

EXHIBIT B
NOTICE OF APPEAL

PLN090253 – Jagers

Board of Supervisors
July 27, 2010

NOTICE OF APPEAL (BOS)



Monterey County Code
Title 19 (Subdivisions)
Title 20 (Zoning)
Title 21 (Zoning)

RECEIVED
MONTEREY COUNTY
2010 APR 22 AM 11:14
CLERK OF THE BOARD

[Signature] DEPUTY

No appeal will be accepted until a written decision is given. If you wish to file an appeal, you must do so on or before APR 26 2010 (10 days after written notice of the decision has been mailed to the applicant). Date of decision APR 08 2010.

1. Please give the following information:

- a) Your name Lombardo & Gilles, ATTN: Anthony Lombardo
- b) Address 318 Cayuga Street City Salinas Zip 93901
- c) Phone Number (831) 754-2444

2. Indicate your interest in the decision by checking the appropriate box:

- Applicant _____
- Neighbor _____
- Other (please state) Representative _____

3. If you are not the applicant, please give the applicant's name:

Kurt and Sue Jagers

4. Indicate the file number of the application that is the subject of the appeal and the decision making body.

- | 5. | File Number | Type of Application | Area |
|---------------------------|------------------|---------------------|------------------------|
| a) Planning Commission: | _____ | _____ | _____ |
| b) Zoning Administrator: | <u>PLN090253</u> | <u>Combined</u> | <u>Carmel Area LUP</u> |
| c) Subdivision Committee: | _____ | _____ | _____ |
| d) Administrative Permit: | _____ | _____ | _____ |

6. What is the nature of your appeal?

- a) Are you appealing the approval or the denial of an application? (Check appropriate box)
- b) If you are appealing one or more conditions of approval, list the condition number and state the condition(s) you are appealing. (Attach extra sheets if necessary).

7. Check the appropriate box(es) to indicate which of the following reasons form the basis for your appeal:

- There was a lack of fair or impartial hearing; or
- The findings or decision or conditions are not supported by the evidence; or
- The decision was contrary to law.

You must next give a brief and specific statement in support of each of the bases for appeal that you have checked above. The Board of Supervisors will **not** accept an application for appeal that is stated in generalities, legal or otherwise. If you are appealing specific conditions, you must list the number of each condition and the basis for your appeal. (Attach extra sheets if necessary).

Please see attached.

8. As part of the application approval or denial process, findings were made by the decision making body (Planning Commission, Zoning Administrator, Subdivision Committee or Director of Planning and Building Inspection). In order to file a valid appeal, you must give specific reasons why you disagree with the findings made. (Attach extra sheets if necessary).

Please see attached.

9. You are required to submit stamped addressed envelopes for use in notifying interested persons that a public hearing has been set for the appeal. The Planning Department will provide you with a mailing list.

10. Your appeal is accepted when the Clerk to the Board's Office accepts the appeal as complete on its face, receives the filing fee (\$4,821.67) and stamped addressed envelopes.

APPELLANT SIGNATURE *Grandall/Bunk for Anthony Lombardo* DATE 04.22.2010
 ACCEPTED *[Signature]* DATE 4-22-10
 (Clerk to the Board)

Appeal of April 8, 2010 Zoning Administrator decision to Deny PLN090253

Objection to Findings and Evidence as adopted.

Finding 9- Special circumstances exist on the property.

Evidence b. There are no special circumstances on the site that warrant a variance to allow exceedance of the height limit provided there is no special privilege and it is an authorized use.

Response:

- (a) The property is bisected by slopes in excess of 30%, contains sensitive habitat areas and is visible from a number of public viewing areas. Therefore, buildable areas are significantly limited. Exceeding the 18 foot height limit allows the structure to blend with the natural topography of the site while eliminating the need for unwarranted grading and further disturbance of slopes greater than 30%. The proposed project will decrease the height of the existing structure by 1.6 feet and will retain a one story elevation on Calle la Cruz Street. Therefore, the design as presented reduces visual, aesthetic, and environmental impacts.
- (b) This evidence directly contradicts the original findings and evidence as presented in the March 25, 2010 staff report which recommended approval of the Variance.

