Monterey County

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Board Order

Resolution No.: 16-078

Upon motion of Supervisor Potter, seconded by Supervisor Armenta and carried by those members present, the Board of Supervisors hereby:

Adopted Resolution No. 16-078 to:

1. Deny the appeal by Alan and Sandra Cordan from a decision of the Monterey County Planning Commission denying a Lot Line Adjustment application (Friedman-Cordan/PLN141011) between two legal lots of record of approximately 0.63 acres (Lot 3, Assessor's Parcel Number 015-522-010-000) and 0.66 acres (Lot 4, Assessor's Parcel Number 015-522-011-000);
2. Find the application statutorily exempt from the California Environmental Quality Act; and
3. Deny the Lot Line Adjustment application (Friedman-Cordan/PLN141011) ~~the Lot Line Adjustment application (Friedman-Cordan/PLN141011)~~ between two legal lots of record of approximately 0.63 acres (Lot 3, Assessor's Parcel Number 015-522-010-000) and 0.66 acres (Lot 4, Assessor's Parcel Number 015-522-011-000).

PASSED AND ADOPTED on this 22nd day of March 2016, by the following vote, to wit:

AYES: Supervisors Armenta, Salinas, Parker and Potter
NOES: Supervisor Phillips
ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 79 for the meeting on March 22, 2016.

Dated: March 28, 2016
File ID: 16-345

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By _____ Deputy

Before the Board of Supervisors in and for the County of Monterey, State of California

Resolution No. 16-078

Resolution by the Monterey County Board of Supervisors:

1. Denying the appeal by Alan and Sandra Cordan from a decision of the Monterey County Planning Commission denying a Lot Line Adjustment application (Friedman-Cordan/PLN141011) between two legal lots of record of approximately 0.63 acres (Lot 3, Assessor's Parcel Number 015-522-010-000) and 0.66 acres (Lot 4, Assessor's Parcel Number 015-522-011-000);
2. Finding the application statutorily exempt under CEQA; and
3. Denying the Lot Line Adjustment application (Friedman-Cordan/PLN141011) between two legal lots of record of approximately 0.63 acres (Lot 3, Assessor's Parcel Number 015-522-010-000) and 0.66 acres (Lot 4, Assessor's Parcel Number 015-522-011-000).....

The appeal by Alan and Sandra Cordan from the Monterey County Planning Commission's denial of the application for a Lot line Adjustment (Friedman-Cordan/PLN141011) came on for public hearing on March 22, 2016 before the Board of Supervisors of the County of Monterey. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and all other evidence presented, the Board of Supervisors hereby finds and decides as follows:

FINDINGS

1. **FINDING:** **PROJECT DESCRIPTION** –Lot Line Adjustment between two legal lots of record of approximately 0.63 acres (Lot 3, Assessor's Parcel Number 015-522-010-000, Friedman's property) and 0.66 acres (Lot 4, Assessor's Parcel Number 015-0522-011-000, Cordan's property) resulting in an equal exchange of 421 square feet. The applicants are Kennard Friedman (Assessor's Parcel Number: 015-522-010-000), located at 24960 Outlook Drive, Carmel; and Alan and Sandra Cordan (Assessor's Parcel Number: 015-522-011-000), located at 24950 Outlook Drive, Carmel.

   EVIDENCE: The application, project plans, and related support materials submitted by the project applicants to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN141011.

2. **FINDING:** **PROCEDURAL BACKGROUND** – The project has been processed in compliance with County regulations (Monterey County General Plan, Monterey County Zoning Ordinance (Title 21) and Monterey County Subdivision Ordinance (Title 19)), and due process has been afforded to the applicant, appellant, and the public.

EVIDENCE: a) On September 9, 2015, RMA-Planning received a Lot Line Adjustment application to address improvements built by Cordan that encroach onto the Friedman property. The application was deemed complete and scheduled for an administrative hearing on November 18, 2016. Public notice of the proposed decision on the Lot Line Adjustment and deadline of November 17, 2015 to submit written opposition was provided.

b) On November 17, 2015, Christine Kemp, an attorney representing neighbor Sandra Kahn, submitted a written request for a public hearing pursuant to Section 19.09.005.H of the Monterey County Subdivision Ordinance (Title 19). In situations where a public hearing is requested, the Planning Commission is the appropriate authority to decide on Lot Line Adjustments. The letter contended:

i. Future development on the Friedman property is potentially being located closer to Mrs. Kahn's property as a result of the proposed lot line adjustment.
ii. The survey map for the adjustment did not show the site topography of the Friedman property and therefore, does not show site constraints that limit development on the property.
iii. The vacant property is forested and contains slopes over 25% on a relatively small parcel. The irregular property line may further limit future development to be located closer to Mrs. Kahn's property.

