



Monterey County

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Report

Legistar File Number: RES 18-091

July 10, 2018

Introduced: 7/2/2018

Version: 1

Current Status: Agenda Ready

Matter Type: BoS Resolution

PLN150755/SCOTT AND CHARLYSE RAVEN

Public hearing to consider an appeal by Ted Muhs and Elizabeth McGinnis, Glen and Angela Charles, Richard and Kathleen Doerr, Charles and Helen Schwab, and Sally Lucas from the April 26, 2018 decision of the Zoning Administrator approving an application (Raven/PLN150755) for a single family dwelling and attached garage within 750 feet of an archaeological resource. The application also includes a request for Variances to exceed lot coverage by 3.9% (totaling 18.9%) and Floor Area Ratio (FAR) by 5.3% (totaling 22.8%).

Proposed CEQA Action: Adopt a Negative Declaration

Project Location: 3213 Whitman Lane, Pebble Beach, Del Monte Forest Land Use Plan, coastal zone.

RECOMMENDATION:

It is recommended that the Board of Supervisors adopt a resolution to:

- a. Deny the appeal of Ted Muhs and Elizabeth McGinnis, Glen and Angela Charles, Richard and Kathleen Doerr, Charles and Helen Schwab and Sally Lucas from the April 26, 2018 decision of the Zoning Administrator approving the application (PLN150755/Raven) for a Combined Development Permit consisting of a 1) Coastal Administrative Permit and Design Approval to allow the construction of a single family dwelling consisting of 2,306 square foot two story, 1,690 square foot basement and a 298 square foot attached garage; 2) Coastal Development Permit to allow development within 750 feet of an archaeological resource; 3) Variance to exceed lot coverage by 3.9% (totaling 18.9%); and 4) Variance to exceed floor area ratio (FAR) by 5.3% (totaling 22.8%).
- b. Adopt a Negative Declaration; and
- c. Approve a Combined Development Permit consisting of:
 - 1) Coastal Administrative Permit and Design Approval to allow the construction of a single family dwelling consisting of a 2,306 square foot two story, with a 1,690 square foot basement and a 298 square foot attached garage);
 - 2) Coastal Development Permit to allow development within 750 feet of an archaeological resource; and
 - 3) Variance to exceed lot coverage by 3.9% (totaling 18.9%); and
 - 4) Variance to exceed floor area ratio (FAR) by 5.3% (totaling 22.8%).

A draft resolution including findings and evidence, is attached for consideration (**Attachment B**). Staff recommends approval subject to eighteen (18) conditions.

PROJECT INFORMATION:

Agent: Anthony Lombardo, Attorney

Property Owner: Scott and Charlyse Raven

APN: 008-401-010-000

Parcel Size: .262 acres (11,413 square feet)

Zoning: "LDR/1.5-D (CZ)" Low Density Residential/1.5 units per acre-Design Control in the Coastal Zone

Flagged and Staked: Yes

SUMMARY:

The applicants (Scott and Charlyse Raven) are proposing a 4,294 square foot, two story home, with a subterranean level on an 11,413 square foot parcel as follows: 2,306 square foot two stories, 1,690 square foot basement and a 298 square foot attached garage. Although the site is within 750 feet of an archaeological resource, Staff supports the basement level because the site has previously been significantly disturbed with underground storage tanks. The original design of the project would have necessitated three additional variances for setback requirements. Staff has worked with the applicant on design, and after multiple revisions, the applicant has reduced the project so that the application requires only two variances rather than five.

County staff duly noticed the project for public hearing before the Zoning Administrator on April 26, 2018. On April 26, 2018, after review of the application and submitted documents, and public hearing at which all persons had the opportunity to be heard, the Zoning Administrator adopted the Negative Declaration and approved a Combined Development Permit to allow the proposed development (Monterey County Zoning Administrator Resolution No. 18-024; **Attachment D**).

The Appellants, Ted Muhs and Elizabeth McGinnis, Glen and Angela Charles, Richard and Kathleen Doerr, Charles and Helen Schwab and Sally Lucas (hereafter "Appellants"), represented by attorney Pam H. Silkwood, then timely filed an appeal from the April 26, 2018, decision of the Zoning Administrator. The appeal contends that there was a lack of fair or impartial hearing, findings or decisions or conditions are not supported by the evidence, and the decision was contrary to law. The specific contentions raised by the Appellants are addressed below in the Discussion section of this report.

