

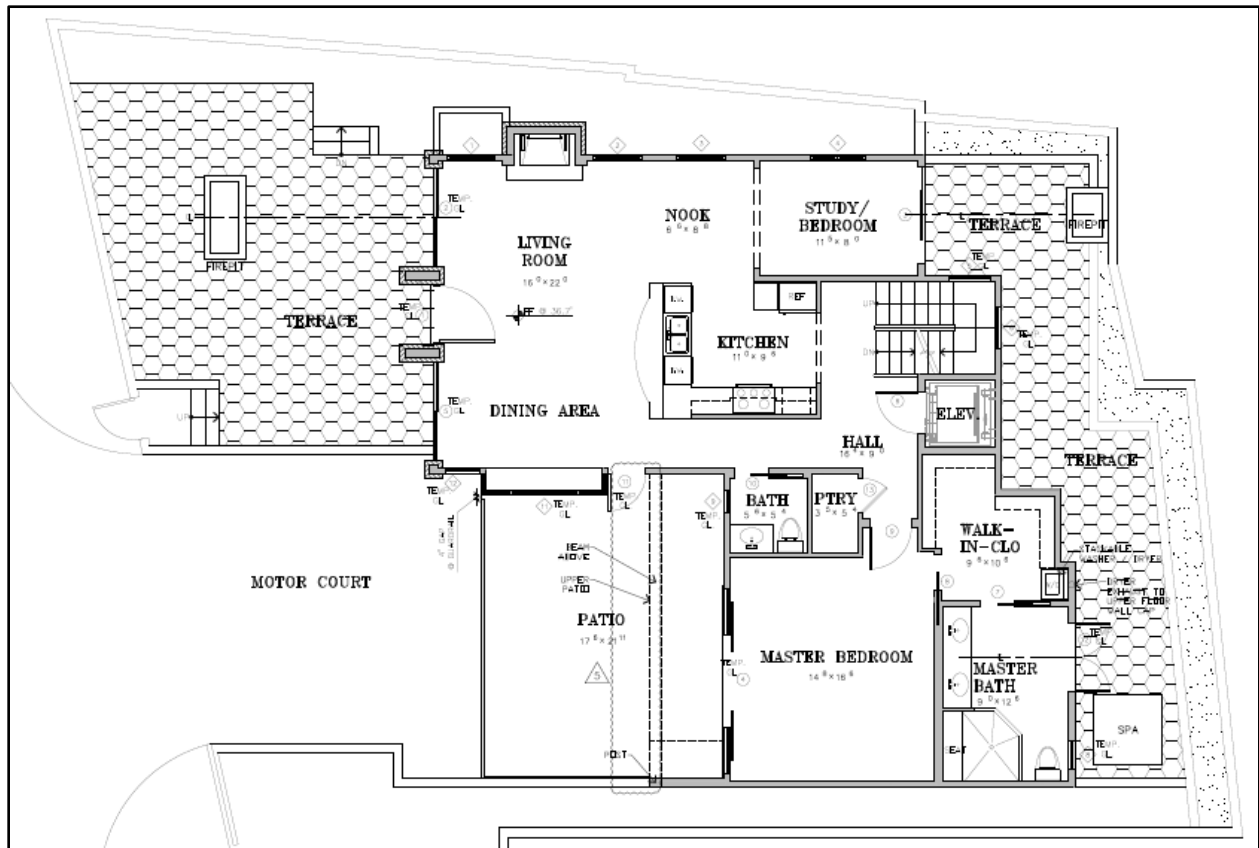
# Attachment A

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## DISCUSSION

### Project Description, Setting and Background

The proposed amendment consists of exterior and interior improvements to a previously approved three-story single-family dwelling, which began construction in 2017 (See **Figure 1**). The property is located at 26327 Scenic Road, Carmel, within the Carmel Land Use Plan (see the Vicinity Map at **Attachment D**). The subject properties are zoned MDR/2-D (18) or Medium Density Residential, 2 units per acre with a Design Control overlay and an 18-foot height restriction and is governed by regulations and policies in the 1982 General Plan, the Carmel Area Land Use Plan (LUP), the Carmel Coastal Implementation Plan (CIP), and the Monterey County Coastal Zoning Ordinance (Title 20). Carmel Point is a developed residential neighborhood, and the subject parcel and adjacent parcels have been previously developed with single-family dwellings.



