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MONTEREY COUNTY

HOUSING AND COMMUNITY DEVELOPMENT

Erik Lundquist, AICP, Director



HOUSING, PLANNING, BUILDING, ENGINEERING, ENVIRONMENTAL SERVICES

1441 Schilling Place, South 2nd Floor
Salinas, California 93901-4527

(831)755-4800
www.co.monterey.ca.us

September 6, 2023

VIA EMAIL

McDougal Amy E (Rene Peinado)
10196 Oakwood Cir
Carmel CA, 93923

Subject: Application Status Update for PLN230127/MCDOUGAL - INCOMPLETE

Dear Rene,

The project application PLN230127 as described below has been deemed **Incomplete** by HCD-Planning, Environmental Services, and Water Resources Agency. Please see the below and/or attached comments.

Combined Development Permit to allow: 1) Administrative Permit and Design Approval to allow construction of an 10,325 square foot single family dwelling with 1,988 square feet of covered patios and decks and associated site improvements including removal of three (3) trees; 2) Administrative Permit and Design Approval to allow construction of an attached 1,200 square foot Accessory Dwelling Unit; 3) Variance to allow a reduction of setback; and 4) a Use Permit to allow development on slopes in excess of 25%. The property is located at 10196 Oakwood Circle, Carmel (Assessor's Parcel Number 416-542-011-000), Carmel Valley Master Plan.

HCD-Planning:

1. Revised site plans shall include or address the following:
 - a. Average natural grade calculated from existing topography. As currently designed, the average natural grade calculation is measures from the "natural landmass removed during Tract No. 1045, Oak shire Phase (II-III) Subdivision Development". Monterey County Code defines "Height of structure" as the vertical distance from the average level of the highest and lowest point of the natural grade of that portion of the building site covered by the structure, to the topmost point of the structure. The proposed structure will cover the existing topography, not the topography prior to approval of the Oakshire Subdivision. Thus, the height of the structure shall be measured from the existing natural grade and conform to the maximum allowed height of 30 feet, as allowed per the Carmel Valley Specific Plan. As currently designed, a variance would be required to increase the allowable height of main structures. Staff support of variances are not guaranteed.
 - b. Dimensions of the entire parcel.
 - c. Parking counts (required vs. proposed).

- d. Location of all easements, including the surrounding “Common Area ‘A’”, which was placed into an easement.
- e. Updated project data to include the square footage for the garage, lot coverage, acreage of lot, total impervious and pervious coverage.
- f. Grading estimates (cut and fill), including the amount of soils to be imported or exported.
- g. Garage lots of the Oakshire subdivision were intended only for garages, not with second story habitable additions.
- h. Square footage of development on slopes in excess of 25%. Staff is researching “master” exception for development on slopes in excess of 30%.
- i. Compliance with required setbacks. Medium Density Residential zoning district requires the following: “In an approved planned unit development (PUD) where the dwelling unit and accessory structures are to be located on a lot in the development, no setbacks from the lot lines are required except as necessary to meet Building Code and Fire Code requirements, unless otherwise noted on the recorded final, parcel map or Sectional District Map”. The proposed project is located in a PUD and the associated final map indicates a setback of 5 feet on all sides. As currently designed, portions of the proposed residence and subterranean portions encroach into the required setbacks and in certain instances, past the property line. All structures (including subterranean portions) shall be setback according to the final map. At this time, absent additional information, a Variance would be required to allow encroachment of the single-family dwelling into the setbacks. Staff support of a variance is not guaranteed. Please note that staff is continuing to research the deck and exterior staircase setback encroachment question.
- j. Construction Management Plan: A Plan (illustration and narrative) that describes how the site will be managed during construction to reduce potential impacts. The Construction Management Plan shall include the following:
 - i. Names and contact information (primary and secondary) of parties responsible for project during construction.
 - ii. Summary table including:
 - 1. Types of construction vehicles and number of truck and/or vehicle trips/day.
 - 2. Amount of grading per day (see Air Quality Management District Standards).
 - 3. Hours of operation.
 - 4. Project scheduling (dates).
 - iii. Map illustrating:
 - 1. Location of project (vicinity map).
 - 2. Proposed route for hauling material.
 - 3. Location of Sensitive Receptors (schools, hospitals, etc) along haul route.
 - 4. Location of stockpiles and parking for construction vehicles.
 - 5. Sensitive areas (tree protection zones, drainage, habitat, slopes, etc.) where no parking, stockpiling, construction will occur.
 - 6. Erosion Control Plan