On January 5, 2016, Christine Kemp submitted an additional letter alleging that the code violations resulting from Cordan constructing permanent improvements encroach onto the Friedman property and that the lot line adjustment should be denied and improvements removed instead of being allowed to remain.

c) A public hearing on the Lot Line Adjustment application was duly noticed for the Planning Commission for January 13, 2016, and the Planning Commission conducted a hearing on the application on that date. At that hearing the Planning Commission heard and considered the information presented by staff, the applicant and the public. Based upon the information presented, the Planning Commission found that the project was not consistent with the General Plan or Zoning ordinance and adopted a motion of intent to deny the application and continued the hearing to January 27, 2016 to enable staff to prepare a resolution with findings and evidence for denial.

d) On January 27, 2016, the Planning Commission adopted a resolution to deny the Lot Line Adjustment application with a 10-0 vote.

e) The lot line adjustment is inconsistent with the General Plan and Zoning Ordinance. *See Findings and Evidence No. 4 for the consistency and site suitability determination.*

f) The project was not referred to the Carmel Valley Land Use Advisory Committee (LUAC) for review. Based on the LUAC Procedures adopted by the Monterey County Board of Supervisors, this application did not warrant referral to the LUAC because a minor lot line adjustment does not typically require a public hearing. The Planning Commission did not require the lot line adjustment to be referred to the LUAC.

g) An appeal was timely filed on February 12, 2016 by attorney Stephen Beals representing the appellant, Alan and Sandra Cordan ("appellant").

h) A public hearing on the appeal before the Board of Supervisors was duly noticed for March 22, 2016. At least 10 days prior to the public hearing, notices of the public hearing were published in *Monterey County Weekly* and were posted on and near the properties and mailed to the property owners within 300 feet of the subject property as well as interested parties.

i) The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development found in Project File PLN141011; materials in the file of the Clerk of the Board of Supervisors in connection with this appeal.

3. **FINDING:** **VIOLATIONS** - The subject property is not in compliance with all rules and regulations pertaining to zoning, uses, subdivision, and other applicable provisions of the County's Code.

EVIDENCE: Staff reviewed Monterey County RMA-Planning and RMA-Building Services records and identified that violations exist on subject properties (13CE00306). Cordan's property (Assessor's Parcel Number: 015-522-011-000) has structures that encroach onto the neighboring property, owned by Friedman (Assessor's Parcel Number: 015-522-010-000), and the Cordan property has other unpermitted development. According to evidence presented at the Planning Commission hearing, the owners of each property have agreed, through a private settlement agreement, to seek a lot line adjustment of equal exchange to resolve this matter. The settlement agreement also provides for removal of all structures that encroach onto the Friedman property if the County does not approve the Lot Line Adjustment.

4. **FINDING:** **LOT LINE ADJUSTMENT** – The proposed Lot Line Adjustment is not consistent with the County's General Plan and zoning ordinance.

EVIDENCE: a) Section 66412(d) of the California Government Code (Subdivision Map Act) states: "*A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the Lot Line Adjustment will conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances.*" Title 19 (Subdivision Ordinance) of the Monterey County Code states: "*The appropriate decision making body shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment conform to County Zoning and Building ordinances.*"The lot line adjustment application is denied because it is inconsistent with the County's General Plan and zoning.

b) The lot line adjustment is between two legal lots of record of approximately 0.63 acres (Lot 3, Assessor's Parcel Number 015-522-010-000) and 0.66 acres (Lot 4, Assessor's Parcel Number 015-0522-011-000) resulting in an equal exchange of 421 square feet. The adjustment is to partially clear a violation (13CE00306). The adjustment would allow existing development encroaching onto the Friedman property to be on the Cordan property and meet required side yard setbacks.

c) The subject property is zoned Low Density Residential (LDR). The minimum lot size in the LDR district is one acre unless approved as part of a clustered development. These lots are part of an approved

development and are thus legal lots, but they are smaller than the zoning district would currently allow. Policy LU-1.16 of the General plan allows Lot Line Adjustments between lots that do not conform to minimum parcel size standards if the resultant lots are consistent with other policies of the General Plan and zoning and building ordinances and meet at least one of other specified criteria. Since the resultant lots would be inconsistent with Policy OS-3.5 of the General Plan and Section 21.64.230 of the Zoning ordinance, the Lot Line Adjustment is inconsistent with Policy LU-1.16 of the General Plan.

