



Monterey County

Board Order

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Salinas, CA 93901
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Upon motion of Supervisor Potter, seconded by Supervisor Armenta and carried by those members present, the Board of Supervisors hereby:

Held a public hearing and adopted resolution No. 15-012 to:

- a. Rescind the Board of Supervisors approval of a Combined Development Permit pursuant to Resolution No. 14-259 which denied an appeal by Evergreen Financial Group of the Venkatesh application approved by the Zoning Administrator, and approved a Combined Development Permit consisting of: 1) a Coastal Administrative Permit to allow a new 1,938 square foot residential addition to a 3,808 square foot single family dwelling; 2) a Coastal Development Permit to allow development within 750 feet of an archaeological resource; and 3) Design Approval; and
- b. Find the project Categorical Exempt per California Environmental Quality Act (CEQA) Guidelines Section 15301(e); and
- c. Confirm the findings on the appeal and approve a Design Approval for a new 1,938 square foot residential addition to a 3,808 square foot single family dwelling, including an attached 18' 5.5" tall privacy wall.

(Combined Development Permit - PLN130706/Venkatesh, 173 Spindrift Road, Carmel, Carmel Land Use Plan)

PASSED AND ADOPTED on this 3rd day of February 2015, by the following vote, to wit:

AYES: Supervisors Armenta, Phillips, Salinas, Parker and Potter

NOES: None

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 77 for the meeting on February 3, 2015.

Dated: February 3, 2015
File ID: RES 15-006

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

By Denise Hancock
Deputy

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

Resolution No. 15-012

Resolution of the Monterey County Board of Supervisors to:)

- a. Rescind the Board of Supervisors approval of a Combined Development Permit pursuant to Resolution No. 14-259, which denied an appeal by Evergreen Financial Group of the Venkatesh application approved by the Zoning Administrator, and approved a Combined Development Permit consisting of: 1) a Coastal Administrative Permit to allow a new 1,938 square foot residential addition to a 3,808 square foot single family dwelling; 2) a Coastal Development Permit to allow development within 750 feet of an archaeological resource; and 3) Design Approval; and)
 - b. Find the project Categorically Exempt per California Environmental Quality Act (CEQA) Guidelines Section 15301(e); and)
 - c. Confirm the findings on the appeal and approve a Design Approval for a new 1,938 square foot residential addition to a 3,808 square foot single family dwelling, including an attached 18' 5.5" tall privacy wall.....)
- (PLN130706/Venkatesh, 173 Spindrift Road, Carmel))

PROJECT INFORMATION:**Planning File Number:** PLN130706**Owner/Applicant:** Gopalakrishnan & Brenda Venkatesh**Project Location:** 173 Spindrift Road, Carmel**APN:** 241-301-014-000**Agent:** Eric Miller Architects**Plan Area:** Carmel Land Use Plan**Flagged and Staked:** Yes**CEQA Action:** Categorically Exempt per CEQA Guidelines Section 15301(e).

RECITALS

Whereas, the appeal by Evergreen Financial Group from the Zoning Administrator's approval of the Combined Development Permit (Gopalakrishnan & Brenda Venkatesh/PLN130706) came on for public hearing before the Monterey County Board of Supervisors on September 9, 2014 at which time the Board denied the appeal and approved a Combined Development Permit consisting of: 1) a Coastal Administrative Permit to allow a new 1,938 square foot residential addition to a 3,808 square foot single family dwelling; 2) a Coastal Development Permit to allow development within 750 feet of an archaeological resource; and 3) Design Approval.

Whereas, on or about October 16, 2014, the County was served with a Summons and Complaint and Petition for Writ of Mandamus in *Evergreen Financial Group v. County of Monterey and Monterey County Board of Supervisors* in Monterey County Superior Court Case No. 129621.

Whereas, upon receipt of the County's Final Local Action Notice (FLAN), California Coastal Commission Staff notified County Staff that the subject property is located in an area within the Carmel Area Land Use Plan that was never certified by the Coastal Commission as part of the County's Local Coastal Program.

Whereas, because the subject property is located in an area within the Carmel Area Land Use Plan which was not certified by the Coastal Commission, the Coastal Commission retains permit jurisdiction over the subject property.

Whereas, the action before the Board is to rescind the Combined Development Permit approval, confirm the Board's findings on the appeal dated July 11, 2014, and take action on the revised Project Plans and corresponding Design Approval which is under the County's jurisdiction.

Whereas, once the Design Approval is considered and approved by the County, the Coastal Commission would need to approve discretionary permits for the project to be constructed.

Whereas, the revised plans, which now include an attached 18'5.5" tall privacy wall, meet all zoning requirements of Low Density Residential Zoning within the Coastal Zone (LDR-CZ).

