

Attachment A

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ATTACHMENT A

DISCUSSION

PROJECT BACKGROUND

The subject property is located at 1170 Signal Hill Road in Pebble Beach above 17-Mile Drive in the vicinity of Fanshell Beach and the Monterey Peninsula Country Club (Exhibit G). The property contains a house designed by architect Richard Neutra and built in 1957-58. The house is known as the “Connell House” and was bought by Ms. Mehdipour in 2004. The house has remained vacant for a few years. In 2010 Ms. Mehdipour applied for a planning permit to demolish the house and replace it with a new home. During the processing of this permit the house was nominated by a third party for listing in the National Register of Historic Places due to the architectural design by Richard Neutra. Mr. Neutra was an Austrian-born architect known for being part of the architectural modernist movement of the mid twentieth century. In 2014 the house was officially listed in the California Register of Historical Resources and is eligible for listing in the National Register of Historic Places. The house meets the requirements of a historical structure under CEQA so an Environmental Impact Report is being prepared for the proposed demolition of the house and the construction of a new structure.

The house has deteriorated over the last several years due to lack of adequate maintenance. In 2014 the County requested that the house be secured and broken windows be boarded up as a measure to protect the house from vandalism, the elements and to maintain a safe environment while the application for a new structure was being processed. An emergency construction permit (Permit # 14CP00708) was issued for repairs to the balcony rail and building fascia and to board and secure openings; construction fencing was also installed as a security measure.

During a site visit related to the planning permit in early 2015, broken windows, visible signs of water intrusion, and significant mold growth were discovered. Deterioration of the building continued due to water intrusion through damaged parts of the roof, missing flashing, unsealed seams in exterior walls, and open windows and doors. Significant mold conditions have developed throughout the house. A report prepared by M3 for the owner identified significant mold issues. Complaints about the condition of the house have been received from the public. Some of these have been reported directly to the Board of Supervisors under General Comments.

On May 22, 2015, a Compliance Order was sent to the property owner requiring that the house be brought into compliance with Chapters 18.14 and 18.15 which require existing structures to be maintained in a safe and livable condition (Attachment E.) This letter was intended to require the property owner to do the work necessary to protect the house from further deterioration.

In early June 2015 a structural engineer approached the County about obtaining a permit to demolish the building as being a structural hazard. Upon inspection of the building it was discovered that interior and exterior structural members on the bottom floor were saw-cut and large bore holes were drilled through the structural header. This vandalism posed a significant risk that the structure may collapse.

As a result a second Compliance Order was issued by the County on June 19, 2015 wherein the house was deemed as an “Unsafe Structure” and the applicant was required to apply for an Emergency Building Permit to shore up the failing section of the house. Due to the urgency of the situation, stabilization was requested to be completed by June 23, 2015. This was a contentious process. On July 1, 2015, the property owner hired a contractor to undertake the

work after the County obtained a warrant and hired a contractor to shore up the structure. The shoring has been completed by the property owner and the structure is stable.

On July 21, 2015 a third Compliance Order was issued to modify the previous maintenance requirement to require action be taken to simply protect the building from further deterioration. This Compliance Order required the owner to submit a “Mothball” Protection Plan (Protection Plan) to weatherize the structure and stop moisture penetration. The applicant filed for the construction permit (Permit No. 15CP01861) and submitted plans. The house is a historic structure and as such the U.S. Secretary of the Interior standards for mothballing of Historic Structures were used to evaluate the work proposed by the property owner. The County of Monterey Historic Resources Review Board is the body charged with reviewing modifications to Historic Structures.

The HRRB considered the Protection Plan at public hearings on August 6, August 24, and September 3, 2015. On August 6th, the HRRB concluded that the property owner’s submittal did not comply with the Secretary of the Interior’s standards and required additional elements on the Protection Plan and scheduled a special meeting on August 24th. The special meeting was to allow approval of the Protection Plan and allow the mothballing work to be completed prior to onset of wet weather. The owner was not responsive to the direction provided by the HRRB and the owner did not appear before the HRRB on August 24th. The HRRB appointed a technical subcommittee to evaluate the existing condition of the house and recommended actions needed to weatherize the structure. The subcommittee along with members of the RMA Building and Code Enforcement staff conducted the evaluation on August 27th. At the hearing on September 3, 2015, the HRRB, based upon the observations of the technical subcommittee, took action to recommend a set of additional requirements for implementation of the Protection Plan consistent with the guidelines contained in Preservation Brief #31 of the U.S. Department of the Interior. Those requirements were provided to the property owner for her review.

The action of the HRRB is a recommendation to the Building Official in approving the permit for the Protection Plan. The owner did not agree with the recommendations from the HRRB. At the public hearing on September 3, 2015, the HRRB considered the comments by the property owner, members of the public and approved the Protection Plan subject to a list of conditions of approval (See Attachment D).