d) The lot line adjustment further constrains an already constrained lot. The Friedman property is vacant. It is approximately half an acre in size, and is constrained by cross slopes exceeding 25% at the rear and front of the property. A small portion of the Friedman property contains slopes less than 25%. This small portion is in the location of the proposed lot line adjustment. This area is the prime building area on the Friedman property for future development because the location minimizes development on slopes. The lot line adjustment would take property from the prime development area of the Friedman property and exchange it for undevelopable property in the front setback of the Cordan property on slopes exceeding 25%.

e) The lot line adjustment is inconsistent with the 2010 Monterey County General Plan. Policy OS-3.5 of the General Plan prohibits development on slopes over 25% unless there is no feasible alternative and/or the development better meets all General Plan policies. The result of the lot line adjustment would be to remove a critical portion of the developable area on the Friedman property that is not on slope over 25%, resulting in greater likelihood of more development on slopes over 25%, in contravention of General Plan policy to avoid development on slopes over 25% if feasible.

f) The lot line adjustment is inconsistent with the Monterey County Zoning Ordinance (Title 21). Section 21.64.230 of Title 21, the Monterey County non-coastal Zoning Ordinance, in compliance with Policy OS-3.5 of the Monterey County General Plan, prohibits development on slopes over 25% unless there is no feasible alternative and/or the development better meets all General Plan policies. (Section 21.64.230 states a 30% threshold, but the subsequently adopted General Plan threshold of 25% controls over the zoning, per Section 21.02.06 of Title 21.) The result of the lot line adjustment would be to remove a significant portion of area where slopes are less than 25% and transfer that area to the Cordan property. Therefore, the adjustment is inconsistent with County zoning because it removes a feasible location where future development on the Friedman property may be sited which would minimize slope impacts.

5. **FINDING:** **CEQA (Exempt):** - The project is statutorily exempt from environmental review under the California Environmental Quality Act (CEQA).

EVIDENCE: a) Public Resources Code section 21080(b) (5) and CEQA Guidelines Section 15270 statutorily exempt projects that are disapproved.

b) On January 27, 2016, the Lot Line Adjustment was denied by the Planning Commission at a duly noticed public hearing, and the Board of Supervisors hereby denies the application.

6. **FINDING:** **APPEAL AND APPLICANT CONTENTIONS.** The appellant requests that the Board grant the appeal regarding the Lot Line Adjustment Application (PLN141011). The appeal alleges that there was a lack of fair or impartial hearing, the findings made were not supported by the evidence, and the decision is contrary to law.

EVIDENCE: The contentions are contained in the Notice of Appeal (**Attachment D** of the March 22nd, 2016 staff report) and summarized below with responses. The Board of Supervisors makes the following findings regarding the appellant's contentions:

Contention 1: ***Lack of a fair or impartial hearing.*** *Due to the appellant's allegations regarding violations on the Cordan property, the applicant was portrayed as a "blatant code violator" which misled the Planning Commission, making them biased toward the Cordans, and resulting in the decision to deny the Lot Line Adjustment application, despite staff recommendation for approval including the required findings necessary to approve a lot line adjustment.*

Response 1: The Planning Commission conducted a duly noticed and full and fair hearing at which all persons had an opportunity to be heard. The applicant (appellant here) presented testimony and utilized the opportunity to rebut and respond to any comments made during public testimony prior to deliberation of the Planning Commission. The reasons for the Planning Commission determination are set forth in the Planning Commission's resolution. It is the Planning Commission's resolution, not comments made by individual commissioners, that represents the decision of the Commission.

Contention 2: ***Findings and Decision are not supported by the evidence.*** *The evidence provided to make a finding to deny the project is contrary to staff's uninfluenced initial findings and evidence, and based on inconsistent information presented to the Planning Commission. A map was provided during the January 27, 2016 Planning Commission hearing with the proposed adjustment and different buildable locations on the lot demonstrating the vacant site is buildable with the adjustments and County regulated setbacks; and therefore, the property is not impacted by the proposed adjustment. The trees that the Planning Commission were concerned about were deemed dead or dying by a certified arborist, and are not protected by ordinance.*