- k. Fuel Management Plan: Site plan illustrating how vegetation around proposed structures and roadways will be maintained to reduce fire fuel loads. The Fuel Management Plan shall include the following:
 - i. •Illustration of the general extent of natural vegetation to be retained. (e.g. grasslands, brush, trees).
 - ii. •“Green Zone” (0-30 feet) – Illustration on plans for maintaining vegetation (native and proposed) within 30 feet of all proposed structures/facilities.
 - iii. Coordinate with Landscape Plan
 - iv. “Management Zone” (30+ feet). Illustration on plans showing maintenance of vegetation up to 100 feet from all proposed structures, or to the property line, whichever is closer. In very high fire hazard severity zones, greater distance may be required by the local Fire Authority.
 - v. Tree Pruning/Removal – Illustration of the species and diameter of trees within the project area and whether the tree is proposed for removal and/or routine pruning.
 - vi. Coordinate with Forest Management Plan
 - vii. Emergency Vehicle Access. Illustrate emergency vehicle access route (driveway and/or roadway) including width, percentage of slope, and driving surface.
2. The proposed project is located within a Design Control zoning district, which regulates of the location, size, configuration, materials, and colors of structures. Additionally, Carmel Valley Master Plan policy CV-1.20 requires that “Development either be visually compatible with the character of the valley and immediate surrounding areas or shall enhance the quality of areas that have been degraded by existing development... and structures should be controlled in height and bulk in order to retain an appropriate scale.” As currently designed, the proposed residence is vastly larger than the average home in the Oakshire subdivision, which are approximately 2,000-4,000 square feet. The proposed residence is also 5 stories high, resulting in a vastly larger bulk and mass than neighboring residences. As currently designed, it is staff determination the proposed residence is not compatible with the surrounding neighborhood character and is not subordinate to the surrounding environment. Staff has yet to be informed that staking and flagging is available and until such time cannot make a visual impact determination.
3. Clarification on tree removal. On-site you had indicated removal of three trees. The prepared arborist report indicates removal of five trees, one of which is a landmark Oak. A Use Permit will be required. Required findings include: the tree removal is the minimum necessary and the removal will not involve a risk of adverse environment impacts.
4. Grant Deed (Assessors Office Document No. 2016028703).

Environmental Services: see attached.

Environmental Health Bureau: see attached.

Environmental Services and Environmental Health Bureau require additional information prior to deeming the project complete. Please review their attached comments. You may work directly

with the respective agency to address their comments. However, once plans have been revised and/or further documentation obtained, please resubmit the entire application packet (all materials addressing the incomplete comments), in electronic form, to your project planner for routing and formal completeness review. Please also include a letter indicating the reason for re-submittal (e.g to satisfy these incomplete comments or due to change in scope). Once these documents are received, a new 30-day interdepartmental review process will begin, and you will be notified of the completeness status.

If you have any questions regarding PLN230127, please contact me at either (831)-796-6407 or jensenf1@co.monterey.ca.us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Fiona Jensen', written in a cursive style.

Fionna Jensen
Senior Planner
Housing and Community Development – Planning

cc: HCD-Planning File No. PLN230127

Project Referral Sheet

Monterey County HCD Planning
1441 Schilling Pl South 2nd Floor
Salinas, CA 93901
(831) 755-5025

TO: FIRE DEPARTMENT
HCD-ENGINEERING SERVICES
PARKS DEPARTMENT

HEALTH DEPARTMENT
HCD-ENVIRONMENTAL SERVICES
OTHER: _____

PLEASE SUBMIT YOUR COMMENTS FOR THIS APPLICATION BY: Monday, August 21, 2023

Project Title: MCDOUGALL AMY E

File Number: PLN230127

File Type: PC

Planner: JENSEN

Location: 10196 OAKWOOD CIR CARMEL

Assessor's No: 416-542-011-000

Project Description:

Combined Development Permit to allow: 1) Administrative Permit and Design Approval to allow construction of an 10,325 square foot single family dwelling with 1,988 square feet of covered patios and decks and associated site improvements including removal of three (3) trees; 2) Administrative Permit and Design Approval to allow construction of an attached 1,200 square foot garage; 3) Variance to allow a reduction of setback; and 4) a Use Permit to allow development on slopes in excess of 25%. The property is located at 10196 Oakwood Circle, Carmel (Assessor's Parcel Number 416-542-011-000), Carmel Valley Master Plan.

