

Attachment A

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I. PROCEDURAL BACKGROUND:

On February 11, 2014, Bruce and Susan Herman applied for a Design Approval to demolish an existing one story single family dwelling and construct a new two story 3,223 square foot two-story single family residence with a 417 square foot attached garage, 573 square feet of covered patios, a 54 square foot covered patio on second floor, other minor site improvements as shown on the plans and grading (approximately 35 cubic yards of cut and 20 cubic yards of fill).

The Design Approval application is consistent with the plans and policies of the 2010 Monterey County General Plan, the Greater Monterey Peninsula Area Plan and the requirements and standards of the Monterey County Zoning Ordinance (Title 21). The issue is not with the proposed rebuild of a structure, but with the zoning setback requirement from an abutting parcel that is owned by the Pebble Beach Company. That parcel provides pedestrian, golf cart, and maintenance access to the Monterey Peninsula Country Club (MPCC) and is given the label "lane" on the final map creating the subdivision.

This appeal is brought by a neighbor who objects to the proposed 10 foot setback from the "lane", claiming that the adjacent parcel titled "Lane" on the final map is a street, which would make it a second front yard requiring a 20 foot setback. The Monterey Peninsula Country Club Subdivision No. 2 map recorded on September 8, 1925 identifies "lanes" throughout the Monterey Peninsula Country Club; however, these so called "lanes" do not function as streets, but as pedestrian connections between the subdivision and the golf course. Many other parcels located adjacent to a "lane" have been developed with a 10 foot setback from the "lane". There are 3 other residences in the Monterey Peninsula Country Club that are developed with not only a 10 foot side yard setback, but a 10 foot setback from the lane for the garage taking access from the adjoining parcel. The properties are located at 1045 Marcheta Road, 3012 Cormorant Road and 3000 Cormorant Road.

These "lanes" are privately owned parcels by the Pebble Beach Company. Each "lane" is assigned a separate assessor's parcel number and according to Margaret Leighton, Manager of the Architectural Review Board, is classified as "Open Space" (Attachment F). The Herman's existing home was built in 1931, has been granted access to the property from the lane for many years; and is not unique in that there are three other parcels that use their abutting lanes for access onto their property.

These lanes are generally used for pedestrian access and golf cart access to the Monterey Peninsula Country Club golf course. The Zoning Ordinance requires a front yard setback from a public road or private road. In addition, the County, as a matter of policy requires a front yard setback from an access easement which is the source of access for two or more parcels. However the "lane" adjacent to the Herman's parcel is not a road, and does not have an easement on it providing primary access to two or more parcels. As explained by the Pebble Beach Company, PBC owns the lane and historically allows this property to have access via the lane; however PBC does not classify the "lane" as a road (Attachment F.) At the entrance to the golf course are signs that say, "Private Property, No Trespassing."

The application for the Design Approval was approved by the Zoning Administrator on May 29, 2014. A Notice of Approved Design Approval was mailed to all property owners within 300 feet of the subject property on May 29, 2014 (Attachment D).

John Bridges, attorney for Kevin Dunne, Appellant, filed a timely appeal on June 6, 2014, of the Zoning Administrator's approval of the Design Approval (Attachment E).

The appeal is brought on the basis that 1) the findings or decision or conditions are not supported by the evidence; and 2) the decision is contrary to law.

A duly noticed de novo public hearing on the appeal is scheduled for July 22, 2014 before the Monterey County Board of Supervisors.

II. ANALYSIS:

A. Factual Background

On May 29, 2014, a Design Approval to demolish an existing one story single family dwelling and construct a new two story 3,223 square foot two-story single family residence with a 417 square foot attached garage, 573 square feet of covered patios, miscellaneous site improvements, a 54 square foot covered patio on second floor, and grading (approximately 35 cubic yards of cut and 20 cubic yards of fill) was approved by the Zoning Administrator.

