factual information. The appellants explain that the reasoning put forward by the Hearing Officer with respect to Marin County Code Sections 22.42.060.A, B, C, E, and F does not justify a change from staff's original resolution recommending approval of the project subject to a reduction in overall floor area.

Marin County Code Section 22.42.060.A

Marin County Code Section 22.42.060.A states, “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 detached accessory structure would be incompatible with its locale and surrounding neighborhood because it would be 14% larger than the average home size in the area, and 445% larger than the average garage size in the area. This is based on the information contained in the floor area ratio analysis (Attachment 15). As depicted on the submitted plans, the detached accessory structure does not incorporate architectural design and detailing that are consistent with the existing single-family residence located on the property. Based on a visit to the project site, the Hearing Officer determined that the structure is out of scale when considering its functional requirements, and will be unsightly as viewed from vantage points to the east of the site.

Marin County Code Section 22.42.060.B

Marin County Code Section 22.42.060.B states, “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 and pleasing development of the neighborhood as a whole, including public lands and rights-of-way.”

The Hearing Officer found that the overall size, height, bulk and mass of the detached accessory structure would result in development that visually interferes with vistas from off-site locations, including open space areas. The Hearing Officer observed that although existing vegetation at the project site would provide partial screening, the detached accessory structure would be located on a localized ridge that is visually prominent and result in a structure that is not consistent with the hillside environment.

Marin County Code Section 22.42.060.C

Marin County Code Section 22.42.060.C states, “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.”

Although the appellant raised this issue in their appeal, findings were made that the project would not impair further investment or improvements in the vicinity because the proposed structure, if built, would be required to comply with safety standards as established by the Uniform Building Code.

Marin County Code Section 22.42.060.E

Marin County Code Section 22.42.060.E states, “The proposed development will be in compliance with the design and locational characteristics listed in Chapter 22.16 (Planned District Development Standards) of the Marin County Development Code.” In summary, the Planned District Development Standards require development proposals be sited away from ridgelines and other visually prominent areas while preserving natural site features through effective design that blends development into the surrounding environment.

Based on the submitted plans, the floor area analysis provided by staff, and a visit to the project site, the Hearing Officer determined that the design of the detached accessory structure is incompatible with that of other structures in the vicinity, the surrounding natural environment, and existing development on the subject property. As discussed above, the size and scale of the proposed detached accessory structure would be significantly larger than other structures in the area and would not be architecturally consistent with the existing single-family dwelling on the property.

In conclusion, the Hearing Officer found that the detached accessory structure would be sited on a localized ridge which is a visually prominent area. As such, the structure would be visible from offsite locations, including nearby open space. The overall scale and size of the detached accessory structure would impact views and vistas because the structure does not blend into the surrounding natural and built environments to the greatest extent feasible.

Marin County Code Section 22.42.060.F

Marin County Code Section 22.42.060.F states, “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 of characteristics of the following: (1) the area, heights, mass, materials, and scale of structures; (2) drainage systems and appurtenant structures; (3) cut and fill or the reforming of the natural terrain, and appurtenant structures (e.g., retaining walls and bulkheads); (4) areas, paths, and rights-of-way for the containment, movement or general circulation of animals, conveyances, persons, vehicles, and watercraft; and (5) will not result in the elimination of significant sun and light exposure, views, vistas and privacy to adjacent properties.”

As discussed above, the Hearing Officer found that the overall size, height, and scale of the project is incompatible with the scale of the surrounding neighborhood and that the project does not incorporate architectural characteristics consistent with the existing single-family dwelling on the property as evidenced by the submitted plans. Furthermore, the Hearing Officer found that the project would result in excessive site disturbance due to the overall scope and size of the project. Although the detached accessory structure would be sited within the building envelope established by R-1:B-4 zoning district and maintains adequate separation from other structures and property lines, the project would be located on a localized ridgeline and would be visible from offsite locations, including open space.

The Hearing Officer concluded that the building area, profile, and footprint could be reduced, thereby minimizing the amount of necessary grading and still achieves a reasonable garage and studio area for the property owner.

4. *The denial does not take into account the size and configuration of the subject property with respect to other properties in the area.*

Response to Appeal

The appellants assert that the findings ignore the size, location, quality, and value of the Zerull property; particularly as it compares to smaller lot sizes elsewhere within the Bayside Acres Subdivision. The appellants express concerns that the project is penalized for having the largest home on the largest private property in the area.