APPELLANT’S CONTENTIONS AND STAFF RESPONSE

On September 28, 2015, the property owner, Ms. Massy Mehdipour, filed a Notice of Appeal requesting that the Board of Supervisors reject the Resolution from the Historical Resources Review Board (**Attachment C**). The issues included in the appeal by Ms. Mehdipour along with responses from staff are described below.

Contention No. 1:

The appellant states that the Resolution from the Historical Resources Review Board is fundamentally flawed and should be rejected prima facie. The appellant bases this assertion on the provisions of Section 18.25.060 of the Monterey County Code which states that “No property shall be designated pursuant to this Chapter without the consent of the property owner.”

Response:

The reference provided by the appellant is based upon Section 18.25.060 of the Monterey County Code which addresses when historic structures may be designated as a Historic Resource. This designation requires the property owner's consent. The action taken by the HRRB was not to designate the structure as historic, but to rather determine whether the mothballing protection plan was appropriate to protect a structure that is historic. The house is historic by its age, architectural style and the architect who designed the house as reflected by the house listing in the California Register of Historical Resources and eligibility for listing in the National Register of Historic Places. The structure does not need to be listed locally for it to be a historic structure for purposes of the County Code or California Environmental Quality Act.

Review by the HRRB is a requirement. Section 18.25.170.A states: "All applications for regulated permits shall be filed with the Secretary upon the prescribed form and shall contain a clear statement and description of the proposed work, together with any other information deemed necessary by the Secretary, including applicable plans and specifications". This section defines when a permit is required. A permit is required for any "regulated permit". A Regulated Permit is defined as: "any permit issued for any work on an historic structure, its site, or a structure within any historic district". Work being done on this historic structure involved work that required a Construction Permit and is thus a Regulated Permit which requires review by the HRRB.

Section 18.25.170.E states: "The Secretary shall give written notice of the recommendation regarding the regulated permit to the applicant and to the Building Official." The action by the HRRB is a recommendation to the Chief Building Official related to the issuance of the permit for the Protection Plan. Thus the action by the HRRB was entirely within the bounds of the discretion of the HRRB and the resolution with conditions is completely consistent with the requirements of the Monterey County Code.

In addition, the County of Monterey is a participant of the Certified Local Government Program under the National Historic Preservation Act of 1966. This participation is certified per a Certification Agreement entered into by the California State Historic Preservation Officer and the County in 1995. Under this agreement, the County has agreed to "execute and administer a program for the identification and protection of historic, architectural, and archaeological resources..." according to the terms contained in the State of California's Procedures for Certified Local Government Historic Preservation Program (procedures) approved by the Department of the Interior. Under these procedures, the County must "enforce appropriate state and local legislation for the designation and protection of historic properties." The Monterey County Historical Resources Review Board was created under these procedures and has the authority to review the mothballing plan because the subject house is listed in the California Register of Historical Resources and eligible for listing in the National Register of Historic Places.

Contention No. 2:

The appellant states that neither the Planning Department nor Historical Resources Review Board has the authority to compel her to implement a long-term 10-year "mothballing" plan in response to a code violation that her house is not weatherproof. The appellant further states that the Historical Resources Review Board rejected her plan as "inadequate" without any explanation as to why and attempted to impose upon her a long-term "mothball" plan without any regard to cost and safety.

Response:

As established in the response to Contention 1 above, the HRRB does have authority to provide a recommendation to the Chief Building Official in the issuance of the Protection Plan.

The Historical Resources Review Board, reviewed the plans for consistency with Preservation Brief #31(Mothballing of Historic Buildings) of the Secretary of the Interior. The Brief contains measures designed as effective means of protecting a building while planning its future such as the case with the subject building. The measures generally strive to protect the building from sudden loss, weatherize and maintain the building to stop moisture penetration and to control humidity levels inside the building once it has been secured.

The Mothball Protection Plan submitted by the owner on July 27, 2015 was not specific to the problems associated with the building and included vague action items to be completed including replacing flashing atop portions of the building's parapet walls, roof patching as necessary, securing windows and doors and placing tarps on both levels of the building. The HRRB found that the Protection Plan was inadequate because it did not specifically identify sources of damage that needed to be addressed and the corresponding corrective measures. The HRRB concluded that the property owner's submittal did not comply with the Secretary of the Interior's standards and required additional elements on the Protection Plan and continued the hearing to a special meeting to allow the property owner to prepare an adequate plan. A follow up letter was sent to the property owner specifically outlining the action items identified by the HRRB (See Attachment F). The plans resubmitted by the property owner were not responsive to the direction provided by the HRRB and the owner did not appear at the follow up hearing before the HRRB. The HRRB appointed a technical subcommittee that conducted a site visit and recommended items for inclusion in the plans. The HRRB added these recommendations to its resolution recommending approval of the plans.