Evidence d. The proposed residence may be architecturally re-designed to reduce the proposed height to meet the 18 foot height limit.

Response:

- (a) Because the parcel is bisected by steep slopes and environmentally sensitive habitat areas, marginally increasing the height better meets the goals and policies of the Carmel Area Land Use Plan. Reducing the height of the structure would require a larger footprint which in turn will cause greater impacts to slopes, environmentally sensitive habitat, and the public viewshed.
- (b) This evidence directly contradicts the original findings and evidence as presented in the March 25, 2010 staff report which recommended approval of the Variance.

Finding 10- (Special Privileges) Granting the Variance shall not constitute a Special Privilege inconsistent with the limitations upon other property owners in the vicinity and zone in which such property is situated.

Evidence a. However, although this is a 1.6 foot reduction in the height of the existing residence, approval of the new residence at the 21.7 foot height above average natural grade would result in an increase of visual impacts to the public viewshed.

Response:

- (a) The project as proposed will decrease the existing height of the residence by 1.6 feet and maintain a one story elevation at Calle la Cruz Street. Therefore, existing visual impacts will be reduced. The residence was purposefully designed to blend in with the topography of the parcel while avoiding slopes and sensitive habitat areas. Based upon the LUAC meeting minutes, the applicant also agreed to reduce the height by approximately .5 feet to address neighboring property owner concerns.
- (b) This evidence directly contradicts the original findings and evidence as presented in the March 25, 2010 staff report which recommended approval of the Variance.

Evidence d. The adjacent property has been granted a Variance (Kessler/PLN970312) to exceed height by approximately 5.5 feet or 23.5 feet above average natural grade. This Variance increased the previously approved height by an additional 2 feet. Similar to this project, the subject project proposes to exceed the limit above average natural grade by approximately 3.7 feet. However, the Kessler project does not apply in this particular situation because of key differences. Beside site topography, the Kessler property and building area is restricted by a public access easement and an irregular shape lot.

Response:

- (a) The Jagers parcel is constrained by slope, environmentally sensitive habitat areas and presence within the public viewshed. The project was purposefully designed to reduce impacts to these elements. The key difference between these projects is the fact that the Jagger proposal includes a 1.6 foot net reduction in height while the Kessler project, proposed on a vacant parcel, exceeded the already approved Variance by an additional two feet.
- (b) This evidence directly contradicts the original findings and evidence as presented in the March 25, 2010 staff report which recommended approval of the Variance.

Evidence d. (Continued) Although the proposed Jagger residence would result in a net height reduction from the existing residence of approximately 1.6 feet, it could be lowered further to meet the 18 foot height limit.

Response:

- (a) Because the parcel is bisected by steep slopes and environmentally sensitive habitat areas, marginally increasing the height better meets the goals and policies of the Carmel Area Land Use Plan. Reducing the height of the structure would require a larger footprint which in turn will cause greater impacts to slopes, environmentally sensitive habitat, and the public viewshed.
- (b) This evidence directly contradicts the original findings and evidence as presented in the March 25, 2010 staff report which recommended approval of the Variance.

Evidence d. (Continued) although other property owners in the area enjoy similar heights, these homes were all constructed prior to the application of the 18 foot height limit.

Response:

The 18 foot height limit was adopted to ensure impacts to the public viewshed would be minimized. The project as proposed includes a net reduction in height of 1.6 feet thereby decreasing an existing impact. As noted in the LUAC meeting minutes, no concerns were expressed about potential impacts to the public viewshed, the very issue the height limit was designed to address. In fact, LUAC members commented on how well the residence was designed so visual impacts were minimized.