

Attachment C2

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June 4, 2021

SUBMITTED TO STAFF VIA
EMAIL ON 06/04/21

Our File No. 4842.004

Wendy Root Askew, Chair
Monterey County Board of Supervisors
168 West Alisal Street, 1st Floor
Salinas, CA 93901

Re: Appeal of PLN190030-AMD1 (Skeen)

Dear Chair Askew and Members of the Board of Supervisors:

Our office represents the applicants in the above referenced project. Our office previously submitted correspondence to County staff addressing the issues raised by the appellant in their appeal, and those responses are attached to this letter as Exhibit "A" and are hereby incorporated by reference. This letter will address the points raised in the appeal which are further expanded upon in the attached correspondence.

A. Applicant is Not Piecemealing This Project

The appellant states, without pointing to any legal or factual evidence, that the applicant is piecemealing the development of their home. Upon even a cursory review of the permits that have been issued or applied for on this project it is clear that the appellant's argument regarding piecemealing of the project has no merit. Below is a list of the planning permits that have been obtained or applied for on this project:

1. **PLN060735**- This was the original approval of the single-family home, which was challenged by the appellant, Mr. Sabih.
2. **PLN110448**- The original 2006 approval was amended pursuant to a settlement agreement with Mr. Sabih to reduce size of the basement, among other things.
3. **PLN150766**- This permit was simply a 5-year extension of the approved permit to construct the home.
4. **PLN190030**- Amended the 2011 approval to relocate fire pits, revise colors and materials and make changes to the interior floor plan. This amendment was approved and unopposed by the appellant.

5. **PLN190030-AMD1**- This is the current application which seeks to slightly move the front firepit approved by PLN190030, add a spa, make minor changes to the approved terraces, and change the pitch of the roof without changing the height of the building.

The applicant is clearly not piecemealing the project. The first amendment in 2011 was obtained pursuant to the settlement agreement with the appellant and the next permit was approved in 2015 to extend the 2011 permit. The only other permit that has been approved was PLN190030, which as you can see from the description above was for minor changes to the 2011 permit and was approved without opposition from the appellant and in any event, that approval would be amended by the approval at issue here.

B. No New Grading, Drainage, or Erosion Control Plans are Required

Appellant incorrectly states in its appeal that the proposed project does not have a grading plan, drainage plan, or erosion control plan. In fact, each of those plans are a matter of public record and are available for review upon request to the County as part of the original approval of PLN060735. New plans for these items are not necessary as the changes proposed by this Minor & Trivial Amendment do not alter the grading, drainage, or erosion control of the project or the site.

C. The Amendment Does Not Violate the County's Zoning Regulations

The applicant relies on a conclusory letter from architect Ray Parks for the proposition that the proposed amendment violates the County's setback standards. The other unsupported arguments raised by Mr. Parks in his letter (regarding lot coverage, FAR, etc...) are addressed in detail in the attached correspondence from our office dated April 20, 2021. As to the setbacks questions specifically referred to in the appeal, Mr. Parks is incorrect as demonstrated below:

a. **Spa setbacks.** Mr. Parks asserts, without any evidence, that the spa will be located in the side yard setback and that the spa should be considered a structure. The spa is not in the side setback, and regardless it is not a structure.

b. **Firepit setback.** Both firepits have already been approved through PLN190030. Firepits are not structures and are not subject to setback standards.

c. **Patio setback.** Mr. Parks and the appellant both characterize the front patio as a "deck" located more than 24" above grade and as such should not be allowed in the front setback. The patio in question is not above grade. Even if it were, Mr. Parks fails to mention Section 20.62.040 of the County Code which provides that "uncovered decks, porches, or stairways...may extend into any required front or rear setback not exceeding 6 feet..."

Monterey County Board of Supervisors

June 4, 2021

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Based on the foregoing and our prior correspondence it is clear that the contentions raised by the appellant throughout the permitting process are wholly without merit. The applicant respectfully requests that the Board deny the appeal and uphold the approval of the project.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cody J. Phillips', with a long horizontal flourish extending to the right.

