

RESOLUTION NO. 2010-_____
RESOLUTION OF THE MARIN COUNTY BOARD OF SUPERVISORS
DENYING THE CALL APPEAL AND UPHOLDING THE PLANNING COMMISSION
APPROVAL BY APPROVING THE POPOVICH MINOR DESIGN REVIEW WITH
CONDITIONS.

2077 HUCKLEBERRY ROAD, SAN RAFAEL
ASSESSOR'S PARCEL 164-012-04

SECTION I: FINDINGS

- I. WHEREAS Natasha Popovich has requested Design Review Approval to legalize an existing, 150 square foot accessory structure containing pool equipment on a property developed with an existing Eichler home. The accessory structure is painted light blue with white trim. The 8 foot, 9 inch high structure would maintain the following setbacks from the nearest corresponding property lines: (1) more than 100 feet from the eastern front property line; (2) 3 feet, 6 inches from the southern side property line; (3) 55 feet, 4 inches from the northern side property line; and (4) 3 feet, 9 inches from the western rear property line. The subject property is located in the Marinwood area at 2077 Huckleberry Road, San Rafael, also identified as Assessor's Parcel 164-012-04, in the R-1 zoning district.
- II. WHEREAS on December 21, 2009, the Community Development Agency issued an administrative decision of Minor Design Review approval in accordance with Marin County Code Section 22.42.060 (Design Review) with conditions.
- III. WHEREAS on January 6, 2010, Kimberly Call filed a timely appeal of the Minor Design Review approval to the Marin County Planning Commission.
- IV. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on February 22, 2010, to consider the merits of the project and appeal, and hear testimony in favor of, and in opposition to, the project. The Planning Commission denied the Call appeal, in part, and approved the Popovich Minor Design Review, with revised conditions of approval that modified the project, including requiring removal of the side door on the structure, painting the structure a dark, earth tone color, prohibiting habitable use of the structure, and prohibiting any exterior lighting to be attached to the outside of the shed.
- V. Whereas on March 8, 2010, Kimberly Call filed a timely appeal of the Minor Design Review approval with revised conditions, approved by the Planning Commission to the Marin County Board of Supervisors.
- VI. Whereas the Marin County Board of Supervisors held a duly noticed public hearing on April 13, 2010, to consider the merits of the project and appeal, and hear testimony in favor of, and in opposition to, the project. The Board of Supervisors denied the Call appeal, subject to conditions modifying the project, for the reasons discussed below:
 - A. The appellant asserts that the accessory structure diminishes her views. The structure is visible from the appellant's property, but it does not significantly diminish, reduce, or interfere with her views of the surroundings beyond her property because it is only 8.5 feet in height. The appellant trims the applicant's plantings so they are not allowed to extend beyond the top of the fence to screen the structure from the appellant's property.

- B. The appellant asserts that the accessory structure diminishes her privacy. The accessory structure is a ground level, backyard structure, a reasonable improvement on a residential lot. The pool equipment is in the structure, which also has additional space for storage. There is no activity associated with the structure that would compromise the appellant's privacy. A condition of approval would prohibit the use of the structure for habitation.
 - C. The appellant asserts that the accessory structure diminishes her quiet enjoyment of her home. The accessory structure encloses pool equipment and muffles the noise that was once a source of complaint from the appellant. A condition requiring that a side door be removed and the wall opening closed off would ensure that noise from the pool equipment be contained within the building.
 - D. The appellant asserts that the accessory structure diminishes the value of her home. The accessory structure is designed to match the main residence on the property. Although changes in the economic value of property are not considered by the County's Design Review Findings, accessory structures are common improvements in back yards. The accessory structure next door to the appellant's property does not conflict with the visual character of the area, nor would it result in other adverse effects to the appellant's property.
- VII. WHEREAS the Marin County Board of Supervisors found that the project, as modified by conditions of approval, is Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15303, Class 3 of the CEQA Guidelines because the project would not result in any environmental impacts.
- VIII. WHEREAS the Marin County Board of Supervisors finds that the project as conditionally approved is consistent with the Marin Countywide Plan (CWP) due to the following factors:
- A. The project is consistent with the CWP's SF6 land use designation and policies for the City Centered Corridor.
 - B. The project is consistent with the Countywide Plan's Ridge and Upland Greenbelt policies.
 - C. The project is consistent with the Countywide Plan's Stream Conservation Area and Wetland Conservation Area policies.
 - D. The project is consistent with the Countywide Plan's Bayfront Conservation Area policies.
 - E. 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.
 - F. 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.
 - G. The project would not cause significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation, or other services.
 - H. The project would minimize soil disturbance and maximize retention of natural vegetation.