The Design Review process takes into account how a project relates to the natural and built environments. This consideration evaluates the merits of a project based on the development patterns and architectural character of the immediate community, as well as the appearance of the project from more distant views that may not be in the immediate vicinity of the project. The findings contained in Chapters 22.42 (Design Review) and 22.48 (Use Permit) work in concert with the planned district development standards enumerated in Chapter 22.16 of the Marin County Code to require that projects be harmonious with its surroundings to prevent incongruities within an area.

The size and configuration of the subject property and how it relates to the proposed project was taken into consideration during the processing of the Use Permit and Design Review application. The floor area ratio analysis produced by staff takes into account residences and detached accessory structures along the upper portion of Bayview Drive. The floor area ratio analysis compares home sizes, garage sizes, lot sizes, and overall percentages of floor area to lot areas.

In comparison to the surrounding neighborhood, the proposed detached accessory structure would be 419 square feet larger than the average residence, and 2,712 square feet larger than the average garage/accessory structure. The proposed detached accessory structure would be 114% larger than the average home size in the area, and 545% larger than the average garage size in the area (please refer to Attachment 15 for a detailed analysis of structure sizes in the area).

It is important to note that the subject property historically consisted of 2 lots that were merged into one legal lot of record in January of 2005. At that time, the property was developed with a 5,824 square foot single-family residence. This information was enclosed in the staff report to the Deputy Zoning Administrator and considered by the Hearing Officer at the hearings of August 25, 2005 and September 15, 2005.

Staff and the Deputy Zoning Administrator have taken into consideration the large size of the property and its setting within the surrounding neighborhood. These factors should allow an accessory structure on the property which is larger than the typical garage or other detached buildings on smaller lots. In recommending a redesign of the proposal, staff and the Deputy Zoning Administrator were not suggesting that the proposed accessory building be limited in size to the average floor area of other accessory buildings in the neighborhood. Further, the proposed size was found to be excessively large in relation to the character of the community. In conclusion, the Hearing Officer determined that the project was not consistent with findings to approve a Use Permit and Design Review because the project is out of scale with the surrounding community character.

5. *The project is not visually prominent or disruptive as viewed from off-site locations.*

Response to appeal

The appellants assert that the project is not visually prominent because the property is situated atop a plateau which is not visible from homes located further down the hillside along Bayview Drive. Furthermore, the larger size of the property is able to accommodate the proposed detached accessory structure while maintain adequate setbacks from property lines and other structures.

Policies in the Countywide Plan and the Marin County Development Code discourage development on ridgelines unless there is no other suitable site to locate the development. If structures must be placed along a ridgeline area, they should be kept to a height limit of 18 feet and 1 story, and should be situated to minimize visibility from adjacent properties and view corridors.

The subject property is located along a localized ridge which provides separation from the Bayside Acres Subdivision to the east, and the Loch Lomond Highlands subdivision to the west. The project can be seen from open space and from the fire road portions of Bayview Drive. The Hearing Officer indicated that the project would be greatly improved if the following design modifications were made to the project: (1) reduction of the overall size and scale of the detached accessory structure, including height; (2) reduction of the area of the upper level while stepping it further into the hillside; and (3) articulating the roof ridgelines to minimize monotonous building lines that are not harmonious with the hillside setting.

Based on the discussion above, project modifications are required to minimize the visual character of the structure as viewed from off-site locations.

CONCLUSION:

Findings to approve the Zerull Use Permit and Design Review cannot be made because the proposed project is grossly out of scale with the prevailing community character. The overall size, height, and scale of the detached accessory structure would result in unnecessary site disturbance, and the more prominent building forms and lack of architectural details of the proposed detached accessory structure are not consistent with the existing Spanish-styled architectural vernacular of the existing single-family residence. The proposed detached accessory structure is located on localized ridge and would be visible from local open space and from the fire road portions of Bayview Drive. Finally, the design of the proposed detached accessory structure would not blend into the hillside environment effectively as it could due to its excessive mass, scale, dimensions, and overall height.

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 Zerull Appeal; and (2) sustaining the Deputy Zoning Administrator's denial of the Zerull Design Review and Use Permit.

