

Attachment A

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EXHIBIT A DISCUSSION

Pending Potential Design Revisions:

The applicant and appellant are attempting to resolve this matter through mediation. That attempt may cause the following revisions to the project's design:

- reducing the height of the chimney by two feet, removing the chimney spark arrestor, and changing the proposed chimney finish color to the existing white stucco;
- reducing the height of the shed to approximately 9 feet, reducing the number of skylights on the shed from (4) to (2), removing the proposed electrical connection to the shed, and painting it tan; and
- changing the style of the fence posts

A conceptual revised plan that indicates some of these changes is attached to this report for the boards consideration. However, these plans do not reflect all of the potential changes that have been communicated to staff, as they don't provide a final specified chimney finish, show (3) skylights instead of (2), and don't include the removal of electrical to the shed. Additionally, as of the writing of this report no formal request to modify the proposed project has been submitted. Consequently, staff has only analyzed the design as approved by the Zoning Administrator on May 13, 2021, and applicant's additional design approval request, DA 210122, to legalize the existing shed. The Board has discretion to either consider the item as currently proposed or to continue the hearing to a date certain to allow additional time for the parties to negotiate a mutually agreeable design.

Process:

The property has both Design Control and Site Plan Review zoning overlays. The Design Control Overlay requires a Design Approval for the proposed development, and the Site Plan Review Overlay requires approval by either the Director of Planning or Zoning Administrator for small development projects such as this one. Hence, the appropriate permit for this project is an Administrative Design Approval. The County received two written requests, from Robert Kahn and Christine Kemp, to refer this Design Approval to a public hearing. Consequently, staff referred the Design Approval to the Zoning Administrator for a public hearing.

On May 13, 2021, the Zoning Administrator adopted a resolution approving the project (Zoning Administrator Resolution No. 20-025). Christine Kemp, on behalf of Robert Kahn, timely appealed on June 1, 2021.

Proposed Scope:

The project consists of the remodel and addition to an existing single-family dwelling, amending a previously approved design approval (PLN170572).

Original Project Scope:

1. 355 square foot studio addition with two skylights.
2. Replacement of exterior siding, doors, and windows.
3. Siding to be Woodstock brown.
4. Re-finish chimney with heath ceramics diamond tile or similar.
5. Addition of 1,236 square foot patio on grade (executed through PLN170572)

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Revised Project Scope Heard by the Zoning Administrator:

1. 531 square foot studio addition with one skylight and a 63 square foot landing.
2. Replacement of exterior siding, doors, and windows.
3. Siding to be painted “swiss coffee” white. (work performed without permit)
4. Re-finish chimney with Carmel stone. (addresses previously unpermitted white smooth coat stucco finish)
5. Addition of 1,236 square-foot patio on grade (executed through PLN170572)
6. Remodel of southeastern portion of residence, including conversion of garage to living space.
7. Construction of 447 square foot 2-car carport.
8. Construction of a 4-foot tall to 6-foot-tall cedar fence.

Additional Scope Added for Boards Consideration:

1. Approve an approximately 5-foot increase in the height of an approved shed and approve the location of the shed slightly further from the property line and primary dwelling. (shed initially installed in this manner without the benefit of permit, this would retroactively approve this condition)

The parcel is in a developed residential subdivision (Carmel Views No. 2) The property is zoned for low-density residential use, which allows for development of single-family dwellings and non-habitable accessory structures.

Development Standards:

Development standards for the zoning district are identified in Monterey County Code (MCC) section 21.14.060. Development standards of the building site B-6 zoning district are identified in MCC section 21.42.030. The project, as proposed, meets all required development standards.

Applicant seeks two setback exceptions. The 63 square foot deck for the studio addition encroaches into the side setback; however, such encroachments are permitted within the Height and Setback Exceptions detailed in MCC section 21.62.040(D). The attached 2-car carport encroaches into the front setback. However, such encroachments may be permitted under MCC section 21.62.040(N).