The appeal was filed on May 10, 2018. An appeal shall be heard by the Board of Supervisors within 60 days of filing, which in this case would be July 9, 2018, unless applicant and appellant agree to a later date. Because the Board is not meeting on July 3, 2018 and the Board's calendar in June was full, both the Applicant and Appellants agreed in writing to the hearing date of July 10, 2018. Therefore, the hearing is timely.

The hearing on the project at the Board is de novo. Staff is recommending denial of the appeal and approval of the project. Staff has prepared a draft resolution denying the appeal, adopting the negative declaration and approving the project. If the Board desires to take a different action, the Board could adopt a motion of intent and continue the hearing to a date certain for the staff to prepare a resolution with modified findings.

DISCUSSION:

The Appellants' contentions (in italics) and staff's responses are set forth below.

1) *Appellant contention: There was a lack of fair and impartial hearing. The applicant's representatives misrepresented the facts before the Zoning Administrator, which prejudiced the ZA's decision, including the following:*

- a. *CEQA Baseline - appellant contends that the CEQA baseline should be vacant land, not the pre-existing maintenance building because it was removed 9 years ago.*

STAFF RESPONSE: The CEQA baseline in the Initial Study is the vacant lot, and therefore, an Initial Study was prepared to address any potential impacts from the future development in relation to the creek. However, the parcel was the site of the former Pebble Beach Golf Links maintenance facility, which the Initial Study included in its analysis.

- b. *Appellant asserts that the facts do not support the variance findings and argues applicant can and should design a project that does not require a variance.*

STAFF RESPONSE: The Variance request is to exceed lot coverage by 3.9% (343 square feet) and floor area ratio by 5.3% (605 square feet). If the house was to be reduced by these numbers, the applicants would not have to apply for a variance. The zoning in this area of 1 to 2 acre parcels is LDR/1.5 (CZ); which has a lot coverage of 15% and floor area ratio of 17.5%. The proposed project site is a lot of .26 acres (11,413 square feet), a substantially smaller lot size than the other lots zoned LDR in this area. In the Del Monte Forest, this size lot would typically be zoned MDR, which would have a lot coverage of 35% and floor area ratio of 45%. If the parcel was zoned MDR, there would be no need for a variance. The Whitman enclave area is surrounded by "OR (CZ)" Open Space Recreational zoning. Therefore, consideration of a rezoning to MDR would not be appropriate. While LDR zoning is more appropriate than MDR for the area, the small size of this particular lot justifies the finding of a special circumstance applicable to the subject property.

- c. *Appellant argues that the facts do not support a "hardship" finding for the variance.*

STAFF RESPONSE: A variances requires three findings, as set out in Government Code section 65906 and section 20.78.040 of Title 20 of the Monterey County Code. One of the required findings for a variance is that "because of special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, the strict application of this Title [Title 20] is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification." (Monterey County Code, section 20.78.040.A.) Substantial evidence supports this finding. Besides the small lot size (.26 acres) and limited coverage and floor area that results from the LDR zoning district as applied to this unusually small lot, the parcel is an irregular, quasi-triangular shaped lot that restricts designing a structure that would be visually consistent with the larger homes in this neighborhood.

- d. *Biological impact analysis under CEQA: Appellant is arguing that the CEQA analysis is flawed, specifically that it did not analyze the project's cumulative biological impacts or impacts to migratory birds.*

STAFF RESPONSE: The Initial Study addresses all potential impacts from development in relation to Stillwater Creek, including drainage impacts. Engineered drainage plans were prepared for the site and designed to retain storm water on site, provide erosion control measures, and pre- and post- construction inspections to ensure that the site is stabilized and erosion control measures are effective. Also, a Biological Assessment was prepared for the site to determine potential impacts to any environmentally sensitive habitat area and concluded there are no sensitive biological resources on the subject property. Substantial evidence in the record confirms that the proposed development would have no additional cumulative impacts to the creek, because the proposed drainage plan has been prepared to avoid drainage into the creek. A condition of approval also requires a qualified biologist prepare a pre-construction survey for nesting birds and raptors in the one Oak on the site.

e. Contamination: Appellant contends the applicant did not properly answer questions specific to the potential contamination resulting from the prior maintenance yard activities.