- Attachments:
1. Proposed Resolution denying the Zerull Appeal and upholding the Deputy Zoning Administrator's denial of the Zerull Design Review and Use Permit
 2. Zerull Petition for Appeal, September 26, 2005
 3. Minutes from the Deputy Zoning Administrator Hearings of September 15, 2005 and August 25, 2005
 4. Deputy Zoning Administrator Resolution 05-208
 5. Location Map
 6. CEQA Exemption
 7. Reduced Plans prepared by Randolph Ford and J.L. Engineering, dated January 27, 2005 and February 4, 2003, respectively
 8. Letter from Brent and Susan Zerull, August 10, 2005
 9. Department of Public Works, Land Use and Water Resources Memorandum, July 13, 2005
 10. San Rafael Sanitation District letter, June 22, 2005
 11. New Home Green Building Residential Guidelines, April 8, 2005
 12. San Rafael Fire Department Memorandum, March 23, 2005
 13. Marin Municipal Water District letter, February 24, 2005
 14. Proposed Deed Restriction
 15. Floor Area Ratio Analysis
 16. Section 22.48.040 of the Marin County Code (Decision and Findings, Use Permit)
 17. Section 22.42.060 of the Marin County Code (Decision and Findings, Design Review)

MARIN COUNTY PLANNING COMMISSION

RESOLUTION _____

A RESOLUTION DENYING THE ZERULL APPEAL AND SUSTAINING THE DEPUTY ZONING ADMINISTRATOR'S DENIAL OF THE ZERULL USE PERMIT 05-37 AND DESIGN REVIEW 05-52

ASSESSOR'S PARCELS 186-071-06 AND -07
233 BAYVIEW DRIVE, SAN RAFAEL

SECTION I: FINDINGS

- I. WHEREAS Brent and Susan Zerull have submitted a Use Permit and Design Review to construct a new, two-story, 3,321 square foot detached accessory structure on an approximately 1.4-acre lot within the Bayside Acres Subdivision, San Rafael. The proposed detached accessory structure would have a maximum height of 28 feet and would maintain the following minimum setbacks from corresponding property lines: 40 feet, 6 inches from the northeasterly front property line (along Bayview Drive); 96 feet, 6 inches from the southeasterly side property line; and 40 feet, 4 inches from the southwesterly rear property line. The detached accessory structure is proposed to be used as a garage and studio and is proposed to be constructed using concrete barrel tile roofing and stucco siding to match the existing 5,824 square-foot single-family dwelling on the property. The subject property is located at **233 Bayview Drive, San Rafael**, and is further identified as **Assessor's Parcels 186-071-06 and -07**.
- II. WHEREAS on September 15, 2005, the Deputy Zoning Administrator denied the Zerull Use Permit and Design Review on the basis that the proposed project is inconsistent and out of scale with the prevailing community character, architecturally incompatible with existing development on the property, and visually disruptive from off-site locations as the project relates to the hillside environment.
- III. WHEREAS, a timely appeal of the Deputy Zoning Administrator's denial of the Zerull Use Permit and Design Review has been filed by Brent and Susan Zerull asserting the following issues: (1) the Single-Family Residential Design Guidelines should not apply to the project since it was accepted as complete before the adoption of said guidelines; (2) neither staff nor the DZA provided the Zerull's with an opportunity to modify the proposed project; (3) the findings denying the application are subjective in nature and not based on factual information; (4) the denial does not take into account the size and configuration of the subject property with respect to other properties in the area; (5) the project is not visually prominent or disruptive as viewed from off-site locations.
- IV. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on November 28, 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 the proposed 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 entails construction of a detached accessory structure on a residentially developed property that would not result in significant impacts on the environment.

