

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. PC22-008

A RESOLUTION GRANTING THE MARMOR APPEAL OF THE ADMINISTRATIVE RUSHWORTH DESIGN REVIEW DECISION AND DENYING THE RUSHWORTH DESIGN REVIEW

VACANT LOT ON POINT SAN PEDRO ROAD, SAN RAFAEL ASSESSOR'S PARCEL: 186-141-03

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SECTION I: FINDINGS

1. WHEREAS, John Wright, on behalf of the property owners, requested a Design Review approval to construct a new 2,511 square-foot single-family residence with an enclosed 808 square-foot understory and an attached 535 square-foot garage on a vacant lot in South San Rafael. The 3,854 square feet of proposed development would result in a floor area ratio of 48 percent on the 6,959 square foot lot. The building would reach a maximum height of 29 feet, ten 3/4 inches feet above the surrounding grade, and the exterior walls would have the following setbacks: 15 feet from the northwestern front property line; five feet from the northeastern side property line; five feet, three inches from the southwestern side property lines; and 64 feet, seven inches from the southeast rear property line. Various site improvements would also be entailed in the proposed development, including a driveway, new landscaping, and various general site improvements to accommodate the proposed project.

The property is located on a vacant lot on Point San Pedro Road, San Rafael, and is further identified as Assessor's Parcel 186-141-03.

2. WHEREAS, on March 22, 2022, the Marin County Planning Division approved the project.

3. WHEREAS, on March 31, 2022, Bonita Marmor submitted a timely appeal of the Rushworth Design Review approval.

4. WHEREAS, on June 13, 2022, the Marin County Planning Commission held a duly noticed public hearing to take public testimony, consider the project, and overturned the Planning Division's decision.

5. WHEREAS, the bases of appeal are sufficient to overturn the Planning Division's decision, for the reasons discussed below.

A. The appellant asserts that the proposed development fails to conform to County Design Review Guidelines because, contrary to the conclusions stated in the Administrative Decision, the architectural design, massing, and scale are incompatible with the site surroundings and the community.

At 3,854 square feet of proposed development, the proposed home size is incompatible with the surrounding neighborhood due to the size, bulk, mass, and floor area ratio. A future proposal for development should be scaled to align closer with the surrounding

development in the neighborhood, and should be placed on the site to minimize encroachments into the Wetland Conservation Area (WCA) and to increase distance from the existing mature Live Oak tree, classified as a protected tree under the Marin County Code Chapter 22.27 (Native Tree Protection and Preservation). Further, design of the residence should step down the slope to avoid the appearance of excessive mass and bulk.

**B. The appellant asserts that the project encroaches into the Wetland Conservation Area (WCA) in violation of the Marin Countywide Plan policies.**

Given the footprint, size and scale of the proposed development, the impacts to the required WCA 100-foot buffer zone and the surrounding environment are greater than necessary. Thus, future development must be reduced in building footprint, size, and scale to minimize any potential impacts to WCA and other biological resources.

**C. The appellant asserts that the project must go through CEQA (California Environmental Quality Act) review even if it otherwise qualifies for a categorical exemption because it is subject to several of the exceptions to the exemption relied upon by the County.**

Since the application is being denied, it is statutorily exempt from CEQA.

**D. The appellant asserts that the radical pruning of the existing Heritage size Coastal Live Oak required to allow for the size and siting of the residence jeopardizes the tree's survival and puts at risk the biodiversity that thrives in and around the tree.**

The project plans did not include adequate contingencies to protect an existing mature Coast Live Oak tree, classified as a protected tree under the Marin County Code Chapter 22.27 (Native Tree Protection and Preservation). The proposal should have included more details about how those concerns would be addressed, such as by redesigning the building to provide greater distance from the tree.

**E. The appellant asserts that the project infringes upon the views, air, light, and privacy currently enjoyed by the surrounding neighbors.**

Views: Contrary to the appeal, Countywide Plan policies, protecting views and view corridors (DES-4.b, DES-4.d, DES-4.e, and DES-4.f) do not apply in this case because the project is not located near a visually prominent ridgelines, does not involve the construction of a public facility, and is not near a designated scenic highway. Further, it is unlikely that any design would preserve the view from the neighboring property toward Mt. Tamalpais.

