

# Attachment D

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# NOTICE OF APPEAL

Monterey County Code  
Title 19 (Subdivisions)  
Title 20 (Zoning)  
Title 21 (Zoning)

RECEIVED  
MONTEREY COUNTY

2021 JUN 17 PM 4:27

CLERK OF THE BOARD

*Julian Lorenzana*  
DEPUTY  
JULIAN LORENZANA

No appeal will be accepted until written notice of the decision has been given. If you wish to file an appeal, you must do so on or before \_\_\_\_\_ (10 days after written notice of the decision has been mailed to the applicant).

Date of decision: May 26, 2021; last day to file appeal June 17, 2021

The Open Monterey Project and property owners concerned with equal treatment, fairness

1. Appellant Name: and tribal cultural resources

Address: c/o Molly Erickson, Stamp / Erickson, PO Box 2448, Monterey CA 93942

Telephone: 831-373-1214 erickson@stampLaw.us

2. Indicate your interest in the decision by placing a check mark below:

Applicant \_\_\_\_\_

Neighbor \_\_\_\_\_

Other (please state) Interested parties who participated in administrative process below

3. If you are not the applicant, please give the applicant's name:

Isabella 2 LLC PLN180523

4. Fill in the file number of the application that is the subject of this appeal below:

	Type of Application	Area
a) Planning Commission: PC-	<u>21-05</u>	<u>Combined development permit, IS/MND Carmel Point</u>
b) Zoning Administrator: ZA-	_____	_____
c) Administrative Permit: AP-	_____	_____

## Notice of Appeal

5. What is the nature of your appeal?

a) Are you appealing the approval or denial of an application? Approval

b) If you are appealing one or more conditions of approval, list the condition number and state the condition(s) you are appealing. (Attach extra sheet if necessary)

Please see attached.

Thank you.

6. Place a check mark beside the reason(s) for your appeal:

There was a lack of fair or impartial hearing \_\_\_\_\_

The findings or decision or conditions are not supported by the evidence  X

The decision was contrary to law  X

7. Give a brief and specific statement in support of each of the reasons for your appeal checked above. The Board of Supervisors will not accept an application for an appeal that is stated in generalities, legal or otherwise. If you are appealing specific conditions, you must list the number of each condition and the basis for your appeal. (Attach extra sheets if necessary)

Please see attached. Thank you.

8. As part of the application approval or denial process, findings were made by the decision-making body (Planning Commission, Zoning Administrator, or Chief of Planning). In order to file a valid appeal, you must give specific reasons why you disagree with the findings made. (Attach extra sheets if necessary)

Please see attached. Thank you.

9. You must pay the required filing fee of \$3,540.00 (make check payable to "County of Monterey") at the time you file your appeal. (Please note that appeals of projects in the Coastal Zone are not subject to the filing fee.)

Project is in coastal zone and is not subject to the filing fee.

10. Your appeal is accepted when the Clerk to the Board accepts the appeal as complete and receives the required filing fee. Once the appeal has been accepted, the Clerk to the Board will set a date for the public hearing on the appeal before the Board of Supervisors.

**The appeal and applicable filing fee must be delivered to the Clerk to the Board or mailed and postmarked by the filing deadline to PO Box 1728, Salinas CA 93902. A facsimile copy of the appeal will be accepted only if the hard copy of the appeal and applicable filing fee are mailed and postmarked by the deadline.**

APPELLANT SIGNATURE  /s/ Molly Erickson on behalf of appellants  Date:  June 17, 2021

RECEIVED SIGNATURE \_\_\_\_\_ Date: \_\_\_\_\_



Attachment to Appeal  
by The Open Monterey Project and property owners  
who are concerned about equal treatment, fairness, tribal cultural resources,  
and implementing the adopted land use plans and codes.

The appeal is of all approvals including the CDP and the CEQA documents. The statements below describe the concerns with the resolution appealed from. The resolution's findings and evidence overlap so the issues are not necessarily limited solely to the findings provided for reference below. The issues raised are references in several of the findings and are not mutually exclusive. The headings in this document are for reference only, and do not limit the scope and application of the comments provided under each heading.

The project is inconsistent with adopted land use plans and codes.

The project is not consistent with the adopted plans and codes because of the large amounts of grading, the land form change, the FAR variance, and the stairway to the third floor and the height of the chimney shows a foreseeable use of the rooftop as a deck. (E.g., finding 1 and evidence stated).

Roof deck: The original plans actually showed the roof deck, completed with interior staircase and extra-high chimney that is some 9-10 feet higher than the roof. When the public and county expressed concerned about the proposed use, the applicant removed the railing from the roof – however the interior stairway to the roof and extraordinarily high chimney remain.

The foreseeable use as a third store deck would pit neighbor against neighbor because the County only enforces based on complaints. It would require photographing the use of the roof as a deck. The lot is small and is built out to the minimum setbacks which means the house would be very close to adjacent houses and the sound and other impacts of a rooftop use would adversely impacts neighbors.

The County should require the elimination of the interior stairway from the second floor to the flat roof, and the reduction in height of the chimney to six feet or less above the roof. These steps would materially reduce the high risk of the roof being used as a roof deck by future owners, residents and renters.

Grading – the project would remove (cut) 304 cubic yards of soil from the 3,600 square foot property. That is a large amount of unnecessary cut that is not consistent with the LCP statements about changing existing land forms and the recent specific CCC direction on minimizing grading at Carmel Point in order to respect and protect tribal cultural resources and archaeological resources.

Tribal cultural resources: See above. Also, the County failed to provide draft mitigation language to tribal representatives as required. (E.g., See pp. 10-11, evidence m.) Appellants are concerned that this would be a Cultural resources: there is more grading and excavation than is consistent with the CCC recent direction for three houses on Carmel Point. The amount of grading at the site increases the likelihood for uncovering resources. The site has never been developed.

Neighborhood character: The design is not consistent with neighborhood character. The record does not show other two-story flat-roof houses at Carmel Point in the immediate vicinity of the proposed project especially of this size on a small lot.