- VI. WHEREAS the Marin County Planning Commission finds that the proposed project is inconsistent with the Marin Countywide Plan and the Marin County Single-family Residential Design Guidelines for the reasons listed below.
- A. EQ-3.8 (Built Environments), EQ-3.11 (Visual Qualities and Views), EQ-3.16 (Minimize Excavating, Grading, and Filling), and EQ-3.25 (Scale of Development) of the Marin Countywide Plan: These policies require that projects be of good design both functionally and aesthetically, and that visual qualities of the natural and built environments be considered in any project. The project departs from these policies because the more prominent building forms and lack of architectural details of the proposed detached accessory structure are not consistent with the existing Spanish-styled architectural vernacular of the existing single-family residence. Furthermore, the proposed detached accessory structure is located on localized ridge, visible from local open space and from the fire road portions of Bayview Drive. Finally, the design of the proposed detached accessory structure would not blend into the hillside environment effectively as it could due to its excessive mass, scale, dimensions, and overall height.
 - B. Section C (Neighborhood Compatibility) of the Marin County Single-Family Residential Guidelines: This section, in part, discourages floor areas of proposed development that substantially exceed the median home sizes in the surrounding neighborhood. As tools for comparison, the median home size of homes in the neighborhood is 2,902 square feet. The median home size of garages in the neighborhood is 609 square feet. The median building area in the neighborhood is 3,396 square feet. The largest garage in the area is 1,480 square feet and the largest home in the area is 4,966 square feet.
 - C. The proposed detached accessory structure would be 419 square feet larger than the average residence, and 2,712 square feet larger than the average garage/accessory structure. The proposed detached accessory structure would be 14% larger than the average home size in the area, and 445% larger than the average garage size in the area. This is grossly out of scale with other average building sizes, particularly accessory structures, in the area and therefore would be incompatible with the overall neighborhood character.
- VII. WHEREAS the Marin County Planning Commission finds that the Mandatory Findings for a Use Permit per Section 22.48.040 of the Marin County Code cannot be made because the proposed use is inconsistent with the Countywide Plan for reasons discussed in Section IV above, and because the proposed project would be incompatible with the prevailing neighborhood character. The detached accessory structure would be visually incompatible with proposed development on the subject parcel due to differences in architectural styles, and would be incompatible with development on surrounding parcels due to its excessive size and scale compared to the average building sizes in the area. The granting of the Use Permit will 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 because the project would result in development that is excessive and incompatible with the established neighborhood character.

VIII. WHEREAS the Marin County Planning Commission finds that the proposed project is inconsistent with the mandatory findings VIII-A, VIII-B, VIII-E, VIII-F1, VIII-F3, VIII-F5, and VIII-H to approve a Design Review per Marin County Code Section 22.42.060 for the following reasons:

A. The proposed structure will properly and adequately perform or satisfy its functional requirements without being unsightly or creating incompatibility/disharmony with its locale and surrounding neighborhood.

The detached accessory structure would be incompatible with its locale and surrounding neighborhood because it would be 14% larger than the average home size in the area, and 445% larger than the average garage size in the area. The detached accessory structure does not incorporate architectural design and detailing that are consistent with the existing single-family residence located on the property. The structure is out of scale for its functional requirements, and will be unsightly from several public viewpoints.

B. It 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 and pleasing development of the neighborhood as a whole, including public lands and rights-of-way.

The overall size, height, bulk and mass of the detached accessory structure would result in development that visually interferes with vistas from off-site locations, including open spaces. Although existing vegetation at the project site would provide partial screening, the detached accessory structure would be located on a localized ridge that is visually prominent and result in a structure that is not consistent with the hillside environment.

C. It will not directly, or cumulative, 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 project would not impair further investment or improvements in the vicinity because the proposed structure, if built, would be required to comply with safety standards as established by the Uniform Building Code.

D. It 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 detached accessory structure has been sited on the property to prevent the necessity for removal of any mature, native trees at the site. However, because no information has been submitted to either identify or preserve nearby trees (particularly natives), and those trees show evidence of previous vista pruning, there is a substantial possibility of damage to or removal of those trees.

E. It will be in compliance with the design and locational characteristics listed in Chapter 22.16 (Planned District Development Standards) of the Marin County Development Code.

The design of the detached accessory structure is incompatible with that of other structures in the vicinity, the surrounding natural environment, and existing development on the subject property. As discussed in Findings 1 and 2 above, the size and scale of the proposed detached accessory structure would be significantly larger than even other primary structures in the area and would not be architecturally consistent with the existing single-family dwelling on the property.

F. It 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 of characteristics of the following:

1. The area, heights, mass, materials, and scale of structures;

As discussed in Findings 1 and 2 above, the overall size, height, and scale of the project will be incompatible with the scale of the surrounding neighborhood. The project does not incorporate architectural characteristics consistent with the existing single-family dwelling on the property. Although the detached accessory structure has been sited within the building envelope established by R-1:B-4 zoning district and maintains adequate separation from other structures and property lines, the overall dimensions of the project would be located on a localized ridgeline and would be adversely visible from offsite locations, including local open space.

2. Drainage systems and appurtenant structures;

The drainage system for the project has preliminarily been reviewed and accepted by the Department of Public Works (DPW). As part of the Building Permit review, the Department of Public Works will review the grading and drainage plans to ensure that the project incorporates suitable drainage systems that would adequately collect, convey, distribute surface run-off into appropriate drainage systems.