Light and Air: Although the proposed building provides setbacks consistent with the R1-B1 zoning district (five feet from the northeastern side property line and five feet, three inches from the southwestern side property lines), where no setback is required the RSP zoning district in which the project is located, future plans should be reduced in size, bulk, mass and footprint in order to ensure adequate separation between the properties, to reduce encroachment to the wetland and to provide additional protection to the heritage tree on the site.

Privacy Concerns: contrary to the appeal, as depicted in Sheet A5.1 of the project plans, the project includes three windows at the main level and two windows on the upper floor facing this neighbor. Two of the three windows on the main level would be inoperable and installed at a high sill height (six feet, two inches) above the finished floor. One would be located in the garage, while the second would be placed in the living room. Neither one would provide a clear line of sight to the neighboring property. The third window at this level would be installed in the kitchen, above the sink, and face the neighbor's wall. Further, one of the two windows on the upper floor would be inoperable and installed at a high sill height (six feet, two inches) above the finished floor. The second window on the upper level would face primarily the street and partially in the Appellant's direction (garage roof). Therefore, neither of the two windows on the upper floor would provide a clear line of sight or cause a substantial adverse impact upon the privacy of other properties, including the adjacent neighbor.

6. **WHEREAS**, on June 13, 2022, the Marin County Planning Commission overturned the Administrative Decision conditionally approving the project and sustained the appeal, and denied the project. Project denials are statutorily exempt from the California Environmental Quality Act (CEQA) requirements pursuant to section 15270.

7. **WHEREAS**, the project is only partially consistent with the goals and policies of the Marin Countywide Plan for the following reasons:

- A. The project is inconsistent with the CWP woodland preservation policy (BIO-1.3) because the project could cause irreversible and permanent damage to an existing a mature Coast Live Oak tree, classified as a protected tree under the Marin County Code Chapter 22.27 (Native Tree Protection and Preservation). Future development of the site should be sited in a way that more sensitive to the existing Live Oak tree to ensure its survival.
- B. The project is consistent with the CWP special-status species protection policy (BIO-2.2) because the subject property does not provide habitat for special-status species of plants or animals. These policies address the potential effects of the Project on existing sensitive species and habitats. The Wildlife Habitat Assessment and Vegetation Assessment completed for the project evaluate the potentially occurring wildlife, vegetation, and habitat. Biological site assessment, prepared by Huffman-Broadway Group, Inc., an environmental consulting, found no special-status plant or wildlife species or sensitive habitats were found on the project site.
- C. The project is inconsistent with the CWP natural transition and connection policies (BIO 2.3) because the project would substantially alter the margins along riparian corridors, wetlands, baylands, or woodlands. As illustrated in Sheet A.02 of the project plans, the pier foundation to support the residence and posts to support the proposed deck would be within the required 100-foot Wetland Conservation Area (WCA). The deck would overhang the area of the WCA by about 12 feet and would shade vegetation in and around the gravel directly beneath the deck. A revised project with smaller footprint could minimize, if not avoid, incursions into the WCA.
- D. The project is inconsistent with the CWP protection of wetland policies (BIO 3.1) because the project encroaches by four feet (for a drilled-pier foundation to support the residence) and nine feet (shallow foundations to support the proposed deck) into the required 100-

foot buffer zone and would not result in significant direct or indirect impacts to biological resources.