The objective of the HRRB was not to design a weatherization plan that would be for 10 years, but rather to insure that the house was protected from further damage due to water intrusion, existing mold conditions, and additional vandalism. The HRRB was emphatic of the need to adequately protect the house while the EIR process was completed. This could take some time and there was concern of the previous lack of maintenance and the need to provide an adequate plan.

The appellant contends a willingness to maintain and protect the house. This code enforcement action is related to the fact that the house has not been protected from weather impacts. Had the house been adequately maintained and protected there would not be a code enforcement action against the property.

Contention No. 3:

The appellant states that the Department of Interior Standards do not apply because the work involved to weatherproof the house involves maintenance and no alteration to the building, and therefore no permit is required; and further, that the listing of a building under the California Register of Historical Resources does not impose any restrictions on maintenance upon a private property owner. The appellant further states that CEQA Guidelines section 15064.5 uses the standard of "material alteration" and "materially impaired" and that weatherproofing does not entail material alteration.

Response:

The appellant contends that the Mothball Protection Plan does not require issuance of a construction permit under the County Code and thus the Department of Interior Standards should not apply. Yet, the property owner applied for a Construction Permit (15CP01861) for the Mothball Protection Plan. A Construction Permit is required to replace the flashing, repair the roof, and modify electric connections. In the HRRB review of the plan to protect the structure, there needs to be an objective standard for determining what actions are appropriate to prepare the building for a period of non-occupancy while the EIR process is completed. Preservation Brief 31 prepared by the National Park Service is an authoritative document which addresses this and is the industry standard for historic structures being placed into non-use for a period of time. The HRRB is the body of technical experts having discretion over these matters and it is appropriate to consult with technical experts to insure that the County's actions are appropriate. Under this scenario the HRRB completed a peer review of the Mothballing Protection Plan, put together by the property owner, and deemed the plan to be insufficient. The standard of evaluation was Preservation Brief 31, "Mothballing of Historic Buildings." Regardless of whether a Construction Permit is required, the house needs to be protected from additional weather related deterioration. Preservation Brief 31 is the standard by which this protection is measured.

Contention No. 4:

The appellant states that her Protection Plan is consistent with the Department of the Interior's standards, that the HRRB is erroneously involved and has gone beyond what is appropriate in attempting to impose "to the highest extent the requirements and procedures of Brief #31." The appellant also states that she has no obligation to take measures to "mothball" her house for 10 years.

Response:

The appellant's plans were incomplete in identifying what problems existed creating the water infiltration and as a result it was not possible to determine whether the proposed actions would address the problems. Brief 31 is broken down into the following components as taken directly from the National Park Service Website:

Documentation

1. Document the architectural and historical significance of the building.
2. Prepare a condition assessment of the building.

Stabilization

3. Structurally stabilize the building, based on a professional condition assessment.
4. Exterminate or control pests, including termites and rodents.
5. Protect the exterior from moisture penetration.

Mothballing

6. Secure the building and its component features to reduce vandalism or break-ins.
7. Provide adequate ventilation to the interior.
8. Secure or modify utilities and mechanical systems.
9. Develop and implement a maintenance and monitoring plan for protection.

As can be seen under "2" above, part of preparing the Protection Plan is to assess the building condition. This assessment was not provided in the property owner's submittal. The recommendations made by the HRRB are related to each of the provisions identified above. The

HRRB struggled with what is necessary and appropriate given that the house has been allowed to deteriorate as evidenced by the mold, and unless this is addressed adequately that will continue to be a problem which may result in structural damage beyond that caused by the vandalism. It should be noted that one of the provisions is to protect the structure from vandalism, This is particularly important in this circumstance because the house has already been vandalized.

The HRRB considered that imposing the provisions of Preservation Brief #31 per their recommendations is appropriate given the level of deterioration and neglect of the house. The HRRB recommendation does not require the applicant to protect the house for 10 years. The intent is to protect the house until the environmental review is completed for the proposed demolition of the house and until an action has been taken by the County relative to the demolition. The HRRB did find that tarps do not provide sufficient protection from the wind and rain and do not provide sufficient security to protect the house from further vandalism.

Contention No. 5:

The appellant states that the HRRB did not consider the high costs of their suggested plans and had no budget in mind, and that their suggested plan is far more expensive and time consuming than the appellant's plan.

Response:

The property owner is responsible for maintaining her property in a livable condition. Because the property has been vandalized and the cost of restoring the property is high and the property owner is requesting to demolish this structure, staff determined that Mothballing is the more reasonable approach. Mothballing is done for the preservation of the structure while decisions are made as to the future of the structure.

