



Monterey County

Item No.

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: RES 21-052

March 16, 2021

Introduced: 3/3/2021

Current Status: Scheduled PM

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Matter Type: BoS Resolution

Public hearing to consider an appeal by Fred Miranda from the October 28, 2020, decision of the Monterey County Planning Commission to state and issue a final determination that the Planning Commission had an unbreakable tie vote and neither approved nor denied the following applications:

- a. Construction of an approximately 2,153 square foot two-story single-family dwelling, including removal of two trees (Coast live oak), development within 100 feet of environmentally sensitive habitat and development on 30 percent slope (PLN190097/ WALNUT COVE LLC); and
- b. Construction of an approximately 3,114 square foot two-story single-family dwelling including removal of two trees (Coast live oak, Monterey pine), development within 100 feet of environmentally sensitive habitat and development on 30 percent slope (PLN190098/WALNUT COVE LLC).

Project Locations: 24418 (PLN190097) and 24424 (PLN190098) San Juan Road, Carmel Woods, Carmel Area Land Use Plan, Coastal Zone

Proposed CEQA Action: Categorically Exempt per section 15303 of the CEQA Guidelines.

RECOMMENDATION:

It is recommended that the Board of Supervisors adopt a resolution to:

- a. Grant the appeal of Fred Miranda from the Planning Commission's October 28, 2020 statement and issuance of a final determination that the Planning Commission had an unbreakable tie vote and neither approved nor denied the subject applications;
- b. Find that both projects involve the construction of one new single-family dwelling on an existing legal lot of record, which qualify as Class 3 Categorical Exemptions pursuant to Section 15303 of the CEQA Guidelines, and there are no exceptions pursuant to Section 15300.2 (individually or cumulatively);
- c. Approve a Combined Development Permit (Planning File No. PLN190097) consisting of: 1) Coastal Administrative Permit and Design Approval to allow the construction of an approximately 2,153 square foot two-story single-family dwelling with an attached 440 square foot garage;
2) Coastal Development Permit to allow the removal of two trees (Coast Live oaks);
3) Coastal Development Permit to allow development within 100 feet of environmentally sensitive habitat; and
4) Coastal Development Permit to allow approximately 529 square feet of development on slopes exceeding 30 percent; and
- d. Approve a Combined Development Permit (Planning File No. PLN190098) consisting of: 1) Coastal Administrative Permit and Design Approval to allow the construction of an approximately 3,114 square foot two-story single-family dwelling with an attached 462 square foot garage;
2) Coastal Development Permit to allow the removal of two trees (Monterey pine and Coast

Live oak);

3) Coastal Development Permit to allow development within 100 feet of environmentally sensitive habitat area; and

4) Coastal Development Permit to allow approximately 80 square feet of development on slopes exceeding 30 percent.

Draft resolutions, including findings and evidence for each project, are attached for consideration (**Attachments B and C**). Staff recommends approval of each Combined Development Permit subject to fifteen (15) and sixteen (16) conditions of approval, respectively.

PROJECT INFORMATION:

Property Owner: Walnut Cove LLC

Agent: Chad Brown

APNs: 009-013-011-000 and 009-013-012-000

Zoning: Medium Density Residential, 2 units per acre, with a Design Control Overlay (Coastal Zone) [MDR/2-D (CZ)] (Both Parcels)

Existing Parcel Sizes: 9,340 square feet (0.214 acre) and 9,965 square feet (0.229 acre) respectively

Plan Area: Carmel Area Land Use Plan, Coastal Zone

Flagged and Staked: Yes

SUMMARY:

The Walnut Cove LLC projects involve the construction of single-family dwellings on recognized legal lots of record. The projects also involve development on slopes exceeding 30 percent and within 100 feet of environmentally sensitive habitat, and tree removal. The properties are located on San Juan Road, near the intersection with Castro Lane and Pescadero Road, in the Carmel Woods neighborhood of the unincorporated area of Carmel.

On October 9, 2019, the Planning Commission first considered PLN190098 (i.e., the proposed residence at 24424 San Juan Road), and provided two options for staff and the applicant. The Commission directed that either staff return with a resolution for denial of the project as proposed, or that the applicant revise the project to reduce the amount of development on slopes exceeding 30 percent and to reduce the mass of the proposed residence. After the Planning Commission continued PLN190098, the applicant requested a continuance of PLN190097, and opted to revise both projects per Planning Commission direction.