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

The overall dimensions and size of the detached accessory structure would result in excessive grading on the property. The building square footage, footprint, and configuration could be reduced to minimize the amount of grading and still achieve a reasonable garage and studio area for the property owner.

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 detached accessory structure would be sited on top of a localized ridge which is a visually prominent location. As such, the structure would be visible from offsite locations, including nearby private property and public open space. The overall scale, size, design, and height of the detached accessory structure would impact views and vistas because the structure does not blend into the surrounding natural and built environments to the greatest extent feasible.

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

The project applicant submitted a preliminary evaluation of the proposed single-family residence indicating that the project qualify as a “Certified” structure per the “New Home Green Building Residential Guidelines.”

- 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 project is inconsistent with policies and programs in the Countywide Plan and the Marin County Single-family Residential Design Guidelines identified in Finding IV above because the detached accessory structure would be out of scale with surrounding residential development and incompatible with the prevailing community character. The project does not blend into the surrounding natural and built environments to the greatest extent feasible, would not minimize grading and site disturbance, and would be detrimental to the public interest, health, convenience, and welfare.

- IX. WHEREAS the Marin County Planning Commission finds that the bases for the Zerull appeal cannot be sustained and that the Deputy Zoning Administrator acted appropriately in denying the Zerull Use Permit and Design Review due to the following factors:

- A. *The Single-Family Residential Design Guidelines should not apply to the project since it was accepted as complete before the adoption of said guidelines.*

Response to Appeal:

The appellants assert that the Zerull application was deemed complete prior to the adoption of the Single-Family Residential Design Guidelines and therefore should not be relied upon or made reference to in the determination regarding the Zerull Use Permit and Design Review application. The proposed project is subject to Use Permit approval because the detached accessory structure exceeds a height of 15 feet. Design Review approval is required because the total building area on the property exceeds 4,000 square feet.

The findings to approve a Design Review (specifically Section 22.42.060.E of the Marin County Code) state, in part, that “The proposed development will be in compliance with the design and locational characteristics listed in Chapter 22.16 (Planned Districts Development Standards).” Furthermore, findings to approval a Use Permit (specifically Section 22.48.040.D of the Marin County Code) states, “The design, location, size, and operating characteristics of the proposed use are compatible with existing and future land uses in the vicinity.”

The Single-Family Residential Design Guidelines (Guidelines) reaffirms the development standards established by the code sections listed above. Unlike an ordinance, the Guidelines are not binding but instead serve to expand and clarify existing provisions of the Marin County Code. The Marin County Community Development Agency (CDA) utilizes these design principles when applying these standards to ensure that development occurs in an orderly fashion throughout the County. The adoption of the Design Guidelines represents an effort by the County to more clearly describe and explain preferred design solutions for residential development throughout the County. The Guidelines are an extension of the County’s long standing Design Review requirements and Planned District design standards.

Regardless of whether the Design Guidelines had been adopted before or after the Zerull application was deemed complete, the proposed project would still be inconsistent with the findings to approve a Use Permit and Design Review. The Deputy Zoning Administrator found that the detached accessory structure is visually incompatible with proposed development on the subject parcel due to differences in architectural styles, and is incompatible with development on surrounding parcels due to its excessive size and scale compared to the average building sizes in the area. For more detailed analysis of the project, please refer to the ensuing response to basis of Appeal 3 below.

- B. *Neither staff nor the DZA provided the Zerull's with an opportunity to modify the proposed project.*

Response to Appeal:

The appellants assert in points 2, 3, and 6 of the appeal that they were not given an opportunity to address project deficiencies prior to or at the Deputy Zoning Administrator's hearing. The appellants explain staff did not alert them to the project inconsistencies with the findings to approve a Use Permit and Design Review; that they were not given an opportunity to modify the project in response to project inconsistencies; and that they were placed in a position before the Deputy Zoning Administrator where they were forced to choose between project denial or a modified project.

The appellants were provided with a staff report prior to the August 25, 2005 Deputy Zoning Administrator's hearing where staff raised concerns about the project's conformance with Design Review and Use Permit requirements, and staff recommended a reduction in overall floor area for the detached accessory structure in order to address the project inconsistencies with Design Review and Use Permit requirements. At the public hearing, the Hearing Officer gave the appellants a choice between requesting a continuance to allow time for a redesign, or receiving a denial of the project so the appellants could appeal the decision to the Planning Commission. The appellants chose to appeal the decision.