B. Appellant Contention

The appellant challenges the Design Approval on the following grounds: 1) the findings or decision or conditions are not supported by the evidence; and 2) the decision is contrary to law. Staff's response to each of the Appellant's contentions follows:

Appellant's Contention No. 1: *The project does not comply with the applicable zoning setback requirements. Zoning Ordinance setback requirements for this property are simple and straightforward. Section 21.62.040.M states, "In case of a lot abutting upon two or more streets, the main structure and accessory structures shall not be erected so as to encroach upon the front setback required on any of the streets." Section 21.12.060.C.1 defines the applicable minimum front setback from all streets as 20 feet for main structures. Section 21.06.1180 defines a private street as: 'Private street means an avenue, place, way, drive, lane, boulevard, highway, or road not owned or maintained by a state, county or incorporated city, or other public agency'. As reflected on the subdivision map for the neighborhood approved by Monterey County and recorded at Volume 3, Cities and Towns, Page 29, the access way immediately adjacent to and north of the Herman property is defined as a "lane". Similarly, said access way is also defined as a "lane" on the Assessor's parcel map at Book 7, Pages 31 and 32. Accordingly, the zoning ordinance clearly and unambiguously requires a minimum 20 foot front setback from the lane. The project conflicts with this requirement in that it only provides a 10 foot setback from the lane.*

Staff's Response to Contention No. 1: The "lane" was created with the recordation of the subdivision maps for the Monterey Peninsula Country Club Subdivision #2. The recorded map identifies this lane, and about a dozen other lanes in the immediate neighborhood, as a "lane".

There is nothing in the recorded maps that describes how these lanes are to be used; however, the facts associated with how the lanes have been treated and used demonstrate that these lanes are not “private streets” within the meaning of County’s zoning ordinance. These facts are as follows:

1. The “Lanes” are labeled on the map but no access easement, private road or right of way has been attached to these lanes. They are privately owned property. If there was any intent for these to be private roads, this was not reflected with any type of easement granting access.
2. These lanes are property privately owned by the Pebble Beach Company who has indicated that they consider them “open space” for wildlife migration, pedestrian use and with the consent of the Pebble Beach Company for utilities and access to garages. These lanes are not a part of their road system and it has been their practice to only require a side yard setback from PBC’s lanes in keeping with the current zoning.
3. Homes throughout the Monterey Peninsula Country Club have been approved by the County and constructed adjacent to these lanes with less than a 20 foot setback giving indication that these lanes have previously not been considered to be a private street.
4. Several lanes do provide access to garages, and some of those have only 10 foot setbacks consistent with the Herman application. To name a few, 1045 Marcheta Road, 3012 Cormorant and 3000 Cormorant Road use the lanes for access to their garages and two of them have only 10 foot setbacks from these “lanes”.

The Appellant argues that the title “lane” on these parcels automatically gives it the status of a private street and therefore requires a front yard setback. When viewed in the context of the County’s definition of a private street, terms like avenue, drive, way and lane make clear that if a route has the typical attribute of a street, i.e., a thoroughfare for vehicular traffic, then it is considered a street. This lane does not have those attributes. It is not a thoroughfare, it does not provide vehicular access from one place to another. These parcels provide pedestrian and golf cart connectivity from the interior of the subdivision to the golf course but not vehicular access. It is only 15 feet wide. There are other properties located in the Country Club that currently use the abutting lane their property as a private drive into their garages, but this does not make the lane a street. These parcels are private property with access to an adjoining property owner. Several of these lanes either have large trees growing within them or have been landscaped to benefit the neighbor. All the lanes dead end at the Monterey Peninsula Country Club Golf Course which is posted for no trespassing.

Appellant’s Contention No. 2: *The project conflicts with and compromises the neighborhood character and aesthetics by infringing upon the required 20 foot setback from the lane. The lane at issue, as well as many other lanes throughout the Monterey Peninsula Country Club Subdivision (MPCC) area, was intentionally designed by the original subdivider as an integral part of the neighborhood character. These lanes serve multiple purposes including, but not limited to, access to adjoining property, public view corridors to the golf course, forested open*

space and the Pacific Ocean, and prevention of the creation of a solid wall of building mass bordering the golf course (i.e., to ensure open space relief and view opportunity for interior properties). These lanes are critical to the land value and reasonable enjoyment of the interior property owners whose homes do not immediately adjoin the golf course.

Staff's Response to Contention No. 2: The Appellant's primary contention is that the project conflicts with the neighborhood character and aesthetics by infringing upon the required 20 foot setback from the lane. The primary disagreement at this point is whether a twenty foot (20') front yard setback located along the parcel labeled lane is required by County zoning. As discussed in response to contention 1 above, the "lane" at issue does not function as a street, has not been considered a street and should not be considered a street and thus County zoning does not require a front yard setback along this property line. Other homes in the Monterey Peninsula Country Club area have only 10 foot setbacks from the "lanes". Thus there is no compromise in the neighborhood character by not requiring a 20 foot setback.