Status: COMPLETE/**INCOMPLETE** (highlight/circle one)

Recommended Conditions:

The Environmental Health Bureau has reviewed the above referenced application and has considered the application incomplete. The following reports and/or information are needed prior to considering the application complete:

1. The site is proposed to be served by “underground sewer system lateral pipe” but no verification of available service has been provided. It is anticipated that service may be available from Carmel Area Wastewater District but verification will be required. Submit a Can and Will Serve letter demonstrating wastewater collection availability for the proposed project.
2. The application materials indicate that water service will be provided by “Calam + water well.” Please submit verification of water availability for the proposed project. Proof of available water credits (e.g. Monterey Peninsula Water Management District Water Use Permit) or Can and Will Serve letter from California American Water will be required to consider the application complete.

Signature: Bryan Escamilla, EIT, REHS

Date: August 11, 2023

Project Referral Sheet

Monterey County HCD Planning
1441 Schilling Pl South 2nd Floor
Salinas, CA 93901
(831) 755-5025

**TO: FIRE DEPARTMENT
HCD-ENGINEERING SERVICES
PARKS DEPARTMENT**

**HEALTH DEPARTMENT
HCD-ENVIRONMENTAL SERVICES
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PLEASE SUBMIT YOUR COMMENTS FOR THIS APPLICATION BY: Monday, August 21, 2023

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Status: COMPLETE/**INCOMPLETE** (highlight/circle one)

Recommended Conditions:

Stormwater Control Plan (PR1)

Prior to issuance of the permit, the applicant shall submit a stormwater control plan addressing the Post-Construction Requirements (PCRs) for Development Projects in the Central Coast Region. The stormwater control plan shall include the total square footage of new and/or replaced impervious area, and incorporate the measures identified on the completed *Site Design and Runoff Reduction Checklist*.

Signature: Katherine Day

Date: August 10, 2023

COUNTY OF MONTEREY



OFFICE OF THE COUNTY COUNSEL

168 WEST ALISAL STREET, 3RD FLOOR, SALINAS, CALIFORNIA 93901-2439
(831) 755-5045 FAX: (831) 755-5283

LESLIE J. GIRARD
COUNTY COUNSEL

MICHAEL J. WHILDEN
DEPUTY COUNTY COUNSEL

November 30, 2023

Krista M. Ostoich
Attorney at Law
3855 Via Nona Marie, Ste. 201
Carmel, CA 93923
Via email only: kostoich@ostoichlaw.com

Re: Calculation of Height of Structure—PLN230127

Dear Ms. Ostoich:

County staff has requested that I respond to your memo dated November 6, 2023, addressing, among other items, how the height of a structure is calculated by the County.

The Monterey County Code provides as follows:

21.06.630 - Height of structure.

"Height of structure" means the vertical distance from the average level of the highest and lowest point of the natural grade of that portion of the building site covered by the structure, to the topmost point of the structure, but excluding certain feet as specified in Chapter 21.62 (Height and Setback Exceptions) of this Title.

Your memo argues that the natural grade of a building site, as used in this ordinance, means something other than the grade that actually exists at the building site upon which development is proposed. Specifically, the argument appears to be that at some historical point in time the grade at your client's building site was higher than what exists today, and that the County should calculate the height of the proposed building based upon this historical grade that existed in the past, rather than the actual existing grade. Such an interpretation of this ordinance is nonsensical, and, contrary to your assertion, it is not likely any court would ever adopt this interpretation.

It is common throughout most jurisdictions for zoning ordinances to address the height of buildings. The purpose of height restrictions in zoning ordinances (as opposed to building codes) primarily concerns visual impacts. How high a building stands above ground is a factor in determining whether the building is consistent with the character of a neighborhood, and can also be a factor in whether the building is an eyesore or otherwise negatively impacts the public or neighborhood viewshed. Given this purpose, the appropriate way to determine height is from the

Krista M. Ostoich
November 30, 2023
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actual grade of the ground upon which the building stands. Historical grades of a building site are not relevant in determining the height of a building for the purpose of evaluating present-day visual impacts. Nobody views the height of a building based upon some past historical grade of the land—height is perceived by humans from the existing grade of the land.

If you are aware of any legal authority that directly addresses this issue and supports your argument, please forward to me and I would be happy to consider it.

LESLIE J. GIRARD
County Counsel

By: /s/ Michael J. Whilden
Michael J. Whilden
Deputy County Counsel

COUNTY OF MONTEREY

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1441 Schilling Place, South 2nd Floor
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www.co.monterey.ca.us

February 9, 2024

Rene Peinada
9361 Holt Road
Carmel CA 93923

VIA E-MAIL

RE: PLN230127/McDougal Amy E

Mr. Peinada-

The following comments are in response to your September 9, 2023 letter regarding the County's September 6, 2023 'Incomplete' determination of PLN230127.