Privacy: The project as proposed would intrude on the privacy of adjacent and nearby neighbors due to the floor-to-ceiling class windows on the first and second floors of the house on this lot, and due to the foreseeable use of the easily accessible flat roof as a deck.

#### Variance.

The County records show that “the County has a history ... of denying ... Variances to FAR in this vicinity” of Carmel Point for new construction. (Cooper project, PLN040559, 2005.) Nothing has changed.

The County should deny the variances here. (E.g., findings 8, 9 and 10.)

The proposed development exceeds the allowed FAR by nearly 30%. The planning commission resolution contains incorrect math calculations. The exceedance of 45% to the variance amount of 58.4% is approximately 30%, which is far greater than the “13.4 percent” claimed in finding 9a. Lots range in size. Somebody will have the largest lot, for which they will pay more to acquire, and somebody will have the smallest lot, for which they will pay less to acquire. The price differential reflects the entire bundle of sticks, including the ability to develop. The size of the lot controls many zoning requirements – such as

setback where it is a percent to lot frontage, or site coverage that is a percentage of lot coverage, or floor area ratio that is a percentage of the size of the lot. That is the nature of zoning. The mere fact that nearby lots have recently been developed with larger homes is a simple reflection of the fact that those are larger lots. It is not for any other reason than the other lots are larger.

There is no evidence that the floor area variance would better achieve the goals and objectives of the LUP, contrary to the findings appealed from. There is no correlation between (1) the LUP goals and (2) a floor area that is over the maximum allowed by zoning. The floor area should be within the maximum allowed by the Title 20, which would be more consistent with the LUP, and better achieve the goals and objectives than an FAR variance. (E.g., see 10c.)

The size of the lot is not a special circumstance such that it supports an FAR variance here. The FAR is based on the size of the lot, and thus granting a variance from the standard is an award of special privileges. Other lot owners in the area have not received a variance for new construction. The County has a history of denying FAR variances for new construction. The only evidence of other variances is when existing structures that exceeded the FAR – that were build before the current zoning ordinance – have reduced their FAR. Isabella 2 LLC proposes new construction on an undeveloped lot. Thus, the granting of a variance for this new development to exceed the FAR would be a special privilege and is not supported.

Dozens of lots at Carmel Point are approximately 40' x 100' which was the typical lot size when the lots were subdivided, the same as in the adjacent Carmel-by-the-Sea. These 40' by 100' lots are subject to the 45% FAR. A 4,000 sf lot could have a 1,800 sf house on it under the 45% FAR. When an applicant with a 40' x 100' lot comes to County, they would be subject to the 45% FAR because there are no unusual circumstances. The 45% FAR would allow a 1,800 sf house.

The proposed variance would give the Isabella 2 LLC lot more floor area than a 40' x 100' lot. The Isabella 2 LLC project has asked for 2,100 square feet, which is 300 s.f., or 25% larger than the FAR of a typical 40' x 100' lot, which is 1,800 s.f.

At most, the Isabella 2 LLC project should not be awarded any more than the amount of FAR that would be provided to a typical Carmel Point lot of 40' by 100', which is 1,800 sf. Anything more than that would be an unfair privilege not given to other lots in the immediate vicinity. Merely because a lot is nonconforming is not in itself unusual circumstances. Many lots at Carmel Point – and possibly the majority of lots at Carmel Point – are less than 6,000 s.f. which is the current minimum lot size for newly created lots. That means that many and perhaps

most of the lots at Carmel Point are nonconforming lot sizes.

In fact, many of the existing 40 x 100 lots on Carmel Point proper have much smaller existing homes than the new house proposed by Isabella 2 LLC. These existing homes on existing 40' x 100' lots range from approximately 1,000 s.f. to 1,650 s.f. and up to around 1,800 s.f.. Those are existing homes that comply with the FAR. Compliance with the 45% FAR is doable as these homes show.

To grant a variance to this lot and not others that are less than 6,000 s.f. would be to give special privileges to this applicant and this lot. The County CEQA documents have not considered the potential cumulative impacts of allowing all Carmel Point lots that are less than 6,000 s.f. to exceed the Floor Area Ratio by 30%.

#### CEQA document

The initial study and MND is not appropriate and not accurate in light of the potential inconsistencies with, and/or impacts, of grading, land form changes, neighborhood consistency, and to tribal cultural resources (including the failure to provide conditions to the tribal representative). (E.g., finding 4.)

The potential cumulative impacts – on neighborhood character, public views, grading, cultural resources and more – have not been considered and mitigated in the CEQA document for this project. See discussions above.

#### Comparisons:

Comparisons with other lots at Carmel Point should be limited to Carmel Point proper. Past efforts by the County and applicants to include areas not on Carmel Point proper have stretched the comparison past the breaking point, because lots that are not located on Carmel Point proper tend to be larger and have other distinguishing features not found at most lots at Carmel Point proper.

Appellants reserve the right to provide further evidence and argument to support the appeal. Thank you.

Attached: Letter to Planning Commission dated May 24, 2021 (total 19 pages)

May 24, 2021

Ana Ambriz, Chair  
Monterey County Planning Commission

Subject: May 26 agenda item 3, PLN180523 – 26308 Isabella Ave, Carmel Point

Dear Chair Ambriz and members of the commission:

This letter is on behalf of The Open Monterey Project and property owners who are concerned about fairness, equal treatment, and tribal cultural resources. My clients appreciate the commissioner's recent direction to start correcting the problems with this project. My clients regret that the staff report omits information critical to the commission's review.

**The County has not granted FAR variances for new development at Carmel Point. A 130% variance would be an unfair special privilege not granted to others, and specifically denied to others on Carmel Point.**

There is no support legally or factually for the proposed **130%** increase to the floor area ratio (FAR).. An FAR variance for new development is unprecedented at Carmel Point. The County FAR maximum is fair – larger lots get larger houses, smaller lots get smaller houses. This is a vacant never-developed lot, it can comply, and the FAR variance should be denied.

The sole support claimed are a handful of variances that were for existing structures that decreased their FAR. They do not support the request for a variance here because all of them were for reduction of existing FAR for pre-existing structure. An existing development must deal with existing structure and complying with County regulations can be challenging. Here, the new development can and should comply with floor area ratio.