**Figure 1. Minor and Trivial Amendment – Site Plan**

On January 31, 2008, the Zoning Administrator approved a Combined Development Permit consisting of a 1) Coastal Administrative Permit to allow the construction of a new 2,950 square foot single-family dwelling with a 545 square foot attached garage and 1,130 cubic yards of cut for basement excavation; 2) a Coastal Development Permit to allow development within 750 feet of a known archaeological resource; and 3) a Design Approval. Approval of this permit also included the adoption of a Mitigated Negative Declaration and 25 conditions of approval

(Resolution No. 060735 (PLN060735)). On February 17, 2008, Mr. David Sabih (appellant) filed an appeal of the January 31, 2008 discretionary decision of the Zoning Administrator, pursuant to Monterey County Code (MCC) 20.86.030.A. On July 22, 2008, the Board of Supervisors held the continued public hearing and denied the appeal of the Zoning Administrator's decision to approve a Combined Development Permit (Board of Supervisors' Resolution No. 08-521; PLN060735) (**Attachment I**). This resolution approved 26 conditions of approvals for PLN060735.

On August 29, 2008, the project was appealed to the California Coastal Commission. On October 15, 2008, the Coastal Commission found no substantial issue with the County's decision, making the County's decision final. Mr. Sabih, appellant, filed a lawsuit challenging the County's approval and environmental determination, and the permit expiration date was stayed while the project was in litigation. As part of the settlement agreement stemming from the legal challenge, the applicant submitted a request for a Design Approval (PLN110448) to allow minor changes to the previously approved single-family dwelling (PLN060735). The changes included reducing the basement area by moving the foundation in from the side setback by three feet and re-arranging portions of the main and upper-level floor plans. On September 7, 2011, the Director of Resource Management Agency (RMA) - Planning approved a Design Approval (PLN110448) to allow minor changes to the previously approved Combined Development Permit (PLN060735) (**Attachment J**). On September 3, 2015, an application for a 5-year Permit Extension (PLN150766) to PLN060735, as modified by PLN110448, was submitted to staff. On March 1, 2017, the RMA Chief of Planning approved this extension of the permit under Resolution No. 16-080 (**Attachment K**).

On December 21, 2018, the applicant submitted a Design Approval (PLN190030) to modify previously approved permits (PLN060735, PLN110448, and PLN150766) to allow interior and exterior changes including the installation of two (2) lightwells, change of interior floor plans, removal of 39 square feet, modification of windows and doors, the addition of an outdoor firepit, and a change in approved colors and materials. On February 21, 2019, the Director of RMA - Planning approved the Design Approval (PLN190030) to allow minor changes to the previously approved permits PLN060735, PLN110448, and PLN150766 (**Attachment L**).

The totality of the project (Combined Development Permit (Resolution No. 08-251; PLN060735)), as proposed to be amended herein and as amended by the prior Design Approvals, consists of: an approximately 2,895 square foot three story single family dwelling with an attached 556 square foot garage, a 360 square foot main-level patio, a 160 square foot upper-level balcony, an 815 square foot terrace (front and rear), 2 firepits (located in front and rear terrace), a rear spa/hot tub, 300 linear feet of retaining walls, and 1,130 cubic yards of cut.

### Project Analysis

Staff reviewed the application and found the project, as proposed, consistent with the Carmel Area Land Use Plan, 2010 General Plan, Coastal Implementation Plan (CIP) Part 4, and Title 20.

### *Applicable Zoning Development Standards*

See the below section - Appeal Contention and Responses - for the County's summarized response to contentions relating to development standards. In summary, staff has found the project, inclusive of the plan changes, consistent with the applicable development standards.

### *Cultural Resources*

During planning review of PLN060735, potential impacts to cultural resources and geological conditions were identified and mitigated (See the previously adopted Mitigated Negative Declaration at **Attachment G**). No technical reports have been prepared for PLN190030-AMD1 because the proposed minor interior and exterior improvements are in keeping with analysis contained in the technical reports prepared for the previously approved Combined Development Permit (PLN060735).