On October 28, 2020, the Planning Commission considered both projects. A series of motions resulted in an unbreakable tie vote as to whether to approve or deny the projects. The Planning Commission then adopted a motion, per Rule 10.1 of the Monterey County Planning Commission Rules for the Transaction of Business, to state and issue a final determination that the Planning Commission had an unbreakable tie vote and neither approved nor denied the applications (**Attachment F**). Based on comments made by the Planning Commissioners, the findings for denial and approval are summarized below:

Findings for denial of the projects:

- Potential impacts caused by construction of the single-family dwellings on slopes exceeding 30 percent;
- Potential impacts of the proposed development on an adjacent drainage easement;
- Compatibility of the proposed development with the neighborhood character (e.g., exterior design and colors, and size);
- Consistency of the proposed projects with applicable Carmel Land Use Plan policies and zoning regulations;
- Applicability of the CEQA categorical exemption; and
- Affordability of the proposed development.

Findings for approval of the projects:

- The applicant revised the proposed development per the Planning Commission's direction in October 2019 (i.e., reduced the amount of development on slopes exceeding 30 percent and reduced the size of the proposed structures);
- The proposed structures would be consistent with the County's development standards as identified in the applicable zoning ordinance; and
- The proposed development would be consistent with the neighborhood character (e.g., exterior design and colors, and size).

The Appellant, Fred Miranda (also the Applicant, Walnut Cove LLC, collectively, Appellants), timely appealed the October 28, 2020 Planning Commission decision. The Appellant is challenging the Planning Commission's final determination that it had an unbreakable tie vote and that it therefore neither approved nor denied the applications, a de facto denial. Appellant's contentions: 1) there is no feasible alternative to development that encroaches on slopes exceeding 30 percent; 2) the proposed projects would not impact an adjacent drainage easement; 3) the proposed structures and exterior colors and materials would be compatible with the neighborhood character; 4) the proposed projects are consistent with applicable plan policies and zoning regulations; 5) as proposed, the projects qualify for categorical exemptions under CEQA; and 6) affordability ordinances are not applicable to the proposed projects. These contentions are addressed in more detail in the attached Discussion (**Attachment A**) and Draft Resolutions (**Attachments B and C**).

On January 13, 2021, Appellants agreed to a postponement of the appeal hearing beyond the 60-day timeframe required by Monterey County Code section 20.86.070.C. The postponement would allow the Appellants time to revise the plans to address the concerns of the neighbors and Planning Commission. On January 22, 2021, Appellants submitted revised plans that show a reduction in the floor area and height of each single-family dwelling. The proposed residence at 24418 San Juan Road would be reduced by 270 square feet in floor area, and by an additional 4.5 feet in roof height. The proposed residence at 24424 San Juan Road would be reduced by 341 square feet in floor area, and by an additional 6.0 feet in roof height.

Overall, since the submittal of the original applications in 2019, the Appellants have reduced the bulk and mass of the proposed structures to better fit the neighborhood character.

For the proposed (i.e., revised) residence at 24418 San Juan Road (Planning File No. PLN190097), the revisions have:

- Reduced the amount of development on slopes exceeding 30 percent by approximately 1,371 square feet (from 1,900 square feet to the revised amount of 529 square feet). The revisions include a cantilevered deck, thereby avoiding development on slope exceeding 30 percent on the lower half of the property and resulting in elimination of the 17-foot retaining wall initially proposed in the same general area.
- Reduced fill by approximately 500 cubic yards (from 720 to 200 cubic yards).
- Reduced the height above average natural grade by approximately 6.5 feet (from 30 feet to 23.5 feet).
- Reduced the total floor area by 270 square feet (from 2,863 square feet to 2,593 square feet).