What the staff report describes as other "variances" to floor area ratio were for **reductions** in existing nonconforming floor area ratio for property owners who were making changes to their existing structures. "Reductions to existing, nonconforming structures built prior to the adoption of the current zoning development standards" is a markedly different scenario than a new project on a vacant lot. The most recent "other variance" was in 2021. Here are the ones for which information is available on Accela:

PLN120165/Fash	REDUCTION from existing 54% to 51%-
PLN120101/DeYoung	REDUCTION in existing FAR from 59 to 58.3%
PLN040559/Cooper	No change to FAR. Existing FAR unchanged.
PLN020284/Johnson	REDUCTION of FAR from 70% to 65%

Please see the attached exhibit A. The other projects listed in the staff report have no usable information on Accela. An online search showed that staff in 2005 recommended against a variance for the Cooper project. County staff specifically reviewed the history of Carmel Point requests for variances and stated this:

**the County has a history of allowing Variances to FAR in the vicinity of the subject project for legal non-conforming structures that seek to reduce their FAR yet not fully comply with the current limitation due to special circumstances, and of denying other types of Variances to FAR in this vicinity.**

The County's history is that variances – like the one requested here – are denied. Anything other than denial would give an unjustified and special privilege to the applicant. The issue is the proportion on the lot that is the subject of the application, rather than average size of other lots and other development. The FAR regulation is framed in terms of percentages and ratios, instead of absolute numbers. Because this lot is smaller, it is subject to the regulation and thus did not cost as much. The staff report makes a nonsensical claim that "The non-conforming size of the lot constrains the allowed development compared to other lots in the vicinity." That simply is not true – the County applies the same regulations to this lot as all the other lots on Isabella and on Carmel Point. The applicant is a sophisticated developer/contractor and knew that when he purchased the small lot. This applicant wants special treatment by this Commission in order to get 130% of the FAR. The request for special privilege and unequal treatment should be denied.

**The flat roof would be used as a third story roof deck. The stairs leading to the roof should be deleted and the chimney should be reduced in height.**

The interior stairs to the third story roof are a giveaway that the roof would be used as a deck. The extraordinarily tall chimney is another giveaway that the roof would be used as a deck. As proposed, the design foreseeably would result in use as a deck, pit neighbor against neighbor and become a thorny County enforcement problem.

To avoid the foreseeable use of the roof as a deck, the County should direct as follows:

1. Remove the permanent stairs to the roof.
2. Reduce the 11-foot high chimney to 5 feet high.

A third-story roof deck would be inconsistent with neighborhood character and affect privacy and views of surrounding properties. Attached exhibit B shows some of the foreseeable problems.

This is a spec house, and a purchaser of the house likely would see the stairs to the roof and presume that the flat roof could be used as a deck. Modern rooftop solar

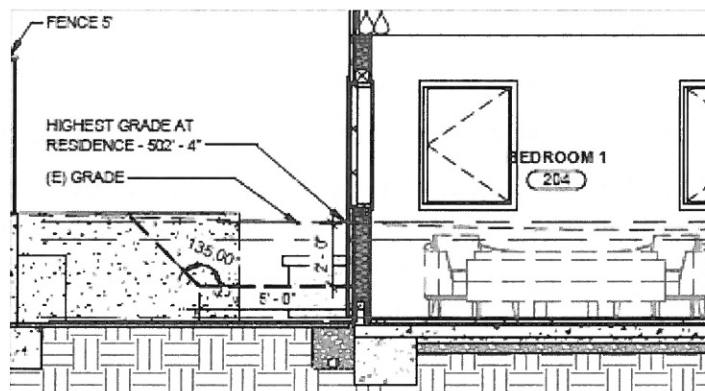


facilities do not need frequent maintenance and do not need formal stairs. Any rooftop solar can be easily accessed by a ladder as needed. In any event, the developer may decide not to install solar facilities, or a future owner may remove them if installed. What would remain would be interior stairs to a flat roof.

**Proposed excavation would materially exceed the amount of ground disturbance allowed by the Coastal Commission in July 2020 for neighboring houses.**

The proposed project would far exceed the limitations on ground disturbance required by the Coastal Commission for three new neighboring houses. The County should be consistent with the Coastal Commission and should require the same conditions of approval. Carmel Point is an area of high sensitivity for tribal cultural and archeological resources. The LCP also prohibits changes to land forms.

The proposed house would not be built at current ground level. Instead, the applicant proposes the rear half of the property practically from property line to property line and to excavate more than 6 feet deep for the house, subsurface patio, and other development. The proposed design shows a *finished* level 5.5 feet below average natural grade (A.N.G.) and that excavation *below the finished* level is planned. See screenshot below of plan excerpt showing existing (E) grade at the site:



The project would require 304 cubic yards of cut due to the proposed subsurface development. That is a large amount for such a small lot. In July 2020, the Coastal Commission approved three new houses on Isabella and Valley View with the specific limiting condition as follows:

Limited Ground Disturbance/Subsurface Development. With the exception of foundation elements, utility trenching, driveways, minor impervious surfacing, and limited landscaping, all as described below, all other ground disturbing and/or subsurface elements, including all basements, shall be prohibited.

See attached Exhibit C. The County should require the same condition as the Coastal Commission condition stated above .

**Monitors should observe all ground disturbance.**

The proposed mitigation measures 2 (archaeological monitor) and 4 (tribal monitor) are inconsistent and ambiguous. Recall that approximately one block away four sets of native american remains were found by landscapers who were installing a gas line for an outdoor fire pit, and that work would not have been called grading and excavation. The language for the two monitors should be consistent and avoid ambiguity.

The preferred term is “soil disturbance” instead of the terms used that refer to “grading and excavation.” Mitigation number 2 says that the archaeological monitor shall be “present” and Mitigation Measure 4, stating the tribal cultural monitor “shall be on-site.” Merely being present at the site is not adequate mitigation.

The mitigations should require that the tribal and archeological monitors be “present and observe during all soil disturbance.”