Item 1a: Average Natural Grade. County Zoning Ordinance requires that structure height be measured from average natural grade. As confirmed by County Counsel, the "appropriate way to determine height is from the actual grade of the ground upon which the building stands. Historical grades of a building site are not relevant in determining the height of a building for the purpose of evaluating present-day visual impacts." No further legal authority has been presented to County staff for consideration. During our November 1, 2023 meeting, you or your representative claimed that all development within the Oakshire Subdivision has relied on the "historical" or pre-subdivision grade for the purpose of measuring height. Staff has reviewed all of the project files associated with Tract No. 1045 of the Oakshire Subdivision (Phase II-III) and confirms that all development utilized existing grade elevations, not pre-subdivision or other historical grade elevations. Consequently, staff continues to interpret Title 21 section 21.06.0303 "Height of Structure" to apply to existing average natural grade conditions. If you disagree with this interpretation, pursuant to Monterey County Code Chapter 21.82 you may request administrative interpretation by submitting a written request to your project planner (Fionna Jensen). Please note that separate fees will be invoiced to process this request (approximately \$2,087.00).

Items 1b, d, e, and f: Site Plan requirements. The provided topographic map is not incorporated into the project's site plans. Per HCD's [website](#), a site plan shall include property lines (show entire property and dimensions, all easements, size of the property, and grading amount and location, square footage of development on slopes in excess of 25 percent).

Item 1c: Parking count. Understood.

Item 1g: Garage lot. Given the plain distinction between garage lots and residential lots within Tract No. 1045 of the Oakshire Subdivision (Phase II-III), staff reaffirms our position that garage lots were created to be occupied by garages, not habitable development. As demonstrated through review all of the project files associated with Tract No. 1045 of the Oakshire Subdivision (Phase II-III), all garage lots have only been approved and permitted for the construction of garages. No subterranean or second-story extensions of the main residence

have been approved on garage lots. There are four instances within this area of the subdivision where residential lots do not have separate garage lots (Lots 7, 9, 26, and 34). On these lots, residential development has been approved over the garage.

Item 1h: Development on slopes in excess of 25%. During our November 1, 2023 meeting, you mentioned that a “master” permit or exception to allow development on slopes in excess of 30% was approved and applied to all properties within the subject subdivision. Staff has reviewed all of the project files associated with Tract No. 1045 of the Oakshire Subdivision (Phase II-III) and confirms no master permit or exception for development on slopes exists. All previously approved development in this subdivision were subject to the requirements in effect at the time of approval, which included the 1982 Monterey County General Plan. 1982 General Plan Policy 26.1.10 prohibited development on slopes greater than 30% unless an exception could be granted by the Appropriate Authority finding that there is no alternative to allow development on less steep slopes or the proposed development better achieves the resource protection objectives and policies contained in the Monterey County General Plan, accompanying Master Plan, Area Plan, or Land Use Plans. Per staff’s research, all previously approved residences within this subdivision that were constructed on slopes in excess of 30% were granted an exception to General Plan Policy 26.1.10 by the Monterey County Planning Commission. A few residences were not constructed on slopes greater than 30%. In this case, the subject property is now regulated by the 2010 General Plan, which establishes a similar policy. 2010 General Plan Policy OS-3.5 prohibits non-agricultural development on slopes in excess of 25%, unless the Appropriate Authority can find that there is no alternative to allow development on less steep slopes and/or the proposed development better achieves the resource protection objectives and policies contained in the Monterey County General Plan, accompanying Area Plan, and all applicable master plans.

Item 1i: Setbacks. On September 1, 2023, you provided staff with a document detailing your findings of whether existing development encroaches into the required setbacks. You note that structures on four lots (Lot Nos. 1, 26, 29, and 35) encroach into the required setbacks. Staff has reviewed all of the project files associated with Tract No. 1045 of the Oakshire Subdivision (Phase II-III) and confirms that no residential structure footprint encroaches into the required 5-foot setbacks. We acknowledge that in most cases accessory structures, limited to decks and patios 24 inches above average natural grade, do encroach into the required setback. However, such an allowance is not permissible under the County’s Zoning Ordinance, which stipulates that all structures, including decks and patios 24 inches above average natural grade, must meet required setbacks. HCD-Planning would support a Variance to allow reduced setbacks for accessory structures limited to decks and patios.