In terms of neighborhood character there are many other houses in the neighborhood that have been approved and constructed with less than a 20' setback along the parcels labeled as a lane. This includes homes with a 10' setback for a garage which is the scenario proposed in this project (see staff's response to Contention 1, #4 above). Requiring a 20' setback at this time would be a change in the neighborhood character because this has not been the standard at which the community has been planned and developed.

The claim that the lanes are critical to the land value and reasonable enjoyment of the interior property owners whose homes do not immediately adjoin the golf course is without merit. The manner in which the "lane" parcel is used will not change. The "lane" parcel itself will not be closed or encumbered in any way. To the extent, the appeal is requesting that the subject property owner's property be restricted for the benefit of an adjoining property owner. The appeal requests that a setback be applied to this parcel which has not previously been required of any other parcel.

A larger implication here is that if it is determined that a 20' setback should be maintained from all "lanes" then all the properties adjacent to "lanes" constructed with less than a 20' setback would become non-conforming with respect to setbacks from these "lane" parcels. The development pattern established in the area does not maintain 20' setbacks at these locations. This would affect expectations of what these property owners can do on their property. The implications of changing the definition of these "lane" parcels and determining that these parcels should be considered streets would affect more than the development potential of the subject property it would affect the ability of other property owners to add on to their homes.

This project is consistent with the County zoning and established neighborhood character and to interpret otherwise would cause a change in the neighborhood character.

Appellant's Contention No. 3: *The project does not qualify for a categorical exemption under CEQA. CEQA Guidelines section 15300.2 provides that a categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant*

effect on the environment due to unusual circumstances. In this case, the adjacency of the property to the lane as well as the unique placement and role of the lanes in the original subdivision design constitute unusual circumstances applicable to this property and project. Inconsistency with the zoning and the adverse impacts on the public view opportunities that would result from the proposed project create a reasonable possibility that the activity will have a significant effect on the environment. Section 15300.2.B provides that categorical exemptions are inapplicable when the cumulative impact of successive projects of the same type in the same place over time is significant. As discussed above, without proper setback protection of the lanes, the cumulative impact of successive large homes being built along the golf course frontage will result in a significant impact to the neighborhood character and aesthetic for all interior property owners in the neighborhood as well as the general public.

Staff's Response to Contention No. 3:

The CEQA exemption is CEQA Guidelines Section 15302 allowing replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. This is exactly the case of the proposed house. It is a residential structure in compliance with the existing Medium Density Zoning District regulations and is essentially a reconstruction of an existing house of the same type.

The appellant argues the exceptions to Categorical Exemptions from CEQA based upon the presence of the "lane." The Appellant has presented no evidence that the lane is an unusual circumstance that would render the categorical exemption inapplicable. The project would replace an existing house that takes access from the lane with a new house that takes access from the lane. Thus, the project falls precisely with the Section 15302 categorical exemption for replacement of existing structures "where the new structure will be located in the same location as the structure replaced". Appellant also argues that the inconsistency with zoning setback requirement is an unusual circumstance, but as discussed above, staff disagrees with appellant's assertion of zoning inconsistency; the setback requirement cited by Appellant does not apply to the "lane" because it is not a private street, and therefore the project is consistent with zoning. In regard to Appellant's argument that the project will affect public views, Appellant has not proved an unusual circumstance exists, and even if the lane were an unusual circumstance, replacing one house with another house does not create a reasonable possibility of a new impact over baseline on the public view.

The appellant also indicates that the Categorical Exemption is not appropriate to "*the cumulative impact of successive projects of the same type in the same place over time.*" The argument is that the impact of successive large homes being built along the golf course frontage without a 20 foot setback will adversely impact the neighborhood character and aesthetic for the interior property owners. There are a couple of important reasons why this argument is without merit. First the size of the home is governed by the Zoning Ordinance Standards related to height, setbacks and coverage. The overall size of the home is primarily limited by the lot coverage and floor area ratio limitations which in this case are 35%. The same size house could be built on this lot regardless of whether there is a 20 foot setback or a 10 foot setback adjacent to the "lane" parcel. Other houses in the area have less than a 20 foot setback to these lanes, so the project does not alter the neighborhood character or aesthetic. The proposed house is in compliance

with the zoning district standards. The decision to rebuild a home on an established lot that does not have sensitive environmental resources does not pose a threat to environmental resources or change the neighborhood character, and thus does not result in a cumulative impact.