Located on Carmel Point, the project is in an area that is known for its cultural resources. A Preliminary Cultural Resources Reconnaissance prepared by Archaeological Consulting, dated March 25, 1999, concluded that the project area contains a potentially significant archaeological resource, but did not reveal significant resources. Staff requested an updated Archaeological Report for PLN060735, which was completed on January 17, 2007, by Archaeological Consulting. This report indicated that construction could proceed without further archaeological investigation; however, a possibility still exists that, during construction, previously unidentified or unexpected resources may be discovered. Due to this potential, an initial study was prepared, and two mitigation measures were recommended for PLN060735. In order to reduce potential impacts to archaeological resources to a less than significant level, PLN060735 was conditioned to require the applicant to halt construction if archaeological resources were uncovered and contract with an archaeologist to monitor ground-disturbing activities associated with the proposed construction (Condition No. 3 and No. 24). Condition No. 3 (Mitigation Measure 1) has been met under PLN060735 and PLN110448, while Condition No. 24 (Mitigation Measure 2) has only been partially met. Corresponding Condition Compliance Forms (CCF) with supporting evidence have been uploaded to the respective HCD-Planning File No(s). Although initial grading work did not comply with Condition No. 24, which required an archaeological monitor to be on-site during construction related activities, that violation has been corrected and fines have been paid. The applicant was required to pay a fine of \$4,300.00 for conducting 10 days' worth of earth work and ground disturbing activities without having an Archaeological Monitor on-site, as required. Condition No. 3 has been previously satisfied under PLN060735 and PLN110448. This condition requires the County Coroner to be contacted if any archaeological or human remains are accidentally discovered during construction. In order to be consistent with the previously adopted Mitigated Negative Declaration, this project shall be subject to the same requirements and mitigation measures that were established for the original permit. Therefore, although this condition was previously satisfied, it is still applicable to this project because the coroner needs be notified if any cultural resources are discovered during the construction. Staff has carried forward this condition to PLN190030-AMD1, and it is incorporated as Condition No. 17. The condition status has been changed to "Not Met" for this amendment. To satisfy Condition No. 16 (Mitigation Measure 1) the applicant shall submit to staff a revised archaeological contract and include the conditions requirements (i.e. contacting the coroner) as a note in the building plans.

### *Geological Hazards*

This subject parcel is located in the unincorporated area of Carmel near the City of Carmel. Geology maps indicate that the project site is located near potentially active faults and is subject to seismic-related shaking.

During project review of PLN060735, geotechnical and geological reports were requested to identify and address potential issues with developing a new, habitable structure in this area. These reports analyzed the risks associated with the site location and characteristics including soil suitability, tendencies, and seismic effects. The engineer recommended design features and procedures to reduce the risks pertaining to soil suitability and support of adjacent structures. The geotechnical report, prepared by Grice Engineering, supported the “Best Management Practices,” which had been prepared by Haro, Kasunich, & Associates. The “Best Management Practices” included a recommendation for temporary shoring which would support the adjacent structures during foundation excavation. PLN060735 was conditioned to require the applicant to install temporary shoring in order to reduce potential impact of neighboring structures (Condition No. 25). This condition has been partially met under PLN060735 (Document CCF\_PLN\_PLN060735\_072814). This partially met condition, as well as all other “Partially Met” or “On-Going” conditions listed under PLN060735, will be carried forward to PLN190030-AMD1. There will be no change in geological hazards or conditions as a result of the proposed plan changes.

#### *Environmental Review*

During project review of PLN060735, potential impacts to archeological resources, geology, and soils were identified. The Carmel Area Coastal Implementation Plan (CIP) requires environmental assessment of all development proposed on parcels with known archaeological resources (CIP, Section 20.146.090.C.1). An Initial Study and a Mitigated Negative Declaration (MND) were prepared and circulated and adopted by the Zoning Administrator on January 31, 2008. An appeal was received in February 2008 which included comments and concerns regarding air quality from a neighbor. Changes were made to the MND to address public concerns and pursuant to CEQA Guidelines Section 15073.5, the revised MND was recirculated. Subsequently, the Revised MND was adopted and the Combined Development Permit was approved by the Board of Supervisors on July 31, 2008. This decision was appealed to the Coastal Commission who found no substantial issue with the County’s decision, thus making the County’s decision final. A lawsuit challenging the County’s approval and environmental determination was filed with the Superior Court. As part of the settlement agreement, the applicant requested a Design Approval (PLN110448) to allow minor changes to the previously approved single-family dwelling (PLN060735). This permit was approved on September 07, 2011 by the Director of Resource Management Agency (RMA) – Planning.

