Attachment F

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August 29, 2014

Chairperson Lou Calcagno
Monterey County Board of Supervisors
168 West Alisal Street, 1st Floor
Salinas, CA 93901

RE: Appeal of Permit Approval For PLN130706 – Venkatesh
Set For Hearing on September 9, 2014

Dear Chairperson Calcagno and Members of the Board:

I am representing Melvin J. Kaplan (Evergreen Financial Group), who has appealed the approval of a Combined Development Permit granted to Gopalkrishnan and Brenda Venkatesh by the Monterey County Zoning Administrator (ZA). The Zoning Administrator approved the Venkatesh Permit on June 26, 2014, and Mr. Kaplan filed his appeal within the required appeal period.

The permit, as approved by the ZA, would allow significant new construction, in the form of an addition to an existing home located at 173 Spindrift Road, in the Carmel Highlands area. Mr. Kaplan owns property and lives immediately adjacent to the proposed project site, at 174 Spindrift Road.

In his Notice of Appeal, Mr. Kaplan specifically lists the lack of a fair or impartial hearing as one of his grounds for appeal. Mr. Kaplan's Notice of Appeal highlights the aesthetic and neighborhood character issues that Mr. Kaplan believes were not properly considered by the ZA. As approved, the proposed new construction would, without doubt, have very significant impacts to the neighborhood in general, and to Mr. Kaplan's property in particular.

In this letter, I want to list additional problems with the project as currently proposed, as well as to discuss the neighborhood character and aesthetic impacts that would result from an approval (like the current approval) that is not accompanied by conditions that could help minimize and mitigate those impacts. Mr. Kaplan strongly urges the Board to consider and impose appropriate mitigation measures in connection with any project approval.

Size Of The Proposed Addition / Proper Processing

Finding #5 indicates that the proposed project was processed as though it were categorically exempt from review pursuant to the California Environmental Quality Act (CEQA). The basis of this exemption from normal CEQA review is

stated to be a provision in the CEQA Guidelines that categorically exempts an addition to an existing structure if that addition will not result in an increase of more than 50% of the floor area of the structures before the addition, or 2,500 square feet, whichever is less [Guidelines Section 15301(e)].

The findings note that the addition proposed is 1,938 square feet. This is, certainly, less than 2,500 square feet, but it is not clear whether or not the proposed addition will result in an increase of more than 50% of the floor area of the structures before the addition. Finding #5 says that the addition is "not more than 50% of the existing floor area." However, nowhere in the findings is the floor area of the existing structures disclosed, and there is no evidence in the findings that the CEQA exemption is appropriate. In addition, the actual "Conditions of Approval" for the proposed project state that the addition is 1,860 square feet. This difference is not explained.

The architectural diagrams for the project appear to establish that the floor area of the existing structures is 3,375 square feet. The "Project Data" listing found on the first page of the diagrams seems to show existing square footages as (2410+504+461 = 3,375). 50% of 3,375 square feet is 1,688 square feet, and the proposed addition is in fact larger than this, whether the proposed addition is 1,938 square feet or 1,860 square feet. Given these discrepancies, it appears that the project has not received proper review under the California Environmental Quality Act.

Another question related to the size of the proposed addition is whether or not the proposed project has received proper analysis pursuant to Public Resources Section 30212, a provision of the California Coastal Act [a copy of this section is attached]. Section 30212 mandates that public access "shall be provided," with some exceptions, in connection with all "new development."

Under Section 30212, "new development" does not include "improvements ... which do not increase ... the floor area ... by more than 10%." In this case, the proposed improvements would clearly increase the floor area of the existing structure by more than 10%, and this means that the Coastal Act *requires* that access be provided, unless an exception applies. The requirement that access be provided is excused if there is "adequate access ... nearby." While there IS "access" nearby, the proceedings so far have not really examined its "adequacy." The "adequacy" of the access is related in a real way to the aesthetic and neighborhood character impacts of the proposed project that are at the heart of Mr. Kaplan's concern. If the "adequacy" of the access available was not properly analyzed, then this means that the proposed project has not received proper review and analysis.