STAFF RESPONSE: The appellant submitted a letter from M3 Environmental Consulting LLC dated December 5, 2017, stating that based on an aerial photograph of the site from May 2017, “there was an apparent surface staining of the site; and they would consider the staining a recognized environmental concern.” This assertion is based on an aerial photograph. A Soil Sampling and Analysis Report prepared by D & M Consulting Engineers, Inc. dated October 20, 2003 concluded that the site does not have any subsurface contamination issues. The investigated work was pursued as a precursor for removal of the underground storage tanks prior to the sale of the property. On September 2, 2004, the Monterey County Environmental Health Department confirmed the completion of a site investigation and remedial action for the underground storage tanks formerly located at the site.

f. Drainage - Appellant contends that applicant is withholding key information that would affect the drainage analysis and that the proposed complex drainage system could result in flooding of neighbors.

STAFF RESPONSE: The Pebble Beach Community Services District (CSD) confirms that the storm drain on Whitman Lane is part of the Pebble Beach CSD storm drainage infrastructure. Water Resources Agency has also confirmed that discharging into the existing storm drain infrastructure is acceptable and does not conflict with any drainage laws. RMA-Environmental Services has reviewed the drainage plan as well and confirms all the runoff from impervious areas and the underfloor drains will discharge onto Whitman Lane and then to a natural drainage course. The discharge will be metered out by a pump and will not cause any problems with high volume discharge onto the road.

g. Location of the discharge area: appellant contends that the location of the drainage discharge area is not shown on the plans and is not clear.

STAFF RESPONSE: Based on the drainage plan, surface water is collected by:

- area drains and drainage swales onto underground detention pipe system;
- storm drain facilities with catch basins - both lower sump pump and lift station utilized, and
- subsurface drainage for foundation and under slab piped to lower sump pump, which

would eventually drain out to Whitman Lane. The proposed stormwater system provides protection for the ravine and neighboring properties.

A condition of approval requires the plan to include detention facilities to control flow of impervious surface stormwater runoff, along with supporting calculations and construction details. Drainage improvements shall be constructed in accordance with plans approved by the Water Resources Agency.

2) Appellant contention: The Findings and Decision are not supported by the Evidence.

- a. *Finding 1 - The Raven property is not suitable for the development proposed; the Project would pose significant health and safety impacts; and the Project is inconsistent with the Del Monte Forest Land Use Plan/Local Coastal Program (LCP).*

STAFF RESPONSE: The site is physically suitable for the development proposed and not detrimental to the public health and safety. The project is consistent with the Del Monte Forest Land use Plan as analyzed by RMA Planning, Public Works, and Environmental Services, Water Resources, Pebble Beach CSD, and Environmental Health Bureau. (See Finding 2 of the project resolution.)

- b. *Finding 2 - The Project design does not assure protection of public viewshed and is inconsistent with neighborhood character.*

STAFF RESPONSE: The proposed development is consistent with Del Monte Forest Land Use Plan Policies 123 and 137, as it will not block significant public views toward the ocean and will not adversely impact the public viewshed or scenic character in the project vicinity.

- c. *Finding 3 - The Project will have a significant effect on the environment.*

STAFF RESPONSE: As analyzed in the Initial Study with the support of technical documents, there is no substantial evidence that the proposed project will have a significant effect on the environment. (See CEQA finding in the project resolution.)

- d. *Findings 5, 6, 7 - Variance approval is not supported by the findings, and the findings are not supported by substantial evidence in the record.*

1. *The variance approval would not deprive the Raven property of privileges enjoyed by other properties in the vicinity and under identical zone classification.*
2. *The granting of the variances would grant the Applicant special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.*

STAFF RESPONSE: This lot is substantially smaller and abnormally shaped than all the other lots within the Whitman enclave, making it difficult to design a structure conducive with the character of the neighborhood; and therefore, grant of a variance for this project is not a special privilege due to site development limitations far more restrictive than that of the neighboring properties.

3) Appellant Contention: The Decision was Contrary to the Law

- a. *The Zoning Administrator abused its discretion by failing to proceed in the manner required by law and failing to support its decision to adopt the Negative Declaration with substantial evidence in the record. The Project's Initial Study fails to adequately*

describe the environmental setting, analyze environmental impacts and mitigate significant impacts.