The appellants were given an opportunity to redesign the project to bring it into compliance with the required findings for Use Permit and Design Review.

- C. *The findings denying the application are subjective in nature and not based on factual information.*

Response to Appeal

The appellants assert that the Deputy Zoning Administrator's action to deny the Zerull Use Permit and Design Review is based on conclusions drawn by the Hearing Officer and not based on factual information. The appellants explain that the reasoning put forward by the Hearing Officer with respect to Marin County Code Sections 22.42.060.A, B, C, E, and F does not justify a change from staff's original resolution recommending approval of the project subject to a reduction in overall floor area.

Marin County Code Section 22.42.060.A

Marin County Code Section 22.42.060.A states, "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 detached accessory structure would be incompatible with its locale and surrounding neighborhood because it would be 14% larger than the average home size in the area, and 445% larger than the average garage size in the area. This is based on the information contained in the floor area ratio analysis on file at the Marin County Community Development Agency. As depicted on the submitted plans, the detached accessory structure does not incorporate architectural design and detailing that are consistent with the existing single-family residence located on the property. Based on a visit to the project site, the Hearing Officer determined that the structure is out of scale when considering its functional requirements, and will be unsightly as viewed from vantage points to the east of the site.

Marin County Code Section 22.42.060.B

Marin County Code Section 22.42.060.B states, “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 and pleasing development of the neighborhood as a whole, including public lands and rights-of-way.”

The Hearing Officer found that the overall size, height, bulk and mass of the detached accessory structure would result in development that visually interferes with vistas from off-site locations, including open space areas. The Hearing Officer observed that although existing vegetation at the project site would provide partial screening, the detached accessory structure would be located on a localized ridge that is visually prominent and result in a structure that is not consistent with the hillside environment.

Marin County Code Section 22.42.060.C

Marin County Code Section 22.42.060.C states, “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.”

Although the appellant raised this issue in their appeal, findings were made that the project would not impair further investment or improvements in the vicinity because the proposed structure, if built, would be required to comply with safety standards as established by the Uniform Building Code.

Marin County Code Section 22.42.060.E

Marin County Code Section 22.42.060.E states, “The proposed development will be in compliance with the design and locational characteristics listed in Chapter 22.16 (Planned District Development Standards) of the Marin County Development Code.” In summary, the Planned District Development Standards require development proposals be sited away from ridgelines and other visually prominent areas while preserving natural site features through effective design that blends development into the surrounding environment.

Based on the submitted plans, the floor area analysis provided by staff, and a visit to the project site, the Hearing Officer determined that the design of the detached accessory structure is incompatible with that of other structures in the vicinity, the surrounding natural environment, and existing development on the subject property. As discussed above, the size and scale of the proposed detached accessory structure would be significantly larger than other structures in the area and would not be architecturally consistent with the existing single-family dwelling on the property.

In conclusion, the Hearing Officer found that the detached accessory structure would be sited on a localized ridge which is a visually prominent area. As such, the structure would be visible from offsite locations, including nearby open space. The overall scale and size of the detached accessory structure would impact views and vistas because the structure does not blend into the surrounding natural and built environments to the greatest extent feasible.

Marin County Code Section 22.42.060.F

Marin County Code Section 22.42.060.F states, “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 of characteristics of the following: (1) the area, heights, mass, materials, and scale

of structures; (2) drainage systems and appurtenant structures; (3) cut and fill or the reforming of the natural terrain, and appurtenant structures (e.g., retaining walls and bulkheads); (4) areas, paths, and rights-of-way for the containment, movement or general circulation of animals, conveyances, persons, vehicles, and watercraft; and (5) will not result in the elimination of significant sun and light exposure, views, vistas and privacy to adjacent properties.”

As discussed above, the Hearing Officer found that the overall size, height, and scale of the project is incompatible with the scale of the surrounding neighborhood and that the project does not incorporate architectural characteristics consistent with the existing single-family dwelling on the property as evidenced by the submitted plans. Furthermore, the Hearing Officer found that the project would result in excessive site disturbance due to the overall scope and size of the project. Although the detached accessory structure would be sited within the building envelope established by R-1:B-4 zoning district and maintains adequate separation from other structures and property lines, the project would be located on a localized ridgeline and would be visible from offsite locations, including open space.