Cody J. Phillips

CP/al

Enclosures

cc: Client
Fionna Jensen

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March 22, 2021

Our File No: 4842.004

Fionna Jensen
Resource Management Agency
1441 Schilling Place
2nd Floor
Salinas, CA 93901

Re: 26327 Scenic Road – Skeen (PLN190030-AMD1)

Dear Ms. Jensen:

Our office has received and reviewed the comment letters received from the public with respect to the aforementioned minor & trivial amendment. We understand that based on these comment letters and the request for a public hearing contained therein, that the item will be scheduled for a hearing before the Zoning Administrator at the next available hearing date. After reviewing and considering the concerns expressed in the letters received, and in preparation for a public hearing, the following responds to those concerns and assertions:

1) Built in Firepit: Concerns noted in the letter received include:

- Location unknown
- Concerns that firepits should be subject to the front yard setbacks
- Concerns regarding particulate emissions, smoke, and air quality
- Objections noting that the fire pits should be subject to the Carmel Beach and Carmel River Beach restrictions on fires and the stated health concerns therein.
- Concerns with not understanding the intended location of the firepit described as being moved.

Answer: There are two firepits on the plans (one principally centered in the front patio area and one in the rear patio corner). Both firepits were shown on prior plans approved by both the planning department in prior decisions and by the building department in issued building permits. These firepits are not new to the project.

The only change in this application is to move the front firepit slightly from the previous 2019 Design Approval plans. The location of both firepits is clearly shown on the current plans being considered in this amendment.

EXHIBIT A

Though both firepits were fully approved more than a year ago and were not appealed, it should be noted that the firepits are gas firepits, not wood burning fire pits. Therefore, concerns regarding smoke, particulate emissions, and air quality are not applicable. It should be further noted that outdoor fireplaces are not subject to the structure setbacks specified in the zoning regulations, and are not subject to the restrictions imposed by the City of Carmel on Carmel Beach or Carmel State Beach related to wood-burning fires being started by beach goers on these public beaches.

Conclusion: Both firepits were approved over a year ago or more in prior planning actions. The only change is a minor shift in the location of the front patio firepit.

- 2) Decreasing roof slope to allow larger windows and doors. Increasing roof area implicating more bulk, blocking of light, and viewshed.

Answer: The roof area is not increasing and the roof slope is not being altered to allow larger windows.

The change shown and described in the plans has been misunderstood. In the 2019 Design Approval, a portion of the previously planned pitched roof was reduced to a flat roof with the remaining roof as a 4/12 pitch. The current application changes the remaining 4/12 pitch section to also be a 3/12 roof.

The total roof area and mass are not changing. In addition, the purpose of the change was not to increase window and door sizes. The change being made is to increase the interior ceiling height on one floor from 8' to 9' without increasing the height of the building. The window/door heights change consistent with the shift in interior ceiling height. However, that change occurs to only a few windows that are not located in areas that would impact the privacy of surrounding neighbors.

Conclusion: There is no change in roof mass, size, or height.

- 3) Unable to determine changes at front terrace or where terrace steps were added.

Answer: The changes to the approved front terrace are minimal. The revised plan removes a small planting area off the terrace, to be replaced with terrace pavers; it recenters the already approved firepit; and it removes one approved gate to the front terrace and insets the remaining approved gate off the sidewalk into the front terrace area, requiring stairs for the inset.

None of the changes described here are significant changes from the prior approved terrace plan.

- 4) Privacy concerns noted by neighbors related to patio areas, balconies, taller windows/doors, and the proposed spa.

Answer: Although there is no zoning standard related to the "privacy" of neighboring properties, it appears that the concerns expressed in comments received are a result of a misunderstanding of the details of the plan amendment currently being proposed.

- 1.) The front terrace is not new. The change to the entrance gate at that terrace is a reduction, not an increase. The fire pit in this area is not new and is moving only slightly. None of the changes here would change or increase impacts to neighboring properties.
- 2.) The front balconies were already included in the prior project plans. Both are only being increased in size, but remain in the same locations, which does not change the impacts to neighboring properties.
- 3.) The introduction of a spa in the rear yard is not in violation of any county regulation or prohibition, and it is located in an area that provides privacy for this owner and all neighboring properties, due to the difference in topography where the hot tub sits.

Conclusion: Changes proposed in the project are minimal adjustments to already approved elements of the project. No new impacts result from the changes.

In summary, the majority of the concerns expressed in the letters received are not new to the project and/or were misinterpreted from the project description given.

We appreciate the opportunity to clarify the project for staff and concerned members of the public. If you have any additional questions, please feel free to contact me directly to discuss.