Other Concerns

The Monterey County Coastal Implementation Plan, Part 4, covering properties in the Carmel Area Land Use Plan indicates that a "proof of adequacy" of septic systems may be required as part of the permit process. Section 20.146.050 B.

specifically says that the "proof of adequacy must document that the system is in working condition, and is adequate to serve both the proposed and the existing use" [Emphasis added]. In fact, Finding #3 (b) and Item #7 in the Conditions of Approval indicate that the current system is NOT adequate to serve the proposed use, and this means, according to the CIP requirement, that the septic system should be upgraded first, before the new development is approved. A condition saying to "fix" the identified potential health and safety problem is not really consistent with the requirement of the CIP.

A similar statement can be made about the issue of water availability. While the Conditions of Approval outline a process that is easy for an applicant, it is essentially a process that approves a proposed project "first," and then asks the applicant to demonstrate water availability, whereas the availability of adequate water to serve the proposed new project should precede project approval.

Aesthetic And Neighborhood Concerns

The heart of this appeal revolves around the aesthetic and neighborhood concerns raised by the project. The Monterey County Coastal Implementation Plan, Part 4, covering properties in the Carmel Area Land Use Plan, recognizes the critical importance of the scenic qualities of this part of Monterey County. The very first section in Part 4 (after the definitions) is Section 20.146.030 – Visual Resources Development Standards. The standards in this section are applicable to new development, and also to trails and accessways [See Section 20.146.130].

Section 20.146.030 states the County's intent to "protect the scenic resources of the Carmel Area in perpetuity and to insure that all future development within the viewshed will harmonize and be clearly subordinate to the natural scenic character of the area." The KEY statement with respect to this appeal is the following, as found in Section 20.146.030:

> All categories of public and private land use and development including all structures ... shall conform to the basic viewshed policy of minimum visibility ... [Emphasis added].

The largest single problem with the proposed project is it failure to conform to the standard of "minimum visibility."

Section 20.146.030 C. provides as follows:

> Structures shall be subordinate to and blended into the environment... If necessary, modification of plans shall be required for siting, structural design, height, shape, color, texture, building materials, access and screening through the Coastal Development Permit process [Emphasis added].

Section 20.146.030 C.1.e. specifies that "Landscape screening utilizing native species may be used wherever a moderate extension of native forested and chaparral areas is appropriate..."

Mr. Kaplan's appeal references his feeling that he did not receive a "fair hearing" before the Zoning Administrator. Mr. Kaplan was not represented at either the LUAC meeting at which the proposed project was considered or at the Zoning Administrator hearing, and he felt frustrated that his concerns about viewshed, aesthetic, and neighborhood concerns did not get the kind of consideration that he thought was warranted.

In fact, Mr. Kaplan's instincts about the proposed project were and are correct. Fundamental and critical policies within the County's Coastal Implementation Plan absolutely require that the County apply a "basic viewshed policy of minimum visibility." This standard was not applied to the proposed project.

Conclusion

The essence of Mr. Kaplan's appeal is his plea that the Board do two things: (1) Ensure that the proposed project was properly processed; and (2) Ensure that the proposed project, if approved, be approved only when adequate mitigation measures are imposed with respect to his adjoining property and the current access trail to provide MINIMUM VISIBILITY.

As approved by the Zoning Administrator, no mitigation or project condition seeks to achieve this critically important policy of the County's Coastal Implementation Plan. We urge the Board to ensure that an adequate landscape and screening plan be a requirement of any approval of the proposed project.

Thank you for your serious consideration of these concerns.

Very truly yours,

Gary A. Patton

cc: The Kaplan Family
Monterey County Planning Department
Eric Miller Architects (For Applicant)

Coastal Act Provision
Section 30212 New Development Projects

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

(b) For purposes of this section, "new development" does not include:

(1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.

(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.

(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.

(4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not a seaward of the location of the former structure.

(5) Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the commission determines that the activity will have an adverse impact on lateral public access along the beach.

As used in this subdivision "bulk" means total interior cubic volume as measured from the exterior surface of the structure.

(c) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.

(Amended by: Ch. 1075, Stats. 1978; Ch. 919, Stats. 1979; Ch. 744, Stats. 1983.)