Items 1j and k: Construction Management Plan & Fuel Management Plan. This request remains applicable. Construction Management Plan and Fuel Management Plan shall be prepared upon preparation of code compliant project plans and prior to the project being deemed complete.

Item 2: Design Control District/Neighborhood Compatibility. As noted in the County’s November 6, 2023 letter, the subject property is located within a Design Control zoning district, which regulates the location, size, configuration, materials, and colors of structures. To approve development within the Design Control district, the Appropriate Authority must find that the size, configuration, materials, and colors of structures assure protection of the public viewshed, neighborhood character, and the visual integrity without imposing undue restrictions on private property. Additionally, Carmel Valley Master Plan policy CV-1.20 requires that “Development either be visually compatible with the character of the valley and immediate surrounding areas

or shall enhance the quality of areas that have been degraded by existing development... and structures should be controlled in height and bulk in order to retain an appropriate scale.” Further, the Carmel Valley Ranch Specific Plan requires colors to be harmonious with the immediate surroundings and confined to earth and vegetation colors (i.e., browns, sienna, beige, olive greens). Compatible materials include wood siding and/or native stone, with earth-toned non-reflective roofing, and metal with earth-toned appearances (weathered copper, painted galvanized iron, corten steel or anodized aluminum). The Specific Plan also requires that residential development be located in a manner to that reduces visual and physical impacts and fits into the natural environment. When the Specific Plan was adopted, barn and ranch architectural styles were found compatible with the existing Carmel Valley setting and tradition. The Specific Plan notes that an adaptation of the early Monterey architectural style could also be a compatible design. As currently designed, staff cannot recommend that the Planning Commission find the project consistent with the 2010 General Plan, Carmel Valley Master Plan, Carmel Valley Ranch Specific Plan, and local Zoning Ordinance for the below reasons. During the November 1, 2023 meeting, staff agreed that the proposed colors and materials, including wood and stone, are compatible. However, as currently designed, the proposed residence’s architectural style is neither ranch, barn, or early Monterey. Further, as previously noted in the September 6, 2023 letter, the proposed residence is vastly larger than the average home in the Oakshire subdivision, which is approximately 2,500 to 4,600 square feet, excluding the square footage of the garage. The proposed residence is also 5 stories high, resulting in a dramatically larger bulk and mass than neighboring residences. Consequently, staff does not consider the proposed project to be consistent with the Carmel Valley Master Plan or Carmel Valley Ranch Specific Plan due to the size, configuration, and style being incompatible with the surrounding neighborhood character and insubordinate to the surrounding environment. Once the requested staking and flagging has been installed, the project will be referred to the Carmel Valley Land Use Advisory Committee for review and recommendation to the Planning Commission.

Item 3: Arborist Report. Understood. An updated arborist report shall be submitted prior to the project being deemed complete.

Item 4: Grant Deed. The property’s Grant deed (Document No. 2016028703) is being requested to confirm ownership and will be needed to prepare post-hearing documentation. This requirement can be deferred until the Appropriate Authority has taken final action on the project.

The application is currently in an ‘Incomplete’ status as of September 7, 2023. Options to move forward include 1) providing the requested information for the application to be deemed complete, 2) requesting an administrative interpretation of Average Natural Grade, or 3) requesting that the project, though considered incomplete, be scheduled for consideration by the Planning Commission.

If you would like to proceed with re-submitting the application, please consider the above comments and the requirements provided to you on September 7, 2023. Once the plans have been revised and/or further documentation obtained, please resubmit the entire application packet (all materials addressing the incomplete comments), in electronic form, to your project planner for routing and formal completeness review. Please also include a letter indicating the reason for re-submittal (e.g to satisfy these incomplete comments or due to change in scope). Upon submittal of these documents, a new 30-day interdepartmental review process will begin. You will be notified of the completeness determination prior to the conclusion of this review period. A complete determination does not mean that the project has been found consistent with applicable regulations.

If you would like to proceed with the County preparing an administrative interpretation for Average Natural Grade, please refer to Item 1a's response, above.

Should you request that the project move forward as considered incomplete, staff will assist in scheduling the project for consideration by the Planning Commission, though denial will be recommended.

If you have any questions regarding PLN230127, please contact your project planner, Fionna Jensen, at either (831) 796-6407 or jensenf1@co.monterey.ca.us.

Sincerely,

DocuSigned by:

F6C3AC03D78644E
Melanie Beretti, AICP
Acting Chief of Planning
Housing & Community Development