

Exhibit A

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DRAFT RESOLUTION

Before the Planning Commission in and for the County of Monterey, State of California

In the matter of the application of:

STRAIN FREDERICK S TR (REF240014)

RESOLUTION NO. __

Resolution by the Monterey County Planning
Commission:

1. Denying the appeal from Mr. Thomas Hood of the Director's Interpretation regarding whether the first story of the proposed single family dwelling under PLN220158 should be considered a "story" under Monterey County Code; and
2. Establishing interpretative guidelines for how to apply the Pebble Beach Special Setbacks, established under a blanket variance in 1969 and Title 21, to structures where the first story is partially below grade.

[REF240014 Strain Frederick S Tr, 2987 17 Mile Drive, Pebble Beach, Greater Monterey Peninsula Area Plan (Assessor's Parcel Number 007-251-002-000)]

The Strain Frederick S Tr application (REF240014) came on for a public hearing before the Monterey County Planning Commission on July 10, 2024. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Planning Commission finds and decides as follows:

FINDINGS

1. **FINDING:** **PROCESS** – The County has processed the Director's Interpretation and Appeal Request in compliance with all applicable procedural requirements.
EVIDENCE:
 - a) Staff received a request for a Director's Interpretation whether a basement qualifies as a "story" of a home under the 1969 blanket variance and section 21.12.070 which impose special setbacks for all structures within certain areas of the Greater Monterey Peninsula Area Plan. The applicant paid the associated processing fees on April 17, 2024.
 - b) On April 26, 2024, within 10 days of the request, the Director's Interpretation was completed and sent it to the applicant per section 21.82.040.C of the County's Zoning Ordinance, Title 21.
 - c) Per section 21.82.040, Mr. Thomas Hood, the applicant and appellant appealed the Director's Interpretation and paid the applicable appeal fees to the Secretary of the Commission within 10 days of receiving the Interpretation. Staff received the appeal request on May 5, 2024.

- d) Staff immediately set the project for the July 10, 2024 Planning Commission meeting, the first available date, to which the applicant agreed.
- e) The appeal and supporting materials submitted by the project applicant to County of Monterey HCD-Planning for the proposed project are found in Project File REF240014.

2. FINDING: APPELLANT’S CONTENTIONS – The Planning Commission finds that applicant’s appeal is without merit and therefore denies that appeal.

- EVIDENCE:**
- a) Appellant contends that the subject interpretation is not supported by the evidence, because the proposed second story/10-foot setback would not impact view corridors from the public right of way, golf course, and behind the proposed project. Applicant characterizes the proposed project as a two-story, rather than a three-story house, because the first story is 100% below grade. He argues that their first story should be considered a basement instead of a story, and that basements should not be subject to the special side setbacks of 10 feet for the first story and 20 feet for the second story.
 - b) In support of the appeal, appellant submitted an exhibit to the County, labeled “Exhibit A,” in which he claimed that other jurisdictions required certain criteria be satisfied for a basement to be considered a story. However, appellant neither stated to what jurisdictions he referred nor provided a single supporting citation for his argument. Consequently, this claim is not competent evidence in support of the appeal.
 - c) The applicant also argues that the inconsistent setbacks were not identified until staff deemed his application complete. Staff sent a completeness letter on January 4, 2024, informing the applicant that staff had all the necessary documents and information to complete its review. As an attachment to that letter, staff included a list of inconsistencies with the Code that staff identified during its 30-day completeness review. The Permit Streamlining Act is applicable to discretionary permits and requires local agencies to inform the applicant within 30 days of their submittal if their application is complete or incomplete (Government Code § 65943). The completeness review is a 30 day period in which staff must determine if further information is needed to come to a determination on whether to support an application or not. Inconsistencies with the County Code do not render an application incomplete and staff’s review for consistency is not regulated by the Permit Streamlining Act. Here, staff informed the applicant of these inconsistencies at the time staff deemed the application complete.
 - d) The applicant points out that the current design that is the subject of the appeal was approved by the Pebble Beach Architectural Review Board. The Architectural Review Board is neither a government entity nor is it responsible for reviewing the project for consistency with the County’s policies and regulations; therefore, obtaining its support is immaterial to the question whether the project is consistent with the County Code.