Sincerely,



Gail Hatter
Sr. Land Use Specialist

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April 20, 2021

Our File No: 4842.004

Fionna Jensen
Resource Management Agency
1441 Schilling Place
2nd Floor
Salinas, CA 93901

Re: 26327 Scenic Road – Skeen (PLN190030-AMD1)

Dear Ms. Jensen:

Our office has received and reviewed the email correspondence received by you on April 20, 2021, from Mr. David Sabih with respect to the aforementioned minor & trivial amendment. The correspondence received duplicates previous communications from Mr. Sabih and others, which we have previously addressed. The following responds to those concerns and assertions again:

- 1) **Controversial history:** The project was approved by the County in 2006 and was subsequently revised via a settlement agreement with the opposing party to address concerns noted then. The controversy alleged by Mr. Sabih has no relevance to the minor changes proposed in this application.
- 2) **Cumulative changes alleged:** As noted above, the initial revision to the project was made per the settlement agreement signed in 2011. The permit was then extended in 2015. Minor changes approved in 2019 generated no opposition and the minor changes now do not substantially alter the project. The owners have followed all required procedure for changes to the project, and have made no attempt to hide anything from the public. In all permit actions taken on this project, the concerned parties and the public have been duly notified as required by regulations and per formal requests for notification on file with the County.
- 3) **The project is a “Spec” home, is predicated on profits, and building to allowable limits makes it appear commercial in nature:** There is no merit or supportable evidence for these assertions, nor is there any relevance to this discussion in regulations.
- 4) **Roof changes:** The roof changes are not “to achieve the height limit” as alleged. As noted in all prior responses to this allegation, the project was already approved at the maximum height. The changes proposed do not change the height of the structure.

EXHIBIT A

5) **Asserts that additional grading is required from the changes. Requests that a grading, drainage, & erosion control plan be required for the Minor & Trivial Amendment:** The changes to the front terrace area requires no additional grading, which is evident in the plans. The Grading & Erosion Control Plan and the Drainage Plan for the project are a matter of public record and are available for review upon request to the County. The changes in this Minor & Trivial Amendment do not alter the grading, drainage, or erosion control of the project or site.

6) **Patio in front setback alleged as above grade:** The patio is not above natural grade as stated. In addition, if it were above grade the slight corner encroachment into the front setback is allowed and is not a variance. Per Title 20: 20.62 – HEIGHT AND SETBACK EXCEPTIONS

20.62.040 SETBACKS.

D. Uncovered decks, porches, or stairways, fire escapes or landing places may extend into any required front or rear setback not exceeding 6 feet, and into any required side setback not exceeding 3 feet.

7) **Built in Firepits:** As previously clarified, the fire pits were both previously approved in the 2019 Design Approval action and were not appealed at that time. The opportunity for appeal of the fire pits has passed. The only change is to move the front firepit slightly to the center of the patio. There is no change to the rear fire pit location. As previously clarified, the fire pits are gas not wood burning. They are not structures, they are not subject to any setbacks, and spark arrestors are not required.

8) **Spa setbacks and privacy concerns:** The spa is not located in the side setback as alleged. In addition, the spa is inset into the rear patio, so setbacks would not apply. Although there is no zoning standard related to the “privacy” of neighboring properties, the spa & patio are well below the elevation of surrounding properties/houses, causing no privacy issues. The spa in the rear patio is not a structure, is not in violation of any county regulation or prohibition, and it is located in an area that provides privacy for this owner and all neighboring properties, due to the difference in topography where the hot tub sits.

9) **Effect of multiple changes should not be considered minor & trivial – see 2006 to present:** The 2006 approved project was revised in 2011 to reduce perceived impacts alleged by a neighbor via a settlement agreement, and was extended in 2015 through an extension application. The changes to the exterior design, aesthetic, and some roof elevations (including two fire pits) being noted in opinion letters now as “substantive and not in keeping with the neighborhood were approved in 2019 without appeal. While those changes approved in 2019 are not incompatible with the neighborhood as alleged, the current changes do not alter that design aesthetic and remain consistent with other neighborhood homes.

Fionna Jensen
Monterey County RMA
April 20, 2021
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We appreciate the opportunity to clarify the project for staff and concerned members of the public. If you have any additional questions, please feel free to contact me directly to discuss.

Sincerely,

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Gail Hatter
Sr. Land Use Specialist

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