Section 18.25.175 of the Monterey County Code does allow financial hardships to be taken into account in approving a permit. In this particular case, the applicant has presented no financial information demonstrating why this is a hardship. There is a difference between a financial hardship and not wanting to implement provisions to protect the structure. The appellant indicates that her plan will work adequately to preserve the structure. As has been stated previously the plans submitted by the applicant are incomplete as they do not identify the problem areas nor do they address the action items needed. The information presented by the appellant is vague and does not present a plan which once implemented can be reviewed to determine if success has been achieved consistent with the provisions of Preservation Brief #31.

Contention No. 6:

The appellant states that the implementation of the HRRB's recommendations would create extraordinary dangerous and life threatening conditions by having people work under the failed structure and on top of the failed deck; and that these recommendations contradict the recommendations of a licensed engineer.

Response:

The County is not requesting any activity by the property owner that could pose a life/safety risk to individuals working on the structure. Currently the structure is understood to be stable. The work to stabilize the house was done under the direction of the appellant's engineer. The engineer has not provided any evidence that the house is not stable. If the structure is not stable, then Preservation Brief 31 would indicate that actions need to be taken to insure that the structure is stabilized as part of the Protection Plan. If the appellant's engineer knows that the structure is

not stable, then a condition should be added requiring that the engineer design a solution to insure the stability of the structure for purposes of the Protection Plan and that these actions be taken prior to any other preservation activities are initiated.

Contention No. 7:

The appellant states that she responded to the Code Compliance request with a plan, that this plan was rejected as “inadequate” without explanation and that the HRRB process was extremely biased despite her attempts to voluntarily try to work with the County in good faith. The appellant claims that there was misconduct at the September 3, 2015 HRRB meeting in which a member of the public was provided the ability to contribute information while the appellant’s representative was not.

Response:

At the August 6, 2015 HRRB meeting the HRRB was very clear about what needed to be addressed in the Mothballing Protection Plan to make it adequate. This was followed up in a letter (Attachment F) from Planning Staff to the appellant emailed on August 7, 2015. The HRRB scheduled a special meeting to consider the appellant’s changes on August 24, 2015. A modified plan was only emailed to planning staff at the hour of the August 24, 2015 HRRB meeting. The HRRB took time to review the information submitted and found that it was not responsive to the items identified as needing to be addressed by the HRRB on August 6, 2015. The property owner did not have any representation at the August 24, 2015 meeting. The HRRB appointed a technical subcommittee to take on the task of identifying the problem areas of the house and defining the action items for consideration by the HRRB at their next regularly scheduled meeting on September 3, 2015. This was done because the applicant did not respond to the direction of the HRRB or the letter dated August 7, 2015. At the meeting on September 3, 2015 the HRRB approved the list of recommended action items to be taken.

At the September 3, 2015 meeting there were comments made from the public. There are often unsolicited public comments during a public hearing. At times it can be difficult for a chair to restrain both public and applicant. There is no evidence to show that this adversely affected or influenced the action by the HRRB.

Contention No. 8:

The appellant states that she has been singled out by the County due to concerted efforts by her neighbor and that the County is becoming complicit in this harassment by continuously asking her to take actions it does not ask of other property owners. The appellant cites unpermitted construction activities on a neighboring parcel that the County has done nothing about as an example.

Response:

The appellant has not been singled out. There are two important facts to understand associated with the code enforcement effort on this property. First is that the County responds to complaints in addressing Code violations. The County does not proactively look for code violations. As such the County is not aware of the unpermitted construction referred to by the appellant, but will investigate appropriately if a complaint is filed. Second, this is a high profile structure that has the attention of not only neighbors, but also the architectural and historical communities. The County has attempted to offer every reasonable opportunity for the property owner to maintain the property, but the result is that the property continues to deteriorate, thus the need for compliance orders and the Protection Plan.

Contention No. 9:

The appellant states that the HRRB Resolution and the Planning Department directives “seek to have me endure undue hardship, costs and effort in an attempt to ‘mothball’ the house on a long-term basis”. The house is a failed structure and I am only willing to do the minimum required of a property owner which is weatherproofing the house.” The appellant also states that the HRRB approach “would amount to a blatant unconstitutional government taking.” The appellant asks that the Board of Supervisors reject the HRRB Resolution and accept her plan as enclosed in the appeal.

Response:

The Mothball Protection Plan recommended by the HRRB addresses the guidance provided by Preservation Brief 31 for the Mothballing of Historic Structures. This house is a structure listed in the California Register of Historical Resources and eligible for listing in the National Register of Historic Places. According to the California Office of Historic Preservation the loss of this house is a significant impact under CEQA for which there is no mitigation. The importance of the Mothballing Protection Plan is that it preserves the structure without further degradation while providing the County time to complete an appropriate level of CEQA review on the appellant’s plan to demolish the structure and construct a new structure at this location. The requirement to maintain the house (Monterey County Code Section 18.14, 18.15 and 18.25.240) in a manner that it does not deteriorate any further is not a taking. It is the responsibility of any property owner.