- e) The applicant argues that his current design meets the “wedding cake” setback design, which he claims was contemplated by the special setback regulations. Although the plans provide 20-foot side setbacks for the third floor, the design is still inconsistent with the requirements of section 21.12.070, as the second floor has 10-foot side setbacks.
- f) The appeal and supporting materials submitted by the project applicant to County of Monterey HCD-Planning for the proposed project are found in Project File REF240014.

3. FINDING: DIRECTOR’S INTERPRETATION/REASONS FOR DENIAL –

The Chief of Planning has reviewed the County’s policies and regulations in relation to a proposed structure within the “Pebble Beach Special Setbacks” area and has concluded that the first floor of a structure, even if it is partially below grade, shall qualify as a story under Title 21. The Planning Commission agrees with the Director’s Interpretation.

- EVIDENCE:**
- a) The 1969 blanket variance approved under Resolution No. ZA-595 established special setbacks for properties located within certain subdivisions including Monterey Peninsula County Club #1-5, the Resubdivision of Block 316-Monterey Peninsula County Club #3, Del Monte Forest #1 and 2 and Pescadero Heights. These special setbacks include a 20-foot minimum front yard setback except in cases where lots front a road over 50 feet in width and 10 yard side setbacks for structures in the same subdivisions. Per the County’s Zoning Ordinance, Title 21, section 21.12.070.D.3.b, the 10-foot side setback requirement only applies to the first story of a structure. The second floor of a structure is subject to a 20-foot side setback requirement.
 - b) In PLN220158, applicant applied for a full demolition and rebuild of an existing, legal non-conforming, single-family dwelling within the Monterey Peninsula County Club #1 subdivision. The new single-family dwelling is subject to the blanket variance, which allows a 10-foot side setback for the first story of the structure and a 20-foot side setback for the second story. The proposed single-family dwelling includes three stories, the first of which is partially below grade, but fully visible from 17 Mile Drive.
 - c) The applicant’s current design does not meet the second-story 20 foot side setback, though the third floor would. They believe since the first floor is considered a basement under Monterey Building Code, as it is partially below grade, that it should not count as a “story”. Title 21 defines a story “that portion of a building or structure included between the surface of any floor and the surface of the next floor above it, or if there is no floor above it, then the space between the floor and the ceiling next above it”. Therefore, the applicant’s first floor, although it may be considered a basement, still qualifies as a story.
 - d) Staff’s interpretation of the setback regulations within the blanket variance as well as Title 21, section 21.12.070, are to protect visual resources and create neighborhood consistency within the applicable subdivisions. As stated in the Director’s Interpretation, if a proposed

structure had a basement completely below grade and not visible above ground, the Director would have considered an exception to allow the second story to have a 10-foot side setback and the third story to have a 20-foot side setback. In the case of PLN220158, though, the first story is completely visible from 17 Mile Drive and the structure appears to be three stories from the scenic roadway.

- e) There are other legal non-conforming structures in the neighborhood that do not comply with the second story side setback, which the applicant claims is a reason for an exception to be granted. As the subject parcel currently contains a legal non-conforming structure, staff explained the options for partial remodels or additions to that structure to maintain its legal non-conforming setbacks, but the applicant was not interested in these options. Additionally, the applicant is proposing a 695-square foot accessory dwelling unit (ADU) that is not counted towards their total FAR, as the attached structure is exempt from site development standards under State ADU Law. Therefore, staff disagrees that applicant would not enjoy additional floor area. Although applicant would be giving up their legal non-conforming side setbacks, the applicant would have an additional 695 square feet beyond their allowed FAR, per section 21.12.060 of the County's Zoning Ordinance.
- f) The Code is clear that the applicant's second floor qualifies as a story and is subject to the special second story setbacks established in section 21.12.070. Applicant's appeal does not contain sufficient evidence or argument to rebut the Director's Interpretation as to whether a basement counts as a story for the purpose of the Pebble Beach special side setbacks.
- g) The appeal and supporting materials submitted by the project applicant to County of Monterey HCD-Planning for the proposed project are found in Project File REF240014.

4. FINDING: **INTERPRETIVE GUIDELINES** – The Planning Commission establishes guidelines for how to interpret the Pebble Beach “Special Side Setbacks”, established under a blanket variance in 1969 and Title 21, when a story of a structure is partially below grade.