**Request.**

This commission should:

1. Deny the FAR variance.
2. Eliminate the interior stairs to the roof.
3. Reduce the chimney height to no more than 5 feet above the roof.
4. Limit the soil disturbance and subsurface development by a condition with the same language as the July 2020 Coastal Commission approvals.
5. Require the archaeological monitor and tribal cultural monitor to be “present and observe all soil disturbance.”

Thank you.

Sincerely,  
STAMP | ERICKSON  
*/s/ Molly Erickson*  
Molly Erickson

Attached exhibits:

- A. County Accela printouts of the old projects listed in staff report
- B. Roof deck pointed out in annotations to plans
- C. Coastal Commission limit on ground disturbance/subsurface development for new houses at Carmel Point (July2020)

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PLN120165 🔍

Search by permit number, parcel or address in the box to the right.

Permit Number PLN120165:  
 Discretionary  
 Current Permit Status: Condition Compliance

Record Info ▼      Payments ▼

Project Location

26443 SCENIC  
CARMEL 93923

**Fash: Existing structure.  
REDUCTION of FAR from 54% to 51%**

Record Details

Licensed Professional:  
INTERNATIONAL DESIGN GROUP  
721 LIGHTHOUSE AVE  
PACIFIC GROVE CA 93950  
Phone: 8316461261  
Agent

Project Description:  
Minor and Trivial Amendment to a Combined Development Permit (PLN110254) consisting of: 1) a Coastal Administrative Permit and Design Approval to allow the demolition of an attached 418 square foot two-car garage and a 427 square foot bedroom/bath/laundry room; the construction of an attached 410 square foot two-car garage, a 427 square foot bedroom/bath/laundry room, and an 802 square foot observation deck on the roof of the garage/bedroom /bath/laundry room; an interior remodel of a 3,244 square foot two-story single family dwelling; the installation of an above-ground residential generator 4.5 feet tall by 2.5 feet wide with a sound attenuation enclosure; stone cutting using a wet saw in a negative pressure enclosure vented to the outside through a HEPA filter; and 2) a Coastal Development Permit to allow development within 750 feet of a known archaeological resource; and a Variance to exceed floor area ratio (from 54% to 51%, 45% allowable) by reducing the internal second story floor area by 182 square feet and the garage by 8 square feet for a total of 190 square feet. The property is located at 26443 Scenic Road, Carmel (Assessor's Parcel Number 009-471-017-000), Carmel Area Land Use Plan, Coastal Zone.

▶ More Details

Condition Compliance Status      Conditions of Approval

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Search by permit number, parcel or address in the box to the right

Permit Number PLN120101:  
Discretionary  
Current Permit Status: Cleared

Record Info ▼

Payments ▼

### Project Location

26231 OCEAN VIEW  
CARMEL 93923

DeYoung: Existing structure.  
REDUCTION of FAR from 59% to 58.3%

### Record Details

#### Project Description:

Variance to allow demolitions and additions to existing legal non-conforming single family residence currently exceeding the required 45% maximum floor area ratio limits and resulting in a reduction of FAR from 59% to 58.3%. The project consists of: 1) a second floor interior remodel of 173 square foot master bath and closet; 2) a first floor remodel and demolition of a 147 square foot study and 119 square foot deck to include construction of a 115 square foot covered deck; 3) a basement level conversion of 300 square feet of a 672 square foot garage to a den and bathroom with new 140 square foot deck; a Coastal Development Permit for development within 750 feet of a known archaeological resource; and Design Approval. Materials and colors of the exterior stucco, wood eaves and trim to match the existing: Roof (Eagle Roof Tile Cedar #CEDUr93089 Walden), Clad windows/tan Anlin Catalina vinyl windows, Veneer stone/Lompoc Ledge Cream. The property is located at 26231 Ocean View Avenue, Carmel (Assessor's Parcel Number 009-431-023-000), Carmel Area Land Use Plan, Coastal Zone.

▶ More Details

Condition Compliance Status

Conditions of Approval

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PLN040559 🔍

Search by permit number, parcel or address in the box to the right.

Permit Number PLN040559:  
Discretionary  
Current Permit Status: Condition Compliance

Record Info ▾ Payments ▾

Project Location

0 NA

**Cooper: Existing structure.  
No change to existing FAR.**

Record Details

Licensed Professional:

WALD RUHNKE & DOST ARCHITECTS  
550 HARTNELL ST STE 1  
93940  
Phone: 8316494642  
Architect

[View Additional Licensed Professionals>>](#)

Project Description:

COMBINED DEVELOPMENT PERMIT CONSISTING OF A COASTAL DEVELOPMENT PERMIT AND DESIGN APPROVAL TO ALLOW STRUCTURAL ALTERATIONS AND ADDITIONS WHICH DO NOT CHANGE THE SQUARE FOOTAGE OF AN EXISTING 3,031 SQ. FT. SINGLE FAMILY DWELLING THAT IS LEGAL NON-CONFORMING PURSUANT TO LOT-COVERAGE AND FLOOR-AREA-RATIO (FAR) LIMITATIONS, INCLUDING A NEW 498 SQ. FT. BASEMENT; AND A COASTAL DEVELOPMENT PERMIT FOR DEVELOPMENT WITHIN 750 FT. OF A KNOWN ARCHAEOLOGICAL RESOURCE; INCLUDING GRADING (APPROX. 100 CU. YDS. OF EXCAVATION); A VARIANCE TO EXCEED THE 35% BUILDING COVERAGE BY 1.9%; AND A VARIANCE TO EXCEED THE 45% FLOOR-AREA-RATIO LIMITATION BY 8%. THE PROPERTY IS LOCATED AT 26275 SCENIC ROAD, CARMEL (ASSESSOR'S PARCEL NUMBER 009-432-013-000), CARMEL AREA, COASTAL ZONE.

More Details

Condition Compliance Status Conditions of Approval

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PLN020284 🔍

Search by permit number, parcel or address in the box to the right.