IX. WHEREAS the Marin County Board of Supervisors finds that the project is consistent with the Mandatory Findings for a Minor Design Review approval per Section 22.42.060 of the Marin County Development Code:

A. The proposed development provides architectural design, massing, materials, and scale appropriate to and compatible with the site surroundings and the community.

As conditioned, the design of the existing accessory structure is compatible with the existing residence with regard to architecture and materials. The structure has a slanted roof, similar to the main residence and other structures on adjacent properties. The height of the structure (8 feet 9 inches) complies with the maximum allowed height (15 feet) for an accessory structure in the R-1 zone district. The vertical siding on the structure is consistent with siding styles in the surrounding neighborhood, and the dark, earth tone colors required by the conditions of approval will be compatible with short and long range views, and will blend in with existing vegetation. Therefore, the design, massing, materials, and scale of the structure are appropriate to and compatible with the site surroundings and the community.

B. The proposed development results in site layout and design (including building arrangement, exterior appearance, heights, setbacks, drainage, fences and walls, grading, lighting, signs, etc.) that will not eliminate significant sun and light exposure, views, vistas, and privacy to adjacent properties; that will not result in light pollution, trespass, and glare; and that will not adversely affect rights-of-way or pathways for circulation.

The accessory structure is located at the rear corner of the subject property, well away from neighboring residences. The structure houses pool equipment that has been in place for many years. The pool is located within the required rear yard setback. The structure is visible from neighboring properties, and the exterior appearance is consistent with what one would expect of an accessory structure on a residential site in this neighborhood. The structure, at 8 feet 9 inches, is lower than the maximum allowed height for an accessory structure (15 feet) and thus does not dominate the view from neighboring properties. The door, window, and sliding glass door on the structure are not oriented to provide views into neighboring properties, rather to provide access and light to the interior of the structure. As a condition of approval the side door to the structure will be removed and the wall will be finished to match the rest of the siding. The structure does not eliminate significant sun and light exposure, views, vistas, and privacy to adjacent properties because of its low height. Exterior lighting mounted on the structure is prohibited. The structure is located on private property and does not interfere with rights-of-way nor pathways for circulation.

C. The proposed development will provide appropriate separation between buildings and will be properly and adequately landscaped with maximum retention of trees, native plants, and other natural features consistent with fire safety requirements.

The existing accessory structure is more than 50 feet from the main house on the subject property, and more than 50 feet from the nearest neighboring residence. Landscaping is compatible with the design of the existing home and the structure and is consistent with fire safety requirements.

- D. **The proposed development will minimize cut and fill, the reforming of the natural terrain, and appurtenant structures (e.g. retaining walls and bulkheads).**

The structure is located on a level pad at the rear of a level back yard and there are no retaining walls or other appurtenant structures associated with the structure.