- E. The project is consistent with the CWP stream conservation policy (BIO-4.1) because there are no streams present on the site. However, future project proposals would need to reevaluate any potential impacts to the biological resources based on a different project design, and a peer review or subsequent environmental review may be necessary to determine whether additional measures would be necessary. Pursuant to the CWP, Best Management Practices (BMPs) should be used near ephemeral streams and wetland areas, consistent with BIO-4.1.
  - F. The project is consistent with CWP water quality policies and would not result in substantial soil erosion or discharge of sediments or pollutants into surface runoff (WR-1.3, WR-2.2, WR-2.3) because the grading and drainage improvements would comply with the Marin County standards and best management practices required by the Department of Public Works.
  - G. The project is consistent with CWP seismic hazard policies (CWP Policies EH-2.1, EH-2.3, and CD-2.8) because it would be constructed in conformance with County earthquake standards, as verified during the review of the Building Permit application, and the subject property is not constrained by unusual geotechnical problems, such as existing fault traces.
  - H. The project is consistent with CWP fire hazard management policies (EH-4.1, EH-4.2, EH-4.5) because it would meet all fire safety requirements, as verified by the local fire protection district during the review of the Building Permit application.
  - I. The project is inconsistent with CWP aesthetic policies and programs (DES-4.1 and DES-4.e) because it would be out of scale with the environmental constraints of the site including the steep slope and the adjacent wetland. These impacts could be minimized by reducing the size of the residence and stepping the design down the slope, which would better comply with Chapter 22.26.040 of the Marin County Code, the Single-Family Residential Design Guidelines, and the mandatory findings for design review approval.
  - J. The project is inconsistent with CWP residential design policies and programs (DES-3.b and DES-4c) because it does not fit within the context of the neighborhood, minimize the perception of mass and bulk, and comply with the Single-family Residential Design Guidelines.
8. **WHEREAS**, the project is consistent with the Mandatory Findings for Design Review (Marin County Code Section 22.42.060).
- A. The proposed project complies with the Single-family Design Guidelines, as applicable, the characteristics listed in Chapter 22.16 (Discretionary Development Standards) and 22.32.168 (Tidelands), as well as any applicable standards of the special purpose combining districts provided in Chapter 22.14 of this Development Code.**

There are no standards provided in Chapter 22.14 that apply to the project. The proposed project is inconsistent with the Design Guidelines and Discretionary Development Standards because it was not designed to avoid adversely affecting natural resources or the character

of the local community. The project's inconsistency with the standards and guidelines most pertinent to the subject property are discussed below.

**SITE PREPARATION:** Development Standards J.1 through J.6; Design Guidelines A-1.2 through A-1.4

The site is currently vacant, contains one mature Live Oak tree and slopes up and away from the Bayland. Due to the proposed footprint of the building, the house is designed and sited to encroach into the required 100-foot WCA buffer zone. Because the project includes unnecessary encroachments into the WCA, the project is inconsistent with this finding. Future development on this site should minimize the area of disturbance as much as possible to further minimize grading and encroachments into the WCA.

**BUILDING LOCATION:** Development Standards D.1 through D.4; Design Guidelines D-1.6

Consistent with the development pattern in the neighborhood, the structure has been sited adjacent to the roadway with an emphasis on minimizing changes to the natural topography. However, due to the size and scale of the proposed development, the project proposes encroachments into the WCA due to the size, scale, and footprint of the residence. Therefore, the project is inconsistent with this finding.

**PROJECT DESIGN:** Development Standard I.1 and I.2; Design Guideline D-1.7

The property is not considered to be a visually prominent ridge and is not encompassed within the mapped Ridge and Upland Greenbelt area. Given the location of the building as proposed, and the size of the proposed house, the project would be more visually prominent than a smaller house on the property. Therefore, the project as proposed is inconsistent with this finding.

**MASS AND BULK:** Design Guidelines D-1.1 through D-1.5

As noted above, the project proposes 3,854 square feet of floor area and an approximate 48% floor area ratio on the 6,959 square foot lot. A large house on this lot unnecessarily creates excessive mass and bulk. A smaller house with a reduced footprint and floor area ratio that is stepped down the slope would be more appropriate and consistent with the neighborhood. Therefore, the project is inconsistent with this finding.

**EXTERIOR LIGHTING:** Development Standard G; Design Guideline C-1.11

All exterior lights would be recessed and directed downward. The County's standard conditions of approval require that all exterior lighting be directed downward and shrouded, thereby minimizing glare to adjacent properties and light emissions into the night sky.