- EVIDENCE:**
- a) The Planning Commission reviewed the Director's Interpretation (REF240014) regarding the Pebble Beach special side setbacks and agrees with the proposed interpretative guidelines. The special side setbacks including the 10-foot side setback approved under the 1969 blanket variance, and the second story 20-foot side setback, shall be applied to all stories of a structure that are fully or partially visible above ground.
 - b) If a proposed structure includes a story that is completely underground, it shall not count as the first story of the structure for the purposes of the special side setbacks. In that case, the first story that is visible from above ground would be allowed the 10-foot side setback and the second story of the structure that is visible above ground would be allowed the 20-foot side setback.
 - c) For alterations or renovations to existing structures with legal non-conforming side setbacks, the regulations within section 21.68.040 shall be followed.

- d) The appeal and supporting materials submitted by the project applicant to County of Monterey HCD-Planning for the proposed project are found in Project File REF240014.

- 5. FINDING:** **APPEALABILITY** - The decision on this project may be appealed to the Board of Supervisors.
- EVIDENCE:** Sections 21.82.050 and 21.80.040 of the Monterey County Zoning Ordinance state that the Board of Supervisors is the appropriate authority to consider appeals of decisions made by the Planning Commission as to Director's Interpretations.

DECISION

NOW, THEREFORE, based on the above findings and evidence, the Planning Commission does hereby:

1. Deny the appeal from Mr. Thomas Hood of the Director's Interpretation regarding whether the first story of the proposed single family dwelling under PLN220158 should be considered a "story" under the Monterey County Code; and
2. Establish interpretative guidelines for how to apply the Pebble Beach Special Setbacks, established under a blanket variance in 1969 and Title 21, to structures where the first story is partially below grade.

PASSED AND ADOPTED this 10th day of July, 2024, upon motion of _____, seconded by _____, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Melanie Beretti, AICP
Planning Commission Secretary

COPY OF THIS DECISION MAILED TO APPLICANT ON _____

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS.

IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK OF THE BOARD ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE _____.

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.



MONTEREY COUNTY

HOUSING AND COMMUNITY DEVELOPMENT

Craig Spencer, HCD Director

HOUSING, PLANNING, BUILDING, ENGINEERING, ENVIRONMENTAL SERVICES

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MEMORANDUM

Date: 04/26/2024

To: Thomas Hood, A.I.A., Architect

From: Melanie Beretti, Chief of Planning

Subject: Does a basement qualify as a story in reference to the Del Monte Forest Second Story Side Setbacks

cc: REF240014; PLN220518

The agent (Thomas Hood) for PLN220158/Strain requested a director's interpretation to clarify whether or not their proposed basement qualifies as a "story" in regards to the Del Monte Forest second story side setbacks pursuant to Monterey County Code (MCC) section 21.12.070.D.3.b.

The special setbacks for Del Monte Forest were established under a blanket variance under ZA00595 in 1969. The intent behind the special setbacks is to regulate the size and massing of homes within specific areas of the Del Monte Forest, including the subject project site. The setbacks help protect visual resources including views from scenic roadways and public viewing areas. They also provide consistency in structure design, contributing to the overall neighborhood character.

As codified, the setback regulation applies to the second "story" of a structure. The definition for "story" within section 21.06.1170 of the County's Inland Zoning Ordinance, Title 21 is *"that portion of a building or structure included between the surface of any floor and the surface of the next floor above it, or if there is no floor above it, then the space between the floor and the ceiling next above it."*

Per the definition above, a basement under any circumstances qualifies as a story. Since the intent of the special side setback regulation is for visual purposes, this policy would apply to stories that are visible from scenic roads or public viewing areas. The proposed project's basement is only partially underground and the above ground portion is visible from Old 17 Mile Drive and the golf course across the street. As proposed, all three stories of the single family dwelling would be clearly visible, and the second story would not comply with the special setback regulation.

If a basement was completely below grade and not visible, an exception to the special setback regulations may be appropriate to allow the 20 foot side setback of a third story, when that third story of the dwelling is the second above-ground story. In that scenario, the structure would appear to be a two story house from public views.

Should you wish to appeal this decision, the appeal must be filed with the Secretary to the Planning Commission no later than 5:00 p.m. on May 6, 2024, or no subsequent appeal on this issue may be heard. Please see Chapter 21.82 for more details regarding appeals to administrative interpretations of the zoning ordinance.

Interpretation Prepared By: Zoe Zepp, Assistant Planner

Interpretation/Opinion Confirmed by Managers: _____

DocuSigned by:
Melanie Beretti
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Melanie Beretti, AICP, Chief of Planning

04/26/24

Date

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