



Monterey County Planning Commission

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Agenda Item No. 3

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PLN160105 - BUCHHOLZ

Public hearing to consider an after-the-fact Design Approval for construction of an elevated structure, constructed to resemble a treehouse, exceeding the maximum allowable height of the zoning district.

Project Location: 17 Ring Lane, Carmel Valley, CA

Proposed CEQA Action: Denial of a permit is Statutorily Exempt per section 15270 of the CEQA Guidelines

RECOMMENDATION:

It is recommended that the Planning Commission deny the application based on staff's interpretation that this is a structure exceeding the height limit in the LDR Zoning District.

If the Commission wants to consider approval of this structure, findings for a variance would be required. The application did not include a request for a variance.

PROJECT INFORMATION:

Planning File Number: PLN160105

Project Location: 17 Ring Lane, Carmel Valley

Zoning: LDR/2.5-D-S-RAZ

SUMMARY:

On July 16, 2015, in response to a complaint of construction without permits, Monterey County opened a Code Compliance Case (15CE00201) at 17 Ring Lane, Carmel Valley. A site inspection found an elevated accessory structure over fifteen feet in height being constructed without permits amongst oak trees in the rear of the property, behind an existing single family dwelling.

Subsequent to the code enforcement case being opened, the property owner applied for and was granted a Design Approval (DA) for the construction of a 238 square-foot treehouse in March of 2016. Typically, the Resource Management Agency (RMA) would not enforce permit requirements for treehouses because they are under-sized, temporary in nature, and do not include utilities. If required to obtain a permit, treehouses would have a difficult time meeting planning and building code requirements. In this case, the structure is atypical and warranted further investigation.

Approved plans show the height of the structure at 18 feet. Pursuant to Design Control district requirements, the DA was noticed for a 10-day objection period. A request for a public hearing on the DA was submitted by a neighbor, which effectively suspended action on the DA. No subsequent action has been taken on the DA to date pending attempts to resolve the conflicts.

According to the property owner, the structure in question is a 238-square foot treehouse built as a play structure and it should be exempt from zoning requirements given the historic interpretation of the RMA regarding treehouses. The property owner also contends that the raised structure is protective of the trees on the property and in keeping with the recommendation of the forester hired after a code compliance case was opened because it is not constructed in the actual trees. However, staff finds that the subject structure is not in a tree; it is constructed on a raised steel foundation treated to resemble tree branches. There is no structural connection or reliance to a tree. It also has exterior stairs, windows, doors, and a roof. The subject structure is not connected to any utilities. Photos of the structure are attached as **Exhibit C**.

Based on the specific circumstances of this case, the Building Official determined that the “treehouse” is a structure that requires a Building Permit. As such, it exceeds the 15-foot height limit for an accessory non-habitable structure in the Low Density Residential Zoning district. If the Planning Commission agrees that this is a structure, subject to accessory structure height requirements, a Variance is required to exceed the 15-foot height limit (18 feet existing) in addition to a Design Approval. Staff does not find that the required findings for a variance can be justified in this case there are no physical constraints of the site restricting this structure from meeting the height limit. As such, staff is recommending denial of this application.

In addition to the yet unresolved Design Approval, the County and the property owner entered into a stipulated agreement on November 9, 2018 with regard to the code enforcement case. The stipulated agreement (**Exhibit A**) requires the property owner to apply for, obtain, and final the necessary Planning and Construction permits that meet current Monterey County Codes or remove the structure from the parcel. Also, within the stipulated agreement, the Resource Management Agency (RMA) agreed to move the project forward to the Planning Commission before the end of January 2019 for a policy decision on whether the elevated structure used as a treehouse requires a land use entitlement. The applicant agreed to extend that timeline to February. Staff is bringing this item to the Planning Commission in compliance with the terms of the Stipulated Agreement as well as to address the unresolved Design Approval.

Staff’s recommendation for denial is based on our interpretation of the Zoning Codes and Buildings Codes. Alternatively, the applicant could redesign the structure to reduce the height so that it complies with the zoning code (maximum 15 feet tall) and building codes. A key point is the definition of a structure. If the Planning Commission determines that this is not a structure under the definitions in our Codes, then a permit would not be required.

DISCUSSION:

Location:

The property is located at 17 Ring Lane in Carmel Valley. The property lies east of Carmel Valley Road and West of Laureles Grade within the Los Ranchitos Del Carmelo Tract 1 subdivision. It is in a low density residential zoning district with a maximum density of 2.5 acres per unit, within a site plan review, residential allocation, and design review zoning overlay districts (LDR/2.5-D-S-RAZ) and is governed by the Carmel Valley Master Plan.