As part of the remodel scope to convert the existing garage to living space, the project also includes work within the side setback. Pursuant to MCC section 21.68.040(A), the expansion, extension, reconstruction, or structural alteration of a nonconforming structure, nonconforming only as to height and yard regulations may be permitted provided structural alterations conform to the required setback. In this case, minor changes for window and door openings are proposed within the setback. No new structures or changes in the existing setback are proposed.

Design & Carmel Valley Master Plan Policy CV-1.20:

The proposed exterior colors and materials are consistent with the residential setting and the neighborhood character of the area. Based upon the Zoning Administrator’s review, the white selected as the siding was found to be a neutral tone. Similar whites are found in other residences

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in the area. The white siding on the shed and tan composition shingles are previously approved finishes. The Carmel Stone selected for the chimney is tan, a light earth tone. The cedar for the carport and fence is stained wood, which complements the Valley's natural character.

The size and bulk of all new development is in line with the area's character. The studio addition follows the plane of the existing residence, and the proposed height of this addition is below the previously approved top of roof permitted in PLN170572. The proposed 2-car carport is a single-story, lower in height than the existing one-story residence. The addition of the metal spark arrestor flue cap is a minor mechanical appurtenance common to fireplaces and similar to other chimneys in the neighborhood. The addition in permitted height to the shed is limited to five feet. At approximately 13 feet, the shed is two feet below the allowable height for an accessory structure. The shed will also be partially screened by the six-foot cedar fence running along the property line. Additionally, the shed will be installed three feet and seven inches from the side property line, further from the property line than its originally approved location of one foot from the property, slightly reducing its visual impact to the adjoining property.

Appeal Contentions:

Code Violations

Appellant contends that further permitting on the property should not be allowed while code violations exist on the property, citing the existing shed, which is taller than its approved height, is slightly further from the property line and further from the home than originally approved. Additionally, electrical service was extended to the shed without a building permit. While the Zoning Administrator incorporated a condition at the hearing that would require the applicant to seek separate approvals for the shed or remove it prior to the issuance of building permits, this contention is with merit but would be rectified in this appeal by including a permit for the revised height and location.

The County Code requires that no permit be issued on a property while zoning violations exist unless the permit is part of the administrative remedy for said violation (MCC section 21.84.120). The inclusion of a project condition alone does not remedy the violation. To address this contention, legalization of the shed in its as-built condition is incorporated into the actions being presented to the Board, through a separate Design Approval request DA210122. The addition of electrical does not change the land use of the structure as defined by the zoning ordinance or the physical appearance of the structure. Consequently, a planning entitlement is not required for this change. While the electrical that was installed without a permit has been disconnected, fully abating this violation will require that the property owner secure either a building permit to legally install an electrical connection to the shed, or a demolition permit to ensure that the electrical connection to the shed has been safely disconnected in accordance with applicable building and safety codes.

The other zoning violations on the property consist of modifying the chimney and painting the primary home white without a permit. Both were addressed in the Zoning Administrator's action on the permit. Both will be fully abated by the issuance of this permit.

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Process

Appellant contends there were procedural irregularities that resulted in the lack of a fair and impartial hearing, citing changes to the project description and the information presented to the Carmel Valley Land Use Advisory Committee (LUAC). Specifically, Appellant notes that the project description on the April 19 agenda was modified prior to the meeting and did not differentiate between the new and after-the-fact approvals being sought, and that the applicant added a request for Carmel stone at the LUAC meeting while presenting it as previously approved. Project descriptions are intended as a summary of project activities, viewed together with the project plans and materials, and are frequently changed throughout the planning process. Further, the agenda description of a project and its description in its resolution may differ, as the resolution description provides additional detail on the project.