Response 2: The Planning Commission has authority to act on or reject a recommendation by staff. The fact that staff initially recommended approval is not controlling. On January 13, 2016, the Planning Commission considered the information presented by staff, the applicant and the concerned neighbors. Staff recommended approval of the application, and the staff report contained a draft resolution for approval, but based on the information presented during the public hearing, the Planning Commission did not agree with the staff recommendation. The Planning Commission found that the Lot Line Adjustment was not consistent with the General Plan and Zoning Ordinance because the lot line adjustment would take developable area away from the Friedman property which is constrained by slopes in excess of 25%. Development on slopes in excess of 25% is discouraged by the General Plan and the Zoning Ordinance, and thus the Planning Commission determined that the lot line adjustment, which would push development from areas

without slopes onto slopes, is inconsistent with the General Plan and Zoning Ordinance. The Planning Commission continued the hearing to January 27, 2016 to allow staff to capture the Commission's reasoning and evidence in a resolution denying the application. On January 27, the Planning Commission allowed the applicant and members of the public to testify prior to adopting the resolution. It is completely within the role of the Planning Commission as the decision-maker to determine, based on the evidence, whether a given application is or is not consistent with the General Plan and zoning, and the Planning Commission may within its discretion disagree with staff based upon the facts and evidence submitted at a public hearing.

At the January 27, 2016 meeting, the applicant's representative presented an overlay showing how a house could be constructed on the parcel. The exhibit referenced by the appellant did not include the correct slope map and therefore did not demonstrate that the lot line adjustment would not force future development out onto slopes in excess of 25%. Nothing in the record would refute that the Lot Line Adjustment will have the result of encouraging development onto slopes in excess of 25%.

Contention 3: ***The decision is contrary to law.*** *The findings to approve or deny a lot line adjustment are limited to the findings required in California Government Code Subsection 66412; and therefore, review of code violations, environmental sensitivity (slopes and trees), and future development of the vacant Freidman lot are beyond the scope of the approving authority regarding lot line adjustments. (The appeal quotes the case of San Dieguito Partn. v. City of San Diego stating that the approving agency is strictly circumscribed by the Legislature in a lot line adjustment, with very little authority as compared to the agency's function and authority in connection with a subdivision).*

Response 3: Section 66412(d) of the California Government Code (Subdivision Map Act) states: "*A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the Lot Line Adjustment will conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances.*"

The Planning Commission's decision reviewed the application using the correct standard under Government Code section 66412(d). The Planning Commission denied the Lot Line Adjustment application on the basis of inconsistency with the General Plan and zoning. (See Finding 2 of Planning Commission Resolution No. 16-005.) As explained more fully in Finding 4 above, Policy OS-3.5 of the General Plan prohibits development on slopes over 25% unless there is no feasible alternative and/or the development better meets all General Plan policies. Section 21.64.230 of the Monterey County Zoning Ordinance, in compliance with Policy OS-3.5 of the Monterey County General Plan, prohibits development on slopes over 25% unless there is no feasible alternative and/or the development better meets all General Plan policies. The adjustment would result in removing a feasible location where future development may be sited which would minimize slope impacts.

The action of the Planning Commission focused on General Plan and Zoning Ordinance Standards, as does this decision of the Board, and is thus in compliance with section 66412(d) of the Subdivision Map Act. The case referenced by appellant (*San Dieguito Partnership v. City of San Diego*, 7 Cal. App. 4th 748 (1992)) does not compel a different result because, as required by the court in that case, the County correctly reviewed the application under the standards set forth in Government Code section 66412(d).

II. DECISION

NOW, THEREFORE, BASED ON THE ABOVE FINDINGS AND EVIDENCE AND THE ADMINISTRATIVE RECORD AS A WHOLE, BE IT RESOLVED, that the Board of Supervisors does hereby:

1. Deny the appeal by Alan and Sandra Cordan from a decision of the Monterey County Planning Commission denying a Lot Line Adjustment application (Friedman-Cordan/PLN141011) between two legal lots of record of approximately 0.63 acres (Lot 3, Assessor's Parcel Number 015-522-010-000) and 0.66 acres (Lot 4, Assessor's Parcel Number 015-522-011-000);
2. Find the application (Friedman-Cordan/PLN141011) for Lot Line Adjustment statutorily exempt from CEQA pursuant to Public Resources Code section 21080(b)(5) and Section 15270 of the CEQA Guidelines; and
3. Deny the Lot Line Adjustment application (Friedman-Cordan/PLN141011) between two legal lots of record of approximately 0.63 acres (Lot 3, Assessor's Parcel Number 015-522-010-000) and 0.66 acres (Lot 4, Assessor's Parcel Number 015-522-011-000).

PASSED AND ADOPTED upon motion of Supervisor Salinas, seconded by Supervisor Armenta carried this 22nd day of March 2016, by the following vote, to wit:

AYES: Supervisors Armenta, Salinas, Parker and Potter
NOES: Supervisor Phillips
ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 79 for the meeting on March 22, 2016.

Dated: March 28, 2016
File Number: 16-345

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By _____ Deputy