- E. **The proposed development complies with the Single-family Residential Design Guidelines and the design and locational characteristics listed in Chapter 22.16 (Planned District Development Standards).**

A single family residence with related accessory structures is consistent with the SF6 Land Use Designation of the CWP. The accessory structure is appurtenant to the primary structure, an Eichler home, at 2077 Huckleberry Road, and is therefore consistent with the CWP Land Use designation. The subject property is identified on the Marinwood Land Use Policy Map, Map 2.3 of the Countywide Plan. The following CWP policies and programs are relevant to the proposed project:

Goal DES-1 of the CWP is **Preservation of Community Character**: Perpetuate the unique character of each community, including the essential design characteristics that make it attractive and livable.

The subject property is located in an Eichler neighborhood. The design of the accessory structure is in keeping with the design and appearance of the house. The swimming pool is the dominant visual element of the back yard. The roof angle, sliding glass doors, and wood siding of the accessory structure are in keeping with the roofline, exterior finishes, and windows of the existing residence. The window on the north side of the structure allows natural light to illuminate the interior of the shed. This structure is a utilitarian accessory structure that has been designed to visually relate to the existing residence, and to mimic the architecture of the Eichler-designed homes in the area. The appearance of the existing accessory structure is consistent with the character of the neighborhood because it echoes the Eichler design themes, and its orientation on the site is appropriate as its purpose is to enclose the existing pool equipment. By comparison, the shed preferred by the appellant has the appearance of a mass produced product that, as the appellant suggests, can be purchased at a local home improvement store, and does not contribute to the essential design characteristics that make the Eichler neighborhoods attractive and livable. The existing accessory structure that is the subject of this appeal is clearly consistent with the CWP Goal regarding Preservation of Community Character.

CWP Policy DES-1.1 states **Address Design at the Community Level**: Use community plans to regulate building design and protect key resources. Encourage cities and towns to address design issues.

There being no community planning document to guide development in the Marinwood Area, the proposed project was evaluated against the Development Standards of the MCC as well as the Single-Family Residential Design Guidelines in keeping with CWP Goal DES-1 cited above. As discussed under "A", above, the Development Code allows accessory structures within required setbacks with Design Review approval. The accessory structure's design is compatible with the design, scale, and character of the existing home on the site, as well as development on residential properties in proximity to the project site, and complies with General Site Design Objectives of the Single-family Residential Design Guidelines.

CWP Implementing Program DES-3.b **Adopt Design Guidelines** states, in part, "Continue to incorporate the Marin County Single-Family Residential Design Guidelines into the design process for new and remodeled homes, and include standards for view protection, solar access, landscaping and trees, streetscapes and pedestrian amenities, and compatibility with surrounding built and natural features."

The following policies from the Single-Family Residential Design Guidelines are relevant to the proposed project.

C-1.9 Mechanical Equipment (Visual). Mechanical equipment should be screened from public view. Enclosures should be designed to be integral with the architecture and landscape character of the other parts of the property.

C-1.10 Mechanical Equipment (Noise)

Air conditioning equipment, swimming pool equipment and other facilities that may generate noise should be located a sufficient distance from neighboring property lines to avoid or minimize noise intrusion.

C-1.11 Exterior Lighting. Site lighting fixtures should be selected or designed to complement the architectural design of the project. Exterior light fixtures should be mounted at low elevations to preserve the nightscape and natural setting of the surrounding area, especially in rural and hillside areas, and to prevent glare that may be visible from off-site locations and adjacent residences.

D-1.1 General Massing. Buildings should be divided into smaller parts, including detached buildings, to reduce effective visual bulk.

The pool equipment on the subject property is screened from view by an accessory structure that has been designed to be integral with the architecture and landscape character of the other parts of the property. Pool equipment installed in close proximity to a property line can cause noise problems for neighbors. Many homeowners are remedying this situation by building enclosures for their pool equipment. The existing accessory structure on the Popovich property was constructed to enclose the pool equipment to protect the equipment from the elements and to reduce the noise from the equipment while maintaining the existing setbacks. The detached accessory structure, separate from the primary residence, reduces the effective visual bulk of development on the site.

F. The project is designed to conserve energy and natural resources by meeting the green building standards in Table 4-6 of the Marin County Code.