**LANDSCAPING AND VEGETATION REMOVAL:** Development Standard F; Design Guideline A-1.1

The applicant has provided a landscaping plan that shows retention of the existing protected Live Oak tree and removal of non-native vegetation such as ice plant and pampas grass, which would be replaced with native shrubs and grasses, including California Fescue, California Wild Lilac, Pt. Reyes Ceanothus, and other ornamental non-invasive groundcovers.

**ACCESS:** Development standard C; Design Guidelines A-1.5

The Access to the site would be provided from Pt. San Pedro Road via a new driveway. The Department of Public Works has reviewed the driveway design and determined that the design meets Title 24 requirements.

**NEIGHBORHOOD COMPATIBILITY:** Design Guidelines B-1.1, C-1.1 through C-1.3, C-1.7

The lot is located in an established neighborhood and is the only vacant lot in the area. The project proposes 3,854 square feet of development with a maximum height of 29 feet, ten  $\frac{3}{4}$  inches feet above the surrounding grade. Given the houses in the neighborhood are generally smaller in size, scale, bulk and mass, the project as proposed would be incompatible with the neighborhood. The size of the house is excessively large for the lot and would be visually prominent to the surrounding neighborhood given its location. The project as proposed is inconsistent with this finding.

**B. The proposed development provides architectural design, massing, materials, and scale that are compatible with the site surroundings and the community.**

The exterior colors, materials, details, and the design of the house have been chosen to provide as much compatibility with the site circumstances and the surrounding neighborhood as much as possible. Due to the presence of the WCA on the site, the site constraints dictate that the house should be stepped into the hillside and sited away from the WCA. However, the scale and size of the house, as proposed, are still incompatible with the surrounding neighborhood given the extent of the proposed encroachment into the WCA to accommodate the proposed oversize development. Thus, although development on the site is possible, the project as it is currently proposed is incompatible with the surrounding community.

**C. The proposed development results in site layout and design that will not eliminate significant sun and light exposure or result in light pollution and glare; will not eliminate primary views and vistas; and will not eliminate privacy enjoyed on adjacent properties.**

Although the applicant has proposed a site plan which locates the proposed residence closer to Pt. San Pedro Road, against the hillside, the project proposes encroachments into the WCA and may endanger the long-term viability of the existing mature Live Oak tree. This is mostly due to the size, scale, and footprint of the proposed residence.

**D. The proposed development will not adversely affect and will enhance where appropriate those rights-of-way, streetscapes, and pathways for circulation passing through, fronting on, or leading to the property.**

The project site is located entirely on private property. Therefore, the project would not encroach onto adjoining private properties, public lands, public easements, trails, and rights-of-way.

**E. The proposed development will provide appropriate separation between buildings, retain healthy native vegetation and other natural features, and be adequately landscaped consistent with fire safety requirements.**

The proposed building provides setbacks of five feet from the northeastern side property line and five feet, three inches from the southwestern side property lines. Redesigning the project to provide more protection for the large, protected oak tree would reduce the amount that the oak tree would need to be trimmed, preserving a greater degree of vegetation screening for the proposed project. Therefore, the project is inconsistent with this finding.

**SECTION II: ACTION**

NOW, THEREFORE, BE IT RESOLVED that the Marin County Planning Commission hereby upholds the Marmor appeal and denies the Rushworth Design Review application.

**SECTION III: APPEAL RIGHTS**

NOW, THEREFORE, BE IT RESOLVED that this decision is final unless appealed to the Marin County Board of Supervisors. A Petition for Appeal and the required fee must be submitted in the Community Development Agency, Planning Division, Room 308, Civic Center, San Rafael, no later than eight business days from the date of this decision.

**SECTION VI: VOTE**

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin held on this 13<sup>th</sup> day of June 2022 by the following vote:

AYES: MARGOT BIEHLE, MARGARET CURRAN; CHRISTINA L. DESSER; DON DICKENSON; REBECCA LIND; PETER THERAN.

ABSENT: NONE.



Don Dickenson  
Planning Commission Chair

Attest:

  
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ANA HILDA MOSHER  
Planning Commission Recording Secretary