The Hearing Officer concluded that the building area, profile, and footprint could be reduced, thereby minimizing the amount of necessary grading and still achieves a reasonable garage and studio area for the property owner.

- D. *The denial does not take into account the size and configuration of the subject property with respect to other properties in the area.*

Response to Appeal

The appellants assert that the findings ignore the size, location, quality, and value of the Zerull property; particularly as it compares to smaller lot sizes elsewhere within the Bayside Acres Subdivision. The appellants express concerns that the project is penalized for having the largest home on the largest private property in the area.

The Design Review process takes into account how a project relates to the natural and built environments. This consideration evaluates the merits of a project based on the development patterns and architectural character of the immediate community, as well as the appearance of the project from more distant views that may not be in the immediate vicinity of the project. The findings contained in Chapters 22.42 (Design Review) and 22.48 (Use Permit) work in concert with the planned district development standards enumerated in Chapter 22.16 of the Marin County Code to require that projects be harmonious with its surroundings to prevent incongruities within an area.

The size and configuration of the subject property and how it relates to the proposed project was taken into consideration during the processing of the Use Permit and Design Review application. The floor area ratio analysis produced by staff takes into account residences and detached accessory structures along the upper portion of Bayview Drive. The floor area ratio analysis compares home sizes, garage sizes, lot sizes, and overall percentages of floor area to lot areas.

In comparison to the surrounding neighborhood, the proposed detached accessory structure would be 419 square feet larger than the average residence, and 2,712 square feet larger than the average garage/accessory structure. The proposed detached accessory structure would be 114% larger than the average home size in the area, and 545% larger than the average garage size in the area.

It is important to note that the subject property historically consisted of 2 lots that were merged into one legal lot of record in January of 2005. At that time, the property was developed with a 5,824 square foot single-family residence. This information was enclosed in the staff report to the Deputy

Zoning Administrator and considered by the Hearing Officer at the hearings of August 25, 2005 and September 15, 2005.

Staff and the Deputy Zoning Administrator have taken into consideration the large size of the property and its setting within the surrounding neighborhood. These factors should allow an accessory structure on the property which is larger than the typical garage or other detached buildings on smaller lots. In recommending a redesign of the proposal, staff and the Deputy Zoning Administrator were not suggesting that the proposed accessory building be limited in size to the average floor area of other accessory buildings in the neighborhood. Further, the proposed size was found to be excessively large in relation to the character of the community. In conclusion, the Hearing Officer determined that the project was not consistent with findings to approve a Use Permit and Design Review because the project is out of scale with the surrounding community character.

E. The project is not visually prominent or disruptive as viewed from off-site locations.

Response to appeal

The appellants assert that the project is not visually prominent because the property is situated atop a plateau which is not visible from homes located further down the hillside along Bayview Drive. Furthermore, the larger size of the property is able to accommodate the proposed detached accessory structure while maintain adequate setbacks from property lines and other structures.

Policies in the Countywide Plan and the Marin County Development Code discourage development on ridgelines unless there is no other suitable location for the development. If structures must be placed along a ridgeline area, they should be kept to a height limit of 18 feet and 1 story, and should be situated to minimize visibility from adjacent properties and view corridors.

The subject property is located along a localized ridge which provides separation from the Bayside Acres Subdivision to the east, and the Loch Lomond Highlands subdivision to the west. The project can be seen from open space and from the fire road portions of Bayview Drive. The Hearing Officer indicated that the project would be greatly improved if the following design modifications were made to the project: (1) reduction of the overall size and scale of the detached accessory structure, including height; (2) reduction of the area of the upper level while stepping it further into the hillside; and (3) articulating the roof ridgelines to minimize monotonous building lines that are not harmonious with the hillside setting.

Based on the discussion above, project modifications are required to minimize the visual character of the structure as viewed from off-site locations.

SECTION II: ACTION

NOW, THEREFORE BE IT RESOLVED that the Planning Commission hereby denies the Zerull Appeal and upholds the Deputy Zoning Administrator's denial of the Zerull Use Permit and Design Review.

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 **December 8, 2005**.

SECTION IV: ACTION

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 28th day of November, 2005, by the following vote to wit:

AYES:

NOES:

ABSENT:

STEVE C. THOMPSON, CHAIRMAN
MARIN COUNTY PLANNING COMMISSION

Attest:

Kim Shine
Recording Secretary