Whereas, the Revised Project Plans, which include an attached 18'5.5" tall privacy wall, have been negotiated between the owner/applicant and the appellant as part of a Conditional Settlement Agreement which will result in dismissal of Case No. 12961, if the Design Approval is approved by the County.

Whereas, in furtherance of the proposed Conditional Settlement Agreement, the Design Approval came on for public hearing before the Monterey County Board of Supervisors on February 3, 2015, at which time the Board considered rescinding the Combined Development Permit approved on September 9, 2015, confirming its findings on the appeal dated July 11, 2014, and approving a Design Approval for the Revised Project Plans which include an 18'5.5" tall privacy wall.

Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Monterey County Board of Supervisors hereby finds and decides as follows:

FINDINGS

1. **FINDING:** **PROJECT DESCRIPTION** – The proposed project is an application by Gopalakrishnan & Brenda Venkatesh (PLN130706) for a Design Approval for a project to be considered by the California Coastal Commission consisting of: 1) a Coastal Administrative Permit to allow a new 1,938 square foot residential addition (893 square foot second-story master bedroom addition; 1,010 square foot main level garage addition; 35 square foot elevator addition), 197.5 square foot upper-level deck addition and interior remodel to an existing residence; 2) a Coastal Development Permit to allow development within 750 feet of a known archaeological resource; and 3) a Design Approval. The project is located at 173 Spindrift Road, Carmel.

EVIDENCE:
 - a) The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development are found in Project File PLN130706.
 - b) After discussion with the Coastal Commission subsequent to County approval of the project, the County was informed that the property on which the permit was issued was never certified as part of the County's Local Coastal Program. As such, the Coastal Commission retains permit jurisdiction; the County has Design Approval authority over the application. The County action in this resolution is to rescind the County's approval of the Combined Development Permit, confirm its findings on the Appeal dated July 11, 2014, and consider a Design Approval for a new 1,938 square foot residential addition to a 3,808 square foot single family dwelling, including an attached 18'5.5" tall privacy wall, all of which is consistent with Low Density Residential – Coastal Zone (LDR-CZ) zoning requirements within the Carmel Area Land Use Plan Area.

2. **FINDING:** **CONSISTENCY / SITE SUITABILITY** - The proposed project, as conditioned, is consistent with the policies of the Local Coastal Program (LCP) and other County health, safety, and welfare ordinances related to land use and development. The site is physically suitable for the use proposed.

EVIDENCE:
 - a) No conflicts with the Carmel Area Land Use Plan and Local Coastal Program (LCP) were found to exist. The subject property is designated for the residential development and is zoned LDR/1-HR-D (CZ), or "Low Density Residential, 1 acre per unit, with a Historic Resources and Design Control Overlay Districts in the Coastal Zone." The proposed project involves a residential addition and interior remodel, which is consistent with the land use designation. No communications were received during the course of review of the project indicating any inconsistencies with the text, policies, and regulations in these documents.

- b) The project involves the approval and issuance of a Design Approval, which is required to comply with the "D" or Design Control Overlay District. The materials proposed consist of cream/light-tan painted stucco walls, and large glass panel windows. Proposed colors and materials were selected to match the existing residence.
- c) The property includes a "HR" or Historic Resources zoning overlay. In general, applications within an "HR" zoning designation require referral to the Historic Resources Review Board (HRRB), except those applications solely involving archaeological resources [Monterey County Code (MCC) 20.54.040.A]. This particular property contains the "HR" designation due to its proximity to archaeological resources, not for reasons related to a historic structure or area of historic, architectural, or engineering significance. Therefore, the project was not reviewed by the HRRB.
- d) The project has been reviewed for site suitability by the following departments and agencies: Resource Management Agency (RMA)-Planning, Carmel Highlands Fire Protection District, RMA-Public Works, RMA-Environmental Services; Environmental Health Bureau, and Water Resources Agency. There has been no indication from these departments/agencies that the site is not suitable for the proposed development. Conditions recommended by the reviewing departments and agencies, which are applicable to the Design Approval, have been incorporated as part of the approval.
- e) The project planner conducted site inspections on October 22, 2013 and May 18, 2014 to verify that the project on the subject parcel conforms to the plans listed above and to verify that the site is suitable for this use and concluded that it does conform.
- f) Based on the LUAC Procedures, adopted by the Monterey County Board of Supervisors per Resolution No. 08-338, this application warranted referral to the Carmel Highlands Land Use Advisory Committee (LUAC) because the project had the potential to raise significant land use issues (aesthetics and neighborhood character). The LUAC reviewed the project on April 7, 2014, and recommended approval with requested conditions regarding outdoor lighting, landscape lighting, and stucco wall design, by a 5-0 vote (1 member absent). Standard conditions of approval for exterior lighting and landscaping have been included in the project to address concerns with outdoor and landscape lighting. LUAC minutes are attached as Exhibit H to the February 3, 2015 Staff Report to the Board of Supervisors.
- g) The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development are found in Project File PLN130706.