Permit Number PLN020284:  
 Discretionary  
 Current Permit Status: Cleared

Record Info ▾      Payments ▾

Project Location

0 NA

**Johnson: Existing structure.  
Reduction of FAR from 70% to 65%**

Record Details

Licensed Professional:  
LEE  
Phone: 8318837521  
Planner

Project Description:  
Variance to exceed the 18 foot height limit; a Variance to exceed 45% floor area ratio; a Variance to exceed 35% lot coverage for an 88 sq. ft. second-story bathroom addition to an existing two-story single family dwelling and removal of an existing 215 sq. ft. enclosed sunroom; and Design Approval. Removal of the sunroom will result in a net reduction of lot coverage from 44% to 38% and FAR from 70% to 65%. The property is located at 2496 San Antonio Avenue, Carmel (Assessor's Parcel Number 009-401-007-000), fronting on San Antonio Avenue between Santa Lucia Avenue and 14th Avenue, Carmel area, Coastal Zone.

More Details

Condition Compliance Status      Conditions of Approval



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PC07841

Search by permit number, parcel or address in the box to the right.

Permit Number PC07841:  
Discretionary  
Current Permit Status: APPROVED

Record Info ▼ Payments ▼

Project Location

2393 BAYVIEW AVE  
CARMEL

**Berner: existing structure.  
More than 20 years old. No information  
available as to what was approved.  
Not reliable evidence.**

Record Details

Project Description:  
COASTAL DEVELOPMENT PERMIT FOR A SINGLE FAMILY  
DWELLING ADDITION; VARIANCE FOR ADDITION TO HEIGHT  
REQUIREMENTS AND FLOOR AREA RATIO

More Details

Condition Compliance Status Conditions of Approval

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**Search Results**

Your search for 'ZA093062' returned no results. If you did not find what you are looking for please use one of the advanced searches below:

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PLN970555 🔍

Search by permit number, parcel or address in the box to the right.

Permit Number PLN970555:  
Discretionary  
Current Permit Status: APPROVED

Record Info ▾

Payments ▾

### Project Location

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26161 SCENIC RD  
CARMEL

### Record Details

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**Licensed Professional:**

Chance, Dan  
Phone:7555155  
Planner

**Project Description:**

Combined Development Permit consisting of a Coastal Development for a Variance from the 18 foot height limit for an addition to an existing two story, single family dwelling; a Variance of the floor area ratio and Design Approval; located at 26161 Scenic Road (APN# 009-422-015-000) fronting on and easterly of Scenic Road, Carmel

▶ More Details

Condition Compliance Status    Conditions of Approval

MONTEREY COUNTY ZONING ADMINISTRATOR

<b>Meeting:</b> March 31, 2005, at 9:10 AM	<b>Agenda Item:</b>
<b>Project Description:</b> Continued from 2/24/05. Combined Development Permit (PLN040559/Cooper) consisting of a Coastal Administrative Permit and Design Approval to allow structural alterations and additions totaling 244 sq. ft. above ground to an existing 3,031 sq. ft. single family dwelling that is legal non-conforming pursuant to lot-coverage and floor-area-ratio ('FAR') limitations, including a new 498 sq. ft. basement; and a Coastal Development Permit for development within 750 ft. of a known archaeological resource; including grading (approx. 100 cu. yds. of excavation); and a Variance to exceed the 45% floor-area-ratio limitation by 8%. <b>Staff recommended DENIAL.</b>	
<b>Project Location:</b> 26275 Scenic Road, Carmel (Assessor's Parcel Number 009-432-013-000)	
<b>Plan Area:</b> Carmel Area LUP (Coastal Zone)	<b>Flagged &amp; Staked:</b> Yes
<b>Zoning Designation:</b> MDR/2-D (18') (CZ); Medium Density Residential, 2 units per acre, Design Control District, 18 foot height limit, Coastal Zone	
<b>CEQA Action:</b> Exempt pursuant to Section 15270 of the CEQA Guidelines, which statutorily exempts from environmental review those projects that are denied permits.	
<b>Date application deemed complete:</b> March 10, 2005	
<b>Department:</b> Planning and Building Inspection (PBI)	

**RECOMMENDATION:**

Staff recommends that the Zoning Administrator:

- Deny the proposed project based on the recommended Findings and Evidence (Exhibit "C").

**OVERVIEW:**

The project has been continued from February 24, 2005, so that the application and project description could be revised and publicly re-noticed to include a request for a Variance from the 45% floor-area-ratio (FAR) limitation of 8%. This request represents a 4% increase over the existing legal non-conforming level. The required findings for a variance are that the variance is required due to special circumstances, that the variance does not constitute a special privilege, that the variance would allow an authorized activity or use. Staff can not make the second of these three required findings, and therefore staff recommends denial of the project.

Nonetheless, if the Zoning Administrator would like to consider granting approval of the project without a Variance to the FAR limitation by requiring a reduction in the scope of the project, and the applicant agrees, staff can be directed to return at a continued hearing with the appropriate findings and evidence and conditions to allow this approval. Staff has determined that the project could be categorically exempted from CEQA review. However, a Variance would have to be granted to reduce building coverage yet remain above the 35% limit, which is a Variance that staff could support; in addition to other findings that would have to be revised, to include: Consistency, Site Suitability, Health & Safety, and Public Coastal Access, as well as conditions of approval.

**OTHER AGENCY INVOLVEMENT:**

All of the following agencies have reviewed the subject projects:

- ✓ Water Resources Agency (WRA)
- ✓ Environmental Health Division (EHD)
- ✓ Public Works Department (PWD)
- ✓ Carmel Highlands FPD (CHFPD)

The Carmel Area LUAC voted recommend approval of the *original* version of the project by a vote of 5 to 0 (two members absent), on September 20, 2004, without conditions (Exhibit "D"). They did not review the current version including the Variance request.