Timeline:

Sometime prior to July 2015, the applicant constructed a treehouse amongst oak trees in the rear yard of their existing single family dwelling.

On July 15, 2015, a code enforcement official visited the site and issued an administrative citation for work without a Building Permit and Design Approval.

On February 12, 2016, an application was submitted to the County (**Exhibit B**) for an Administrative Design Approval. The Design Approval was approved on March 3, 2016. Notices of the decision on the Design Approval were provided to all property owners within 300 feet. Before the conclusion of the 10-day objection period, a neighbor submitted a written objection to the Design Approval and a request for hearing. No subsequent action has been taken on the Design Approval to date.

On November 9, 2016, the property owners entered into a stipulated agreement with the County in conjunction with the unresolved code enforcement case.

Entitlements:

In the past, the Resource Management Agency (RMA) has not enforced permit requirements for typical treehouses; however, the treehouse in question is not a typical treehouse.

Pursuant to Section 21.06.1220 of the Monterey County Code (MCC), a structure is defined as: *“anything constructed or erected, except fences under six feet in height, the use of which requires location on the ground or attachment to something having location on the ground, but not including any trailer or tent.”* Further, an accessory structure is defined as: *“a subordinate structure, the use of which is incidental to that of a main structure on the same building site”* (MCC 21.06.1230). Accessory structures are uses allowed in the LDR zoning district (MCC 21.14.030) provided they meet site development standards. Site Development standards in the LDR zone include a 15-foot maximum height limit for accessory non-habitable structures (MCC Section 21.14.060.C.3.b) and the existing structure/treehouse has been erected to a height of 18 feet. In addition, a Design Approval is required because the property is subject to design control district (“D district”) standards, contained in MCC Chapter 21.44.

In this case, it is staff’s opinion that the “treehouse” qualifies as an accessory structure as defined by the Monterey County Code. The structure requires a building permit, has an engineered foundation, and does not sit in a tree. However, the applicant contends that the structure is a treehouse intended for play and is similar to a children’s playhouse or playground and therefore should not be subject to height and setback requirements of the zoning code.

The property owner has agreed to apply for, obtain and final the necessary Planning and Construction permits that meet current Monterey County Codes or remove the structure in its entirety from the parcel as part of the stipulated agreement (**Exhibit A**). As part of the stipulated agreement, the owner requested a permit determination before the Planning Commission. The permit determination will affect the unresolved Design Approval as well as influence the owner’s decision to pursuing permits and keep the structure or to demolish it.

Because this structure is three feet over height (15 feet allowed; 18 feet existing), staff has recommended the applicant reduce the height of the structure and apply for the design approval for a structure that conforms to MCC development standards or apply for a design approval with a variance for the height limit. It is important to note that in order to grant a variance, three findings must be made:

That because of special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, the strict application of the Zoning Ordinance is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zoning classification;

That the Variance does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located;

The Variance shall not be granted for a use or activity, which is not otherwise expressly authorized by the zone regulation governing the parcel of property.

Variance findings would be difficult to support in this case.

The Planning Commission has authority to interpret the Zoning Code as it relates to required permits and entitlements. If the Planning Commission determines that the "treehouse" is not a structure, by Zoning definition, then it is not subject to the 15-foot height limit and staff can return to the Commission with a resolution for approval of the outstanding Design Approval. If the Planning Commission determines that the structure is subject to the height requirements, the applicant has options to demolish the structure, reduce the height, or apply for a Variance to clear the code violation.

CEQA

Denial of a permit is Statutorily Exempt per section 15270 of the CEQA Guidelines. For reference, construction of an accessory structure is eligible to be Categorically Exempt per section 15303 as a minor structure.

OTHER AGENCY INVOLVEMENT:

No other agencies were involved in writing this report

FINANCING:

Funding for staff time associated with this project is included in the FY17-18 Adopted Budget for RMA-Planning.

Prepared by: Yasmeen Hussain, Associate Planner, ext. 6407
Reviewed by: Craig Spencer, RMA Planning Services Manager
Approved by: John M. Dugan, FAICP, Deputy Director of RMA Land Use and Development Services.

YH

The following attachments are on file with the RMA:

Exhibit A - Stipulated Agreement

Exhibit B - Plan Set

Exhibit C - Photos

cc: Front Counter Copy; Craig Spencer, RMA Services Manager; Yasmeen Hussain, Project Planner; Donna Buchholz, Owner; Pam Silkwood, The Open Monterey Project (Molly Erickson); LandWatch; Tracy Call, Jason Retterer; Project File **PLN160105**