The structure is an accessory structure to the main residence and is not subject to the green building standards of the Marin County Code.

G. The design, location, size, and operating characteristics of the proposed use are consistent with the Countywide Plan and applicable zoning district regulations and will not be detrimental to the public interest, health, safety, convenience, or welfare of the County.

As conditioned, the existing accessory structure is an appropriate use on a residential property. The design, location, size, and operating characteristics are consistent with the SF6 Countywide Plan land use designation, and with the R-1 zoning district regulations, and it is not detrimental to the public interest, health, safety, convenience, or welfare of the County.

SECTION II: CONDITIONS OF APPROVAL:

NOW, THEREFORE, BE IT RESOLVED that the Marin County Board of Supervisors hereby denies the Call Appeal and approves the Popovich Minor Design Review (DM 10-18) subject to the following conditions. The property is located a **2077 Huckleberry Road, San Rafael**, and is further identified as **Assessor's Parcel 164-012-04**.

Community Development Agency – Planning Division

1. The Popovich Minor Design Review is approved to legalize an existing, 150 square foot accessory structure. The 8 feet, 9 inch high structure shall maintain the following setbacks from the nearest corresponding property lines: (1) more than 100 feet from the eastern front property line; (2) 3 feet, 6 inches from the southern side property line; (3) 55 feet, 4 inches from the northern side property line; and (4) 3 feet, 9 inches from the western rear property line. The subject property is located at 2077 Huckleberry Road, San Rafael, also identified as Assessor's Parcel 164-012-04.
2. Plans submitted for a Building Permit shall substantially conform to plans identified as "Exhibit A," entitled, "Pool Equipment And Storage Shed," consisting of 2 sheets received October 21, 2009, and on file with the Marin County Community Development Agency, except as modified by the conditions listed herein.
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 have a licensed land surveyor or civil engineer with proper certification conduct a survey of the southern side and western rear 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 to the Planning Division confirming that the staking of the property lines has been properly completed.
5. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall submit a complete set of revised plans for review and approval by the Community Development Agency staff showing the whole property and the existing development to scale. Once approved, the plans shall be incorporated into the approved project file as "Exhibit A-1" and shall supersede "Exhibit A." The revised exhibit shall indicate the following modifications to the project:
 - a. The shed shall be repainted dark, earth tone colors, subject to approval by CDA staff. All flashing, metal work, and trim shall be treated or painted an appropriately subdued, non-reflective color.
 - b. The door on the southern side of the structure shall be removed and the opening shall be finished to match the siding of the rest of the structure.
 - c. There shall be no exterior lighting mounted on the accessory structure.

- d. The shed shall only be used for storage and pool equipment and not as a habitable structure.
6. All construction activities shall comply with the following standards:
 - a. Construction activity is only permitted between the hours of **7:00 a.m. and 6:00 p.m., Monday through Friday**, and **9:00 a.m. and 5:00 p.m. on Saturday**.. No construction shall be permitted on Sundays and the following holidays (New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day). Loud noise-generating construction-related equipment (e.g., backhoes, generators, jackhammers) can be maintained, operated, or serviced at the construction site from 8:00 a.m. to 5:00 p.m. Monday through Friday only. Minor jobs (e.g., painting, hand sanding, sweeping) with minimal or no noise impacts on the surrounding properties are exempted from the limitations on construction activity. 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. 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 this application, for which action is brought within the applicable statute of limitations.
8. 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.

SECTION III: VESTING

NOW, THEREFORE BE IT FURTHER RESOLVED that the applicant must vest this approval by substantially completing all conditions of approval and commencing the allowed use by **April 13, 2012**, 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.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin held on this ____th day of _____, 2010, by the following vote:

AYES: SUPERVISORS

NOES:

ABSENT:

PRESIDENT, BOARD OF SUPERVISORS

ATTEST:

CLERK