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Timothy Johnston, Associate Planner  
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cc: Coastal Commission; Zoning Administrator; Health Department; Public Works; Carmel Highlands FPD; Monterey County Water Resources Agency; Jeff Main; Timothy Johnston; Applicant/Representative; Owners; Bruce Ling-I Chen (c/o Carla White)

Attachments:    Exhibit "A"        Project Data Sheet  
                     Exhibit "B"        Discussion  
                     Exhibit "C"        Recommended Findings and Evidence  
                     Exhibit "D"        Land Use Advisory Committee Recommendations  
                     Exhibit "E"        Applicant's letter to justify Variance request  
                     Exhibit "F"        Letter of concern from Bruce Ling-I Chen, neighbor  
                     Exhibit "G"        Vicinity Map  
                     Exhibit "H"        Project Plans

This report was reviewed by Jeff Main, Planning and Building Services Manager

**Note:** This project is appealable to the Board of Supervisors and to the California Coastal Commission

**EXHIBIT “B”**

**DISCUSSION**  
**PLN040559/Cooper**  
**March 31, 2005**

PROJECT PROPOSAL

The project proposes to remodel an existing 3,031 sq. ft. residence that is legal non-conforming pursuant to building coverage and floor-area ratio (FAR). While the project would not reduce the building coverage below the 35% maximum allowed in the Zoning Ordinance (Title 20), it would reduce building coverage from 2,460 sq. ft. (39.5%) to 2,298 sq. ft. (36.9%). The project architect has explained to staff that the proposal reduces building coverage by eliminating eaves that extend more than 30 inches from the building and by eliminating a courtyard deck built at more than 24 inches above grade. The Department will normally support a project which reduces the non-conforming condition of a property.

According to information received in a letter from the project’s architect (Exhibit “D”) the project would increase FAR from 48.6% (3,031 sq. ft.) to 52.6% (3,275 sq. ft.) while the maximum FAR allowed in the Zoning Ordinance is 45%. Both of these aspects of the project would require a Variance from the strict application of the applicable site-development standards.

Staff has determined that the proposed basement addition in the rear of the structure can be exempted from the FAR calculation since it does not increase the bulk of the structure in any way.

	<b>Bldg. Coverage</b>	<b>B. C. R.</b>	<b>Total Floor Area</b>	<b>F. A. R.</b>
<b>Max. Allowed</b>	2,181.2	35 %	2,804.4	45 %
<b>Existing</b>	2,460	39.5 %	3,031	48.6 %
<b>Proposed (as revised )</b>	2,298	36.9 %	3,275	52.6 %

In the past, the County has granted Variances to three other similar projects in the vicinity of the subject parcel (see file nos. ZA93062, PLN970555, and PLN020284). These projects were granted Variances to reduce FAR although they continued to exceed the 45% limit, due to the special circumstances relating to the legal non-conforming nature of the existing properties. A Variance to reduce building coverage, yet remain above the current limit, could also be supported under the same rationale, as this would likewise allow a lessening of the existing non-conforming condition. However, the Coopers are seeking to increase a legal non-conforming FAR, which staff finds inconsistent with the requirements of the Zoning Ordinance (Title 20). Based on this inconsistency, staff recommends denial of the proposed project.

On one occasion, a Variance to the 45% FAR limitation was initially approved by the Planning Commission (PC) in the vicinity of the subject parcel in 1988 (see file no. PC06249). The PC’s approval was appealed to the Board of Supervisors and subsequently sent back to the PC for a *de novo* hearing due to new information raised by the appeal that was not originally heard by the PC. The project was subsequently revised to be consistent with all applicable development standards, including FAR, and was approved without the need for a Variance. The lot size in that case was just 3,262 sq. ft. (APN 009-401-014-000).

On another occasion, a Variance to the 45% FAR limitation was initially approved by the PC in



the vicinity of the subject parcel in 1991 (see file no. PC07841). However, the PC's approval was appealed to the Board of Supervisors and the FAR Variance was subsequently denied (see BOS Resolution No. 92-50). Therefore, the County has a history of allowing Variances to FAR in the vicinity of the subject project for legal non-conforming structures that seek to reduce their FAR yet not fully comply with the current limitation due to special circumstances, and of denying other types of Variances to FAR in this vicinity.

#### APPLICANT'S JUSTIFICATION FOR THE FLOOR-AREA-RATIO VARIANCE

The project's architect in his letter dated March 9, 2005 (Exhibit "E"), suggests that the Variance should be granted in the present case since by lowering the floor of the garage one foot the square footage of the garage should not count toward the project's total floor area. He also contends that while not fully subterranean, the square footage of the applicant's garage lowered by one foot is comparably subterranean when compared to other recent approvals for rebuilt and remodeled homes in the vicinity of the subject parcel. The problem with these arguments are discussed below.

According to the definition of "floor area" (Section 20.06.564 of the Zoning Ordinance), "*Areas of enclosed floor space constructed and maintained entirely below ground, including garages, shall not be counted as floor area.*" 'Entirely below ground' is clear and concise language. The applicant's proposal to lower the floor of the garage does not convert the garage to one that would be 'constructed and maintained entirely below ground.' In addition, the purpose of the floor-area ration limitation is to limit the bulk of structures. Lowering the floor of the garage by one foot, in this case, does nothing to reduce the bulk of the structure, which is further evidence that the garage, as proposed, should count toward the project's floor-area ratio calculation. As such, the proposed project (as revised), represents a 4% increase in FAR above the existing non-conforming level.

Another problem with the applicant's approach for attempting to justify the Variance request is that it represents only a partial analysis of other project approvals that focuses only one limited aspect of other recent projects in the vicinity. This argument relates to the 'subterranean-ness,' or lack there of, of the garages of these projects, none of which were granted Variances. The projects identified by the applicant's architect consist of homes that were demolished and rebuilt in a manner that was found to be consistent with all applicable site-development standards. Staff is unable to make similar findings for the subject project because the lowering of the floor of the garage by one foot, as proposed, does not make the garage subterranean or reduce the bulk of the project in any way. In contrast, the garages for the projects identified by the applicant were clearly built below grade, thereby limiting the overall bulk of the homes allowing them to be found consistent with the 45% FAR limitation.

#### CARMEL AREA LUAC RECOMMENDATION

The Carmel Area LUAC voted to recommend approval of the original version of the project by a vote of 5 to 0, with two members absent, on September 20, 2004 (Exhibit "D"). They did not review the current version that includes the Variance request. The original version of the project claimed a net reduction to FAR due to the lowering of the garage by one foot, an argument which staff has since rejected.

#### CEQA

If the project application is denied permits, it would qualify for a statutory exemption from CEQA review, pursuant to Section 15270 of the CEQA Guidelines.