This minor amendment does not require subsequent environmental review pursuant to Section 15162 of the CEQA Guidelines because no substantial changes are proposed requiring major revisions of the MND; no substantial changes have occurred with respect to circumstances under which the project was undertaken that will require major revisions to the MND; all work is located within the existing building footprint or previously disturbed areas, and none of the work is within the sensitive habitat area. The revised MND and Mitigation Monitoring and Reporting Plan (MMRP) included three mitigation measures which were applied as Condition No(s). 3, 24, and 25 to PLN060735. All mitigation measures and conditions were carried forward to PLN110448, PLN150766, and PLN190030. Although Mitigation Measure 1 has been met under

PLN060735 and PLN110448, it is still applicable to this project and therefore has been carried forward a “Not Met” condition. Mitigation Measures 2 and 3 from the MMRP have been carried forward to this permit (PLN190030-AMD1) as conditions of approval. Therefore, as proposed and conditioned, this amendment does not require supplemental environmental review pursuant to Section 15162 of the CEQA Guidelines. The amendment, as proposed and conditioned, does not result in any significant impacts not addressed in the previously adopted MND. All mitigation measures that address the previously examined significant effects of PLN060735 (Resolution No. 08-251) have been carried forward to this permit and incorporated as Condition No. 8, 10 and 17.

#### *Carmel Unincorporated/Highlands Land Use Advisory Committee*

The project was referred to the Carmel Unincorporated/Highlands Land Use Advisory Committee (LUAC) for review. The LUAC, at a duly-noticed public meeting on April 5, 2021, voted 4 – 0, with 2 absent members, to support the project with changes. At the LUAC meeting, interested members of the public expressed concerns related to the impact on private views, privacy, noise, and air quality, and the consistency with all development standards for the MDR zoning district. The LUAC members raised concerns about the location of the firepit and the retention of stormwater runoff. At the time of the LUAC meeting, the scope of the project included an addition of 120 square feet to the upper-level balcony. As a result of the concerns raised, the LUAC voted to support the project with one change – remove the proposed 120 square foot upper-level balcony extension/addition. Although the applicant decided to not fully incorporate the LUAC’s recommendation, the applicant did agree to reduce the proposed 120 square foot balcony addition by 50 square feet, resulting in an addition of 65 square feet to the previously approved 95 square foot balcony. The project’s agent discussed this change with Staff via a phone call on April 20, 2021 and subsequently submitted a letter to Staff explaining that this change is in response to the neighbor's concerns and the LUAC’s recommendation (**Attachment E**). This change has been incorporated into this report and is reflected in the attached plan set.

#### *Public Concern*

Concerns expressed by the public referenced specific additions and alterations proposed in the amendment: the outdoor spa, terrace, upper-level balcony, roof height, and firepits (Attachment F1). These concerns related to potential impacts of the above listed modifications on privacy, drainage, private view obstruction, and appearance, and the impact on the proposed structure’s height, lot coverage, and setbacks. An interested public member also stated the need for the project to be reviewed by the Carmel Highlands/Unincorporated LUAC. Staff finds that the proposed amendment meets all development standards established for the MDR district, does not constitute the need for a grading or erosion plan but is conditioned to require the applicant to submit a revised drainage plan, and was reviewed by the Carmel Highlands/Unincorporated LUAC. The LUAC members the found the project, in its totality, compatible with the neighbor characteristic. As for the concern relating to privacy, private views and privacy are not protected under the Carmel Area Land Use Plan or applicable MCC. Finally, Environmental Services will review the revised drainage plan in accordance with applicable MCC regulations, Carmel Area LUP policies, and CIP (Part 4) regulations, to ensure that the plans accommodate the increased run-off resulting from site modifications and provide adequate drainage for the single-family

dwelling. Additionally, the applicant submitted three letters to staff addressing the concerns referenced in the public objections (Attachment F2).

### Appeal Contention and Responses

Fenton & Keller Attorneys at Law, on behalf of David Sabih (neighbor), filed an appeal of the Zoning Administrator's decision to approve the project pursuant to Monterey County Code Section 20.86.030.C. The appeal raised 13 contentions, which staff has summarized below. The Appellant's contentions and the County's responses to those contentions are set forth in the Draft Resolution at **Attachment B**. The full text of the Appellant's contentions may also be found in the Notice of Appeal at **Attachment C**.