For the proposed (i.e., revised) residence at 24424 San Juan Road (Planning File No. PLN190098), the revisions have:

- Reduced development on slopes exceeding 30 percent by approximately 520 square feet (from 600 square feet to the revised amount of 80 square feet). This includes entirely avoiding development on slopes exceeding 30 percent on the lower half of the property by reducing the front setback from 36 feet to 20 feet.
- Reduced the height above average natural grade by approximately 12 feet (from 30 feet to 18 feet).
- Reduced the total floor area by 779 square feet (from 4,355 square feet to 3,576 square feet).
- Reduced the structural coverage by 543 square feet (from 3,319 square feet to 2,776 square feet).
- Reduced the structural width (side to side) of the proposed single-family dwelling by 5 feet.
- Reduced the overall structural length (front to rear) by 9 feet.

As proposed, both projects minimize development on slopes exceeding 30 percent, avoid development impacts to environmentally sensitive habitat areas, minimize tree removal, and are consistent with the neighborhood character. Regarding design and neighborhood character, the dwellings within this vicinity have a variety of architectural styles and the proposed exterior colors and finishes blend with the surrounding environment, are consistent with the surrounding residential neighborhood character and setting, and are consistent with other dwellings in the neighborhood. The proposed residences are consistent with the size and scale of residences along San Juan Road, and the proposed bulk and mass would not contrast with the neighborhood character. The proposed structures would also conform to all applicable development standards. Based on staff review of County records and site visits, the proposed square footages, as well as the proposed bulk and mass of the proposed structures conform to the neighborhood's character.

Staff has reviewed the contentions and has determined that the project is adequately designed and conditioned to minimize potential impacts to resources at or near the site. A more detailed Project Discussion is included as **Attachment A**, in which County staff has summarized contentions and responses. Detailed responses are included in the Draft Resolutions at **Attachments B and C**.

The appeal hearing on the project at the Board is de novo. Staff recommends granting the appeal and approving the projects. Staff has prepared separate draft resolutions granting the appeal, finding the

projects categorically exempt pursuant to CEQA, and approving the Combined Development Permits. If the Board desires a different action, the Board could adopt a motion of intent and continue the hearing to a date certain for the staff to prepare a resolution with modified findings.

DISCUSSION:

An in-depth discussion covering project analysis and detailed responses to appeal contentions has been included as **Attachment A**.

OTHER AGENCY INVOLVEMENT:

The following County agencies or departments reviewed this project:

- Public Works, Facilities and Parks
- Environmental Health Bureau
- Environmental Services
- Cypress Fire Protection District

Land Use Advisory Committee (LUAC):

Staff referred the originally-proposed projects to the Carmel Highlands/Unincorporated LUAC for review. The LUAC, at a duly-noticed public meeting on July 1, 2019, voted to continue the items and recommended the applicant remove a tree from a neighboring property, provide color samples, reduce the plate heights of the proposed structures, and re-stake the proposed development (**Attachment H**). The applications went before the LUAC again on July 15, 2019. Between meetings, the applicant submitted color samples and revised plans to reduce the heights above average natural grade from 30 feet to 28 feet (PLN190097) and from 30 feet to 26 feet (PLN190098), and re-staked the proposed development.

At the meeting on July 15, 2019, the LUAC reviewed the color samples and recommended another continuance to recommend the applicant reduce the plate heights even lower (**Attachment H**). For PLN190097, the applicant did not further reduce the height, opining that the 2-foot reduction was adequate to address concerns. Based on staff review of the proposed development under PLN190097, and consideration of other two-story homes within the neighborhood, the two-story residence at 28 feet above average natural grade would have been consistent and would have blended with the overall neighborhood character. For PLN190098, the applicant reviewed the recommendations from the LUAC and staff, and reduced the height an additional 2 feet, from 26 feet to 24 feet (an overall 6-foot height reduction from the original proposal). Based on review of the proposed development under PLN190098, and consideration of other two-story homes within the neighborhood, staff determined that the two-story residence at 24 feet above average natural grade would be consistent with the overall neighborhood character. Revisions incorporated between the July 1 and July 15, 2019, LUAC meetings were incorporated to minimize the mass to the extent that the residence would not negatively impact the character of the neighborhood. Revisions made to the projects following the October 9, 2019 public hearing serve to bring them even more in line with previous LUAC recommendations.