EXHIBIT “C”

**RECOMMENDED FINDINGS AND EVIDENCE**

PLN040559/Cooper

March 31, 2005

1. **FINDING:** **INCONSISTENT** – The proposed project does not conform to the plans, policies, requirements, and standards of the certified Monterey County Local Coastal Program (LCP). The LCP for this site consists of the *Carmel Area Land Use Plan*, the *Regulations for Development in the Carmel Area Land Use Plan* (Part 4), Part 6 of the Coastal Implementation Plan (Appendices), and the Monterey County Zoning Ordinance (Title 20). The property is located at 26275 Scenic Road, Carmel (Assessor's Parcel Number 009-432-013-000), in the Carmel area of the Coastal Zone. The parcel is zoned “MDR/2-D (18’) (CZ)”; *i.e., “Medium Density Residential, 2 units per acre, with an 18 foot height limit, in a Design Control District, in the Coastal Zone.”* In light of the project application, as well as the record as a whole, the Zoning Administrator finds that the proposed project is inconsistent with the Monterey County Local Coastal Program. In sum, the Zoning Administrator is unable to make all three findings necessary for granting the Variance required for allowing the project as proposed.

**EVIDENCE:** See Finding 3, below. Because all three required Variance findings cannot be made, the proposed project is inconsistent with the requirements of the County’s Local Coastal Program.

2. **FINDING:** **VARIANCE, SPECIAL CIRCUMSTANCES** – The strict application of the 45% floor-area-ratio limitation for the MDR zoning district (Section 20.12.060.F of Title 20) is found to deprive the subject property of privileges enjoyed by other property owners in the vicinity under an identical zoning classification, because there are special circumstances applicable to the subject property, including the size, shape, topography, location of the lot, or the surrounding area.

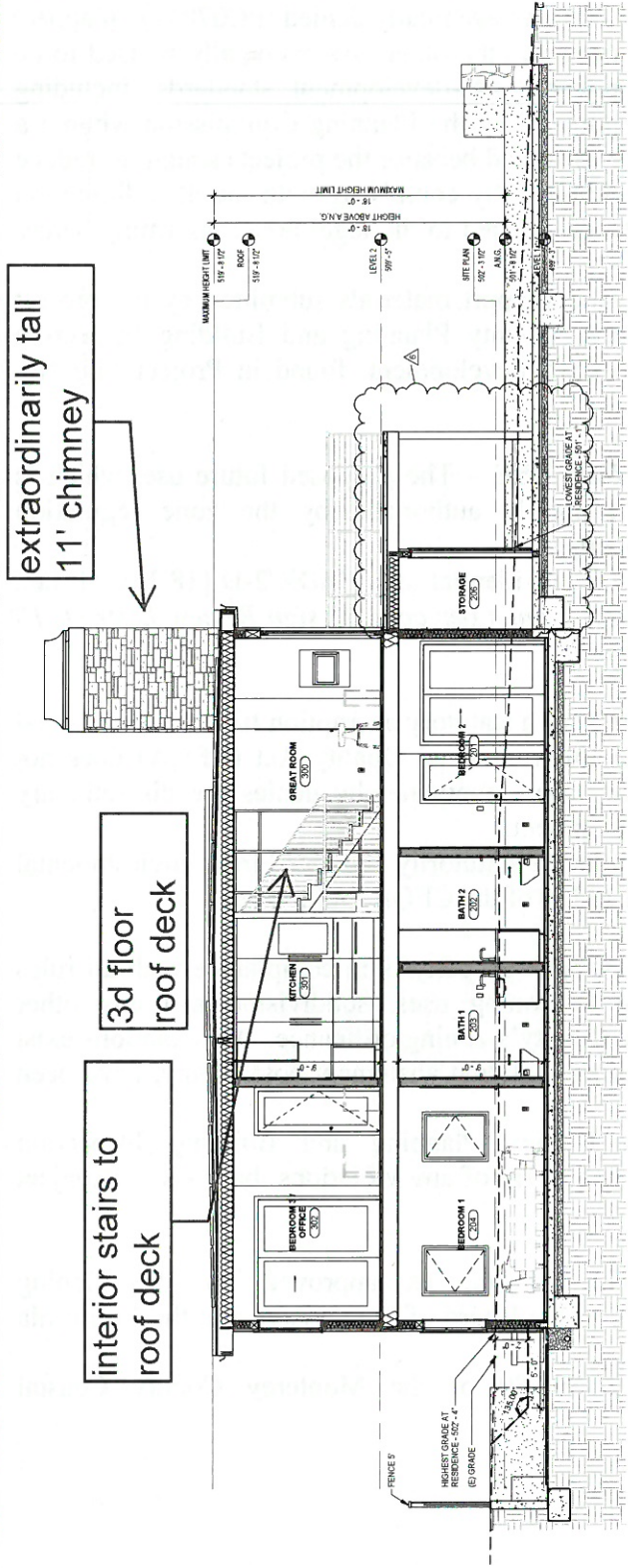
**EVIDENCE:** (a) The record indicates that the subject lot can accommodate a remodel of the single-family dwelling without increasing the project’s FAR beyond the current legal non-conforming level. Three other similar Variances have been granted in the vicinity of the subject parcel (see file nos. ZA93062, PLN970555, and PLN020284). These projects were granted Variances to reduce FAR yet remain above the 45% limit, due to the special circumstances related to the legal non-conforming nature of the existing homes and their lots of record.

(b) The application, plans, and support materials submitted by the project applicant to the Monterey County Planning and Building Inspection Department for the proposed development, found in Project File No. PLN040559.