In summary, the Appellant's contentions relate to the cumulative impacts of the project, compliance with County development standards, and the adequacy of County practices and processes. County staff grouped and summarized the contentions as follows:

1. The amendment violates setback, drainage, lot coverage and floor area regulations;
2. Grading, drainage and/or erosion control plans should be required;
3. The owners "piece-meal" approach evades proper environmental review and public review;
4. The project has been controversial since the original permit (PLN060735);
5. The cumulative impacts of the previously approved projects and this amendment are hard to analyze;
6. The goal of the project is to maximize profits as a "spec. house;"
7. The amendment maximizes all development standards (floor area ratio, lot coverage, height, setbacks) and requires excessive grading;
8. The project is inconsistent with the surrounding neighborhood and looks out of place;
9. A licensed civil engineer should verify that the house does not exceed the required setbacks and height regulations;
10. A grading, drainage or erosion control should be required to verify the applicant's claim of "no new grading;"
11. The patio should be considered a deck structure and should not be allowed in the front setback;
12. The firepits should not be allowed in the setbacks and spark arrestors should be required;
13. The spa, which compromises the neighbor's privacy, should not be allowed in the setback.
14. The improvements are not of minor and trivial nature;

#### *The County's summarized response:*

Staff has reviewed and recommended approval of PLN060735, PLN110448, PLN150766, PLN190030, and, this permit, PLN190030-AMD1 based on their own merits. The various past amendments were based on the particular facts and circumstances occurring at that time, such as the 2011 Design Approval which was done in response to settlement. The County adopted a Mitigated Negative Declaration (MND) prior to approving the original Combined Development Permit (PLN060735). When the project was granted a five-year extension, the County found



that no additional environmental review was required. (Resolution No. 16-080, Finding No. 3.) The 2011 and 2019 Design Approvals were “over the counter” design approvals because they involved only minor changes to the project. The environmental review of this amendment has not been piecemealed. The current amendment does not warrant additional environmental review under CEQA Guidelines Section 15162. In finding that the currently proposed minor changes in the project do not result in additional environmental impacts or increase the severity of environmental impacts as compared to what was analyzed in the MND, the County has reviewed the whole of the project as modified by the proposed minor amendment and has not piecemealed the review. As proposed and conditioned, this amendment is consistent with the previously adopted Mitigated Negative Declaration.

Pursuant to Monterey County Code (MCC) Section 20.12.060.E, the maximum allowed site coverage and floor area ratio in the Carmel MDR/2 district is 35 percent and 45 percent, respectively. Due to the relatively small lots of the Carmel Point area, many of the residences maximize their lot coverage, floor area ratio, and height and are located within close proximity of all setbacks. The previously approved Design Approval, PLN190030, had a site coverage of 1,460 square feet (31 percent) and floor area of 2,076 square feet (44 percent). These calculations were based on a lot size of 4,700 square feet (0.108 acres). It was discovered after approval of PLN190030 that the lot size (4,700 square feet) was incorrectly calculated. This amendment reflects the correct lot size of 4,606, which has been verified by the County Surveyor. To conform with all development standards associated with the correct lot size, the proposed amendment reduces the previously approved main-level and upper-level floor areas by 0.2 square feet and 3.1 square feet, respectively. As a result, the proposed amendment has a lot coverage of 1,561 square feet (34%) and a floor area ratio of 2,072.7 (45%). Therefore, as proposed, the amendment meets all required development standards.

The single-family dwelling is setback from the property line approximately 20 feet (front), 5 feet (sides), and 13 feet (rear). The proposed addition to the main level patio does result in the patio extending into the front setback by approximately 1 foot. Per MCC Section 20.62.040.D, uncovered decks and porches, such as the proposed patio, may extend a maximum of six feet into the front required setback. Per MCC Section 20.62.040, cornices, eaves, canopies, fireplaces, and similar architectural features, such as the previously approved light well, may extend into any required setback not exceeding 2 1/2 feet. As previously approved, the lightwell extends into the side setback by approximately 1 foot. This amendment removes one of the two previously approved lightwells, therefore not changing the previously approved site setback.