The project description sent to the LUAC did not differentiate between new and after-the-fact approvals. However, the Memorandum prepared by Staff dated April 1, 2021, which was routed to the LUAC and is attached as Attachment G, specified that the project would amend a previous design approval, PLN170572, and that the applicant seeks after-the-fact approval for changes to the paint color of the home and modifications to the chimney. Additionally, the project plans routed to LUAC detailed the previously approved scope of work, work intended as part of the amendment, and work for which an after-the-fact approval is sought.

At the meeting, the applicant did change his request to include a Carmel stone, which was shown on Building Permit plan set 17CP03455. This information was presented to the LUAC at the meeting, and after input from members of the public and deliberation the LUAC recommended approval of the project with changes, i.e. that the Carmel stone be modified to be a tan color, that shades be added to the skylights, and that the skylights be nonreflective. The minutes of the LUAC meeting detail their recommendation. Changes to a project after a LUAC recommendation are a normal part of the planning process. The appropriate authority reviewing the permit has discretion to seek further input from the LUAC.

Entitlements

Appellant contends that the project requires a variance or use permit for work performed within the side setback that would convert the garage to living space. Appellant further contends that the conversion requires either a use permit or a variance, pursuant to Monterey County Code (MCC) section 21.68.030(A), as it involves conversion of non-habitable space to habitable space. MCC section 21.68.030(A) indicates that conversion of a nonconforming use of a structure may be changed a more restrictive use, but only with a use permit.

However, both non-habitable attached accessory structures and single-family dwellings are principally permitted uses within the base zoning. The requirement for a use permit applies to nonconforming uses of structures. Here, the uses are allowable, not nonconforming, so neither MCC section 21.68.030 nor the use permit requirement apply. The structure is nonconforming as to setback regulations only, and the structure is not being expanded in the setback area. Pursuant to MCC section 21.68.040(A), the expansion, extension, reconstruction, or structural alteration of a structure nonconforming only as to height and yard regulations may be permitted. Additionally, 21.68.040(B) allows ordinary maintenance and repairs of structures nonconforming

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as to setback regulations so long as no structural alterations are made and the work does not exceed 50% of the appraised value of the home in one year. The replacement of an existing door and two new window openings are proposed within the setback area. These opening changes are minor modifications which fall into the category of repairs, do not contain any structural alterations as defined in Section 21.06.070 of Monterey County Code, and are not of a size which would approach 50% of the appraised value of the home. As such, they do not impact the structural members in a matter that would warrant a Use Permit, or require that the structure be brought into compliance with the setbacks. The nonconforming side setback is a legal nonconforming condition, and is not being expanded, so a variance would not be required.

Pursuant to MCC section 21.68.030(C) expansion of a legal nonconforming residential use may not exceed 120 square feet or 10 percent of the floor area, whichever is greater. The appellant further contends that the project may be greater than this 120 square foot threshold. However, as indicated above, MCC section 21.68.030 applies to legal nonconforming uses of structures, not structures which are only nonconforming in terms of setbacks. The single-family home use is an existing legally established use, so MCC section 21.68.030 does not apply.

Design & Carmel Valley Master Plan Policy CV-1.20

Appellant contends that the approval is inconsistent with both Design Approval Criteria and Carmel Valley Master Plan Policy CV-1.20. Policy CV-1.20 includes a guideline for consideration in design approval requests that development, including road cuts, should minimize disruption of existing views for homes. No other protection for private views is included in applicable Monterey County planning policies or codes.

The design, as proposed, is consistent with both Design Approval criteria and Carmel Valley Master Plan Policy CV-1.20. The materials and colors selected complement the surroundings natural and man-made surroundings. The white for the home and shed are neutral colors, similar to several other homes in the neighborhood. The Carmel stone and cedar fence are natural tones. Structures have been located in a manner as to minimize disruption of views for existing homes. The existing shed is slightly further from the property line than originally approved, and the only addition to the chimney a flue cap and the width of the exterior finish in the location of an existing chimney. The proposed studio addition is being reduced in height from the previously approved roof peak.

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