3. **FINDING:** **NO VIOLATIONS** - The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of the County's zoning ordinance. No violations exist on the property.

EVIDENCE: a) Staff reviewed Monterey County RMA - Planning and Building Services Department records and is not aware of any violations existing

on subject property.

- b) Staff conducted site inspections on October 22, 2013, and May 18, 2014 and researched County records to assess if any violation exists on the subject property and concluded that none exist. RMA investigated complaints of unpermitted tree removal and determined that the complaints were without merit. (See Finding 6)
- c) See evidence for Finding 1: Project Description.

4. **FINDING:** **CEQA (Exempt):** - The project is categorically exempt from environmental review and no unusual circumstances were identified to exist for the proposed project.
- EVIDENCE:**
- a) California Environmental Quality Act (CEQA) Guidelines Section 15301(e) categorically exempts the minor alteration of existing structures involving negligible or no expansion of use beyond that existing at the time of the County's determination including additions to existing structures that will not result in an increase of more than 50% of the floor area of the structure before the addition, or 2,500 square feet, whichever is less. The project proposes to add 50.8% to the existing floor area, which is slightly above that listed by the exemption, but this still fits within this exemption because 1) the limits cited above are just by way of example listed in section 15301 and are not limited to those amounts, 2) the expansion is less than 2,500 square feet, and 3) it is an expansion of a garage and master bedroom that will not constitute an expansion of the use of the site. The addition of the master bedroom and garage are in keeping with all regulations for a home on this parcel related to height, area and setback requirements, and the added floor area does not adversely affect any sensitive resources or require a significant consumption of resources.
 - b) There is no evidence that unusual circumstances exist that would cause it to have a significant effect on the environment, as described in CEQA Guidelines section 15300.2, Exceptions. The proposed addition consists of construction in a previously disturbed (paved) area of the property, and does not involve the removal of any sensitive species (plant or animal), removal of protected trees, or disturbance of resources of historical or archaeological significance.
 - c) No potential adverse environmental effects were identified during staff review of the development application or during site visits on October 22, 2013, and May 18, 2014.
 - d) None of the exceptions under CEQA Guidelines Section 15300.2 apply to this project.
 - e) See evidence for Finding 1: Project Description.

5. **FINDING:** **PROCEDURAL BACKGROUND** – The project has been processed in compliance with County regulations.
- EVIDENCE:**
- a) On March 18, 2014, Gopalakrishnan & Brenda Venkatesh filed an application with Monterey County RMA-Planning for a Combined Development Permit (PLN130706) to allow a 1,938 square foot residential addition to a 3,808 square foot single family dwelling.
 - b) The Combined Development Permit (PLN130706) was deemed

complete on May 16, 2014.

- c) The project was brought to public hearing before the Monterey County Zoning Administrator on June 26, 2014. On June 26, 2014 the Zoning Administrator found the project Categorically Exempt per Section 15301(e) of the CEQA Guidelines, and approved the Combined Development Permit application (ZA Resolution No. 14-022).
- d) An appeal from the Zoning Administrator's approval of the Combined Development Permit was timely filed by Evergreen Financial Group ("appellant"), signed by Melvin Kaplan, on July 11, 2014.
- e) The appeal was brought to public hearing before the Board of Supervisors on September 9, 2014. At least 10 days prior to the public hearing, notices of the public hearing before the Board of Supervisors were published in the *Monterey County Weekly* and were posted on and near the property and mailed to the property owners within 300 feet of the subject property as well as interested parties.
- f) Subsequent to Board action denying the appeal and approving the Permit, the County was notified by the Coastal Commission that the property was not certified as part of the County's Local Coastal Program. As such, the Coastal Commission retains permit jurisdiction over this property. The County has authority and responsibility to act on the Design Approval portion of the application.
- g) Staff Report, minutes of the Zoning Administrator and Board of Supervisors, information and documents in Planning file PLN130706.