Staff referred the projects to the LUAC for review again on October 5 and 19, 2020. At these LUAC meetings, interested members of the public expressed concerns related to the bulk and mass of the proposed residence, impact on neighborhood character, development on slope, drainage and

erosion control, tree removal, and staking and flagging. On October 19, 2020, the LUAC voted to not support approval of either project. For PLN190097, the LUAC voted 3 - 0 - 4 (3 yes, 0 no, and 4 abstain). For PLN190098, the LUAC voted 5 - 1 - 1 (5 yes, 1 no, and 1 abstain) (**Attachments I and J**). In the motion for PLN190098, the LUAC also stated and approved their intent to submit a letter to the Planning Commission regarding their concerns about the development regulations in this and similar areas (**Attachment K**). The LUAC did not offer project-specific modifications for either project.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

The projects are categorically exempt from environmental review under CEQA Guidelines section 15303(a). This exemption applies to the construction of single-family dwellings within a residential neighborhood and limits the number of structures allowable on any legal parcel. The proposed projects involve the construction of two single-family dwellings on two separate and adjacent legal parcels, development on slopes exceeding 30 percent, development within 100 feet of environmentally sensitive habitat, and tree removal. None of the exceptions to exemptions under CEQA Guidelines section 15300.2 apply to these projects. The projects are not located on a hazardous waste site or historic resource, near a scenic highway, are not likely to effect cultural resources, and will not have a significant effect on the environment. Therefore, the projects are categorically exempt.

The proposed projects involve the construction of separate single-family dwellings and accessory structures on two residentially-zoned parcels within a developed neighborhood. The two properties are recognized by the County as separate legal lots of record and both lots were granted unconditional certificates of compliance (CC180035 and CC180036). The technical reports prepared for the projects do not identify any potentially significant or cumulative impacts. Moreover, the construction of up to two single-family dwellings on a single lot in a residential zone would be categorically exempt under section 15303(a) of the CEQA Guidelines. As proposed, the projects would not exceed the cumulative impacts anticipated under this categorical exemption for a single lot or parcel, or the assumed buildout of the area in the certified Local Coastal Program. Since these projects occur on two separate legal lots of record, the potential cumulative impacts are well within the parameters of this categorical exemption. Therefore, there is no substantial evidence that would support a fair argument that the project has a reasonable possibility of having a significant effect on the environment or that it would result in a cumulative significant impact.

FINANCING:

Funding for staff time associated with this project is included in the FY2020-21 Adopted Budget within HCD-Planning's General Fund 001, Appropriation Unit HCD001.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

This action represents effective and timely response to our HCD customers. Processing this application in accordance with all applicable policies and regulations also provides the County accountability for proper management of our land resources.

Check the related Board of Supervisors Strategic Initiatives:

Administration

Economic Development

- Health & Human Services
- Infrastructure
- Public Safety

Prepared by: Joseph Sidor, Associate Planner, x5262

Reviewed by: Craig Spencer, HCD-Planning Services Manager *CS*

Approved by: Mike Novo, AICP, Interim Director of Housing and Community Development

The following attachments are on file with the Clerk of the Board:

Attachment A - Discussion

Attachment B - Draft Resolution for PLN190097, including:

- Conditions of Approval
- Plans

Attachment C - Draft Resolution for PLN190098, including:

- Conditions of Approval
- Plans

Attachment D - Notice of Appeal

Attachment E - Vicinity Maps

Attachment F - Planning Commission Resolution No. 20-037, dated October 28, 2020

Attachment G - Correspondence

Attachment H - Carmel Unincorporated/Highlands LUAC Minutes (July 1 and July 15, 2019)

Attachment I - Carmel Unincorporated/Highlands LUAC Minutes (October 5, 2020)

Attachment J - Carmel Unincorporated/Highlands LUAC Minutes (October 19, 2020)

Attachment K - Carmel Unincorporated/Highlands LUAC Letter, dated January 4, 2021

cc: Front Counter Copy; California Coastal Commission; Cypress Fire Protection District; Environmental Health Bureau; Public Works; Environmental Services; Craig Spencer, HCD Services Manager; Joseph Sidor, Project Planner; Chad Brown, Agent; Walnut Cove LLC, Owner; Tom O'Brien, Interested Party; Natalie Nielsen, Interested Party; Pat Roberts, Interested Party; Elliot Byrd, Interested Party; Robin Robinson, Interested Party; The Open Monterey Project (Molly Erickson); LandWatch; Planning Files PLN190097 and PLN190098