Pursuant to MCC Section 20.12.060.C, the height limit for main structures in the MDR district is typically 30 feet, unless noted differently on the subject parcel’s zoning map. The 18-foot height limit noted in the subject parcel’s zoning designation - MDR/2-D(18)(CZ) - supersedes the standard 30-foot height limit of the MDR district. The original permit, PLN06735, was modified by PLN190030 to allow the structure height to increase from 17 feet 5 inches to 18 feet. Although this amendment proposes to increase the ceiling height of the main (second) level by one foot, the proposed reduced roof pitch and increased flat roof area will allow the structure to maintain the 18-foot height limit regulation. Staff has carried forward a height verification

condition from PLN060735 (integrated into this amendment as Condition No. 11). This condition requires that the applicant provide evidence from a licensed civil engineer or surveyor that the height of the structure, measured from an approved benchmark location, is consistent with what was approved on the building permit.

The Carmel Highlands/Unincorporated LUAC found the project consistent with the neighborhood and comparable to the bulk and mass of other dwellings in the vicinity. Surrounding parcels have been developed with other dwellings of similar size and character making up much of the view on the eastern side of Scenic Road and from Carmel State Beach. Staff has determined that the project will harmonize with the existing character of the neighborhood and scenery using natural earth-toned colors. The colors and materials included in this amendment were previously approved by Design Approval PLN190030.

Private views and privacy are not protected under the Carmel Area Land Use Plan or applicable MCC. The previously approved firepits and the addition of the rear outdoor spa are not considered structures and therefore are not regulated by the setback standards for the zoning district. MCC Section 18.09.030 states that fire arrestors are only required for chimneys, incinerators, smokestacks or similar devices that use solid fuel for conveying smoke or hot gases to the outer air. Both the front and rear fire pits use propane and therefore are not required to install fire arrestors.

As a direct result of the proposed balcony and patio additions, the amendment increases the impervious surface area of the subject lot by 215 square feet. Therefore, HCD- Environmental Services has applied Condition No. 15, which requires the applicant to submit a Drainage and Stormwater Control Plan. A drainage plan for the previously approved single-family dwelling (PLN060735, Resolution No. 08-251) was submitted to RMA - Building Services (17CP01689) and approved by Water Resource Agency in 2017; this plan satisfied Condition No. 17 of PLN060735 and PLN110448. This previously approved drainage plan does not accommodate or account for the increased impervious surface area associated with this amendment. Therefore, a revised drainage plan shall be submitted. Environmental Services will review the plan in accordance with applicable MCC and Carmel Area LUP policies. The proposed 255 square foot addition to the terrace is above grade and does not require any cut or on-site fill as off-site sand and gravel will be used to level the addition with the previously approved terrace. The amendment does not propose any grading or land disturbance and therefore submission of a grading or erosion plan is not required, pursuant to MCC 16.12.060.E. All grading approved under PLN060735 (1,130 cubic yards of cut) has been completed.

The previously approved permit, the Design Approvals, the permit extension, and this proposed amendment have been processed, described, and noticed according to Monterey County Code and applicable laws. This amendment was reviewed by the Land Use Advisory Committee, the Zoning Administrator, and has now received de novo review by the Board of Supervisors at a public hearing. The previously approved Combined Development Permit (PLN060735) and subsequent amendments and extension are on file with Housing and Community Development.

All approved plans and applications associated with these permits are available to the public for review. At the Zoning Administrator hearing, the appellant contended that his concerns were not presented to the LUAC. The LUAC meeting was properly noticed. Pursuant to the Monterey County LUAC Procedure guidelines adopted by the Board of Supervisors on April 28, 2015 (Exhibit 1 to Board Resolution 15-103), the LUAC agenda was posted in accordance with the Brown Act. The LUAC agenda was posted on the HCD-Planning public website, and on a bulletin board outside the County's Government Building (1441 Schilling Place) in Salinas. The notice posting locations were freely accessible to members of the public. The County also mailed notices of the LUAC meeting to owners and occupants of properties within 300 feet of the project site, including appellant. The hearing at the Zoning Administrator was publicly noticed in accordance with state law and state regulation. At these public hearings, all members of the public were given an opportunity to be heard.

In conclusion, staff has reviewed the appeal contentions and finds no issue that would change staff's recommendation with respect to this project. Staff recommends denial of the appeal and approval of the project as described in the attached resolution and subject to the attached conditions.

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