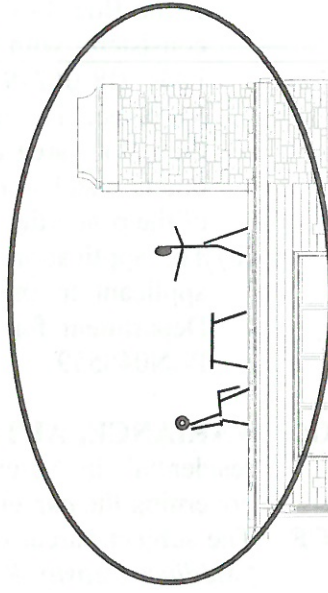
3. **FINDING:** **VARIANCE, SPECIAL PRIVILEGE** – A Variance from the 45% floor-area-ratio (FAR) limitation in this case would constitute a grant of privileges inconsistent with the limitations upon other property owners in the vicinity and zone in which such property is situated, since the project proposes to increase FAR beyond the current legal non-conforming level, inconsistent with prior County approvals for projects with similar circumstances.

- EVIDENCE:** (a) A review of the Planning Department’s permits database and records reveals that only five Variances to the 45% floor-area-ratio limitation have been considered for approval in the vicinity of the subject parcel (see file nos. PC06249, ZA93062, PC07841, PLN970555, and PLN020284). Of these, one was eventually denied (PC07841) on appeal to the Board of Supervisors and the other was eventually revised to be consistent with all applicable site-development standards, including FAR, (PC06249) and approved by the Planning Commission without a Variance. The rest were approved because the projects sought to reduce their floor-area ratios without fully complying with the 45% limitation due to special circumstances related to the legal non-conforming nature of the properties.
- (b) The application, plans, and support materials submitted by the project applicant to the Monterey County Planning and Building Inspection Department for the proposed development, found in Project File No. PLN040559.
4. **FINDING: VARIANCE, AUTHORIZED USE** – The proposed future use, which is residential in nature, is expressly authorized by the zone regulation governing the parcel of property.
- EVIDENCE:** The subject parcel is zoned for residential uses (MDR/2-D [18’] [CZ]; i.e., “*Medium Density Residential, 2 units per acre, Design Review District, 18 foot height limit, Coastal Zone*”).
5. **FINDING: CEQA** – The project qualifies for a statutory exemption from environmental review since the California Environmental Quality Act (CEQA) does not apply to this project because the County hereby denies the discretionary permits required for its development.
- EVIDENCE:** Projects that are denied permits are statutorily exempted from environmental review, pursuant to Section 15270 of the CEQA Guidelines.
6. **FINDING: NO VIOLATIONS** – The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision and any other applicable provisions of the County’s zoning ordinance. No violations exist on the property, and all zoning violation abatement cost, if any, have been paid.
- EVIDENCE:** Staff reviewed Monterey County Planning and Building Inspection Department records and is not aware of any violations that exist on subject property.
7. **FINDING: APPEALABILITY** – The project, as approved by the Zoning Administrator, is appealable to the Board of Supervisors and the California Coastal Commission.
- EVIDENCE:** Sections 20.86.030 and 20.86.080 of the Monterey County Coastal Implementation Plan.

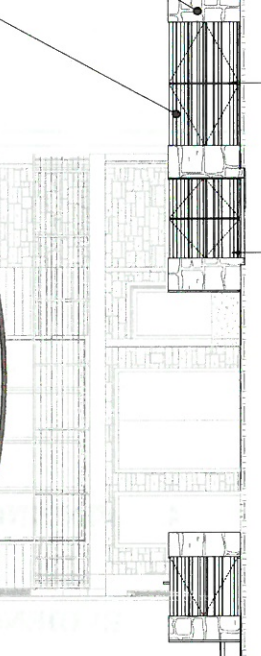
Exh. B



1 E/W SECTION 1  
1/4" = 1'-0"



3d floor roof deck



3 FENCE ELEVATION  
1/4" = 1'-0"

Exh. B

Use of these plans and specifications shall be restricted to the original site for which they were prepared and publication thereof is expressly limited to such use. Reproduction or publication by any method, in whole or in part is prohibited. This is the least and operations manual with the contract and specifications shall constitute the acceptance of the architect or his successors.



26346 Valley View Avenue, respectively) to the Executive Director for review and written approval. The revised plans shall be in substantial conformance with the proposed plans (i.e., site plans and elevations prepared by Tom Meaney Architects and dated received May 22, 2019 in the Coastal Commission’s Central Coast District Office, see Exhibit 3), but shall be modified to achieve compliance with this condition, including that the revised plans shall show the following required changes and modifications to each approved project:

a. **Limited Ground Disturbance/Subsurface Development.** With the exception of foundation elements, utility trenching, driveways, minor impervious surfacing, and limited landscaping, all as described below, all other ground disturbing and/or subsurface elements, including all basements, shall be prohibited. The only allowable ground disturbing and/or subsurface elements are as follows:

1. **Foundations.** All foundations shall be sited and designed to minimize grading and ground disturbance. Site preparation shall be limited to the minimum necessary for a standard perimeter foundation, thickened mat, or other foundation that minimizes grading and ground disturbance. Foundation plans shall be provided along with an analysis from the consulting engineers demonstrating that site preparation has been minimized.

**Driveways.** All driveways shall be limited to 20 feet in width, and 25 feet in length, and otherwise sited and designed to minimize grading and ground disturbance and to limit their overall footprint.

**Utilities.** All utilities shall be installed underneath the driveways and shall be sited and designed to minimize grading and ground disturbance, including limiting any trenching depth as much as possible.

4. **Other Impervious Surfaces.** Other impervious surfaces shall be minimized and limited to the areas immediately adjacent to each building’s footprint.

5. **Landscaping.** Landscaping shall be limited to use of native, drought-tolerant, non-invasive species and any associated irrigation shall be limited to low-flow, water conserving irrigation fixtures, all of which shall be sited and designed to minimize grading and ground disturbance.

b. **Height Limits.** Development height shall be limited to 18 feet above average natural grade. The revised plans shall be submitted with documentation demonstrating compliance with this requirement, including via site plans and scaled architectural elevations prepared by a licensed architect.

All requirements above and all requirements of the approved Revised Plans shall be enforceable components of each CDP. The Permittees may only undertake development in conformance with this condition and the approved Revised Plans, unless the Commission amends the CDP at issue or the Executive Director provides a written determination that no amendment is legally required for any proposed minor adjustments, which may be allowed by the Executive Director if such

26308 Isabella design would materially exceed this scope because it would excavate for subsurface elements of the house and patio.