- b. *The Zoning Administrator abused its discretion by failing to proceed in the manner required by law and failing to support its decision to grant Applicant Variances with substantial evidence in the record. Instead of denying the variances based clearly on the inability to make the required findings and support the findings with substantial evidence in the record, the ZA granted special privileges to the Applicant by approving the variances, which is prohibited.*

STAFF RESPONSE:

The Monterey County Zoning Administrator conducted a duly noticed public hearing on the project on April 26, 2018, at which all persons had the opportunity to present evidence and be heard. The Zoning Administrator found that based on the findings and evidence, the project was consistent with the policies of the Monterey County 1982 General Plan, Del Monte Forest Land Use Plan, and Monterey County Code (Title 20) and that substantial evidence supported the findings for a variance. (Zoning Administrator Resolution (No. 18-024). See also the responses to appellants' other contentions, as this contention essentially duplicates the other contentions.

County staff has provided a brief response to each of the contentions above, as well as in the draft Resolution as **Attachment B**. Staff's analysis is that appellants' contentions are without merit for the reasons stated above.

ENVIRONMENTAL REVIEW:

Staff prepared and circulated an Initial Study/proposed Negative Declaration. Staff is recommending adoption of the Negative Declaration. (Attachment F.)

OTHER AGENCY INVOLVEMENT:

The following agencies have reviewed the project and have no recommended conditions:

- ✓ RMA-Planning
- ✓ RMA-Environmental Services
- ✓ RMA Public Works
- ✓ Environmental Health Bureau
- ✓ Water Resources Agency
- ✓ Pebble Beach Community Services District

The project was referred to the Del Monte Forest Land Use Advisory Committee (LUAC) for review (**Attachment F**). The LUAC reviewed the project at public meetings on April 7, 2016, August 17, 2017 and September 21, 2017; a site visit occurred on September 21, 2017. At the September meeting, the Del Monte Forest LUAC recommended approval of the project (4-2 vote), as the project proposal was a reduction of the previous project. Attorney representing the neighbors attended the LUAC meetings, voicing concerns about size and visibility of the project, the noise potential from the roof deck and impacts to the adjacent estuarine. Staff stated an Initial Study would be prepared to identify impacts, if any, to the adjacent creek. The LUAC agreed.

FINANCING:

Funding for staff time associated with this project is included in the FY2017-18 Adopted Budget within RMA-Planning's General Fund 001, Appropriation Unit RMA001.


BOARD OF SUPERVISORS STRATEGIC INITIATIVES:


This action represents effective and timely response to our RMA customers. Processing this application in accordance with all applicable policies and regulations also provides the County accountability for proper management of our land resources.

Check the related Board of Supervisors Strategic Initiatives:

- Economic Development
- Administration
- Health & Human Services
- Infrastructure
- Public Safety

Prepared by: Elizabeth Gonzales, Senior Planner x5102

Reviewed by: Brandon Swanson, RMA Planning Services Manager 

Approved by: John M. Dugan, AICP, RMA Deputy Director of Land Use and Community Development 

The following attachments are on file with Clerk of the Board:

- Attachment A - Project Data Sheet
- Attachment B - Draft Resolution, including:
 - Exhibit 1 - Recommended Conditions of Approval
 - Exhibit 2 - Site Plan, Floor Plans, Elevations, and Color/Material Finishes
- Attachment C - Notice of Appeal (May 10, 2018)
- Attachment D - Zoning Administrator Resolution No. 18-024 (April 26, 2018)
- Attachment E - Vicinity Map
- Attachment F - Del Monte Forest LUAC Minutes (September 21, 2017)
- Attachment G - Negative Declaration and Initial Study

The staff report and all attachments are also available for review on the RMA-Planning public website at the following link:

<http://www.co.monterey.ca.us/government/departments-i-z/resource-management-agency-rma-/planning>

cc: Front Counter Copy; Zoning Administrator; Pebble Beach Community Services District; RMA-Public Works Department; RMA-Environmental Services; Environmental Health Bureau; Water Resources Agency; California Coastal Commission; Jacqueline R. Onciano, Chief of Planning; Brandon Swanson, RMA Services Manager; Elizabeth Gonzales, Project Planner; Scott and Charlyse Raven, Owners; Anthony Lombardo, Attorney, Agent; Eric Miller, Architect; Pam Silkwood, Appellant's attorney; The Open Monterey Project; LandWatch; Planning File PLN150755.