6. FINDING:

APPEAL AND APPELLANT CONTENTIONS

In the appeal dated July 11, 2014, the appellant requests that the Board of Supervisors grant the appeal and deny the Combined Development Permit application (PLN130706). The appeal alleges: there was a lack of fair or impartial hearing. The contentions are contained in the Notice of Appeal (**Exhibit C of the September 9, 2014 Board of Supervisors Staff Report**) and listed below with responses. The Board of Supervisors confirms and finds that there is no substantial evidence to support the appeal and makes the following findings regarding the appellant's contentions:

Contention 1 – Lack of Fair or Impartial Hearing

The appellant contends that the following are examples of the lack of a fair and impartial hearing:

- a) *After Mr. Kaplan spoke, the Zoning Administrator called for a response from the architect, who made incorrect statements about the trees that were cut down on the project site. When Mr. Kaplan tried to further respond, he was advised that the discussion (public hearing) was closed.*

Response:

The appellant was afforded due process. The Zoning Administrator held a public hearing on the project on June 26, 2014. The Zoning

Administrator received presentations from county staff and the project applicant, followed by testimony and presentations from the public during the hearing, and the appellant was provided the opportunity to present information to the Zoning Administrator and did so. Upon the close of the public hearing, staff responded to questions from the Zoning Administrator (related to information voiced by the appellant) after which the Zoning Administrator directed additional clarifying questions to the applicant's representative (Mr. Miller). Following these responses, the appellant (Evergreen Financial Group – Mr. Kaplan) tried to address the Zoning Administrator again; the Zoning Administrator subsequently informed the appellant that the public hearing had been closed to additional public comment. The Zoning Administrator then publicly discussed the facts and merits of all evidence received. Subsequently the Zoning Administrator approved the Combined Development Permit. The steps of staff presentation, application presentation, and public testimony, followed by the applicant and staff responding to points raised by the public is the standard format for conducting a public hearing and was followed in this case. This process insures a fair and impartial hearing and was followed in this situation. Additionally, the Board of Supervisors' September 9, 2014 hearing on the appeal was de novo, and appellant had the opportunity to testify to the Board of Supervisors at the Board's hearing.

b) The appellant contends that information contained in Evidence 2(d) and Evidence 3 relative to aesthetics and neighborhood character, and health and safety is lacking; claiming that excessive tree removal has changed the aesthetics and neighborhood character of the site, and affected their peace and comfort, and negatively affected their property value.

Response:

The appellant is unhappy with tree trimming which was purported to have occurred within the boundaries of project site (173 Spindrift Road), claiming that trees (20-30) were removed without the appropriate permits. Prior to the hearing, two separate code enforcement complaints relative to reported tree removal were received by the Code Enforcement division of RMA-Building Services. Subsequent to these reports, Code Enforcement and RMA-Planning personnel separately visited the site to investigate the complaints. No unpermitted tree removal was observed or documented during any of these investigative site visits. Evidence of tree trimming was observed; however, the tree trimming was not in violation of any County policies or regulations, and the trimming did not result in the decline of tree health; therefore, both cases were closed "without merit." Evidence and testimony on this issue was publicly presented during the Zoning Administrator

hearing and discussed, both prior to and after public testimony. County staff confirmed that no unpermitted tree removal had taken place, showing various photographs from site visits.

Based on observations made during project review and site visits to investigate the code enforcement complaints, along with the fact that no violations existed on the property, staff recommended approval of the project, with finding related to Consistency/Site Suitability (Finding 2). Additionally, the appellant was afforded due process during the Zoning Administrator hearing (see Response to Contention 1(a) above).

Staff analyzed the project proposal as negotiated and revised to include an attached 18'5.5" tall privacy wall for compliance with applicable zoning regulations (setbacks, coverage, and height) and applicable Land Use Plan policies (Carmel Area Land Use Plan). No inconsistencies with plans, policies, and regulations were found to exist.

DECISION

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors does hereby:

- a. Rescind the Board of Supervisors approval of the Combined Development Permit pursuant to Resolution No. 14-259 which denied an appeal by Evergreen Financial Group of the Venkatesh application approved by the Zoning Administrator, and approved a Combined Development Permit consisting of: 1) a Coastal Administrative Permit to allow a new 1,938 square foot residential addition to a 3,808 square foot single family dwelling; 2) a Coastal Development Permit to allow development within 750 feet of an archaeological resource; and 3) Design Approval; and
- b. Find the project Categorically Exempt per Section 15301(e) of the CEQA Guidelines; and
- c. Confirm the findings on the appeal and approve a Design Approval for a new 1,938 square foot residential addition to a 3,808 square foot single family dwelling, including an 18'5.5" tall privacy wall subject to the conditions of approval and in accordance with the project plans, both attached hereto and incorporated herein by reference.

PASSED AND ADOPTED upon motion of Supervisor Potter, seconded by Supervisor Armenta and carried this 3rd day of February 2015, by the following vote, to wit:

AYES: Supervisors Armenta, Phillips, Salinas, Parker and Potter

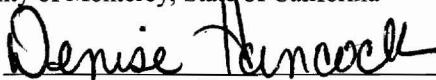
NOES: None

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 77 for the meeting on January 27, 2015.

Dated: February 3, 2015
File Number: RES 15-006

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

By 
Deputy