

Attachment A

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ATTACHMENT A DISCUSSION

SETTING:

The fence is proposed on James and Catherine Sims' property located at 26401 Scenic Road, Carmel. The property is located along Scenic Road, which the Carmel Area Land Use Plan designates as a protected public viewshed, with views of Carmel River State Beach, Point Lobos State Reserve and ridgeline views of the Santa Lucia mountain range. The side and rear of the property are surrounded by existing residential development. The proposed fence is located along the property line extending from the house setback to Scenic Drive.

BACKGROUND:

The fence design is simple, but the circumstances provide perspective on the reason for the appeal. Timothy and Kathy Rhein, neighbors (and appellants of the fence), share the side yard property line with the Sims (26387 Isabella Avenue, Carmel). On August 6, 2014, a Coastal Administrative Permit and Design Approval (PLN140386) was approved for landscaping improvements surrounding the existing dwelling on the Rhein property which included construction of a masonry wall along the property line to replace a wood fence between the houses. During the installation of the concrete wall, and after the appeal period ended for the Coastal Administrative Permit and Design Approval, the Sims expressed concerns to the County that the new concrete wall was more than six feet tall and that fill material was placed on the Rhein property raising the elevation of the front and rear yard. Staff determined that the new wall was in conformance with the approved plans, that the rear yard had not been raised in elevation and that the front yard was in conformance with the approved plans.

On October 8, 2015, the Sims, represented by Anthony Lombardo and Associates, requested a Director's Determination for the "Height of a Structure" contending that the height of the new masonry wall should be measured from the bottom of an existing retaining wall which was not modified by the new wall. The Sims property adjacent to the new masonry wall is approximately four feet lower than the Rhein property. On October 16, 2015, a Director's Determination was made determining that a fence or wall on or along an existing retaining wall is measured from existing grade. In this case, existing grade is the elevation of the Rhein's rear yard as demonstrated by photo evidence contained in the Planning File showing the elevation was not modified. On October 26, 2015, the Sims submitted a notice of appeal to the Director's Determination. The appeal of the Director's determination was heard by the Planning Commission on February 10, 2016 at which time the Planning Commission took no action on the interpretation and directed that the Coastal Administrative Permit be brought back for consideration to determine if the wall was constructed in compliance with the submitted plans and approved Coastal Administrative Permit. This is expected to return to the Planning Commission in March 2016.

The Sims are also concerned about the lack of privacy in their front yard patio area, resulting from the changes made to the elevation to the front yard of the Rhein property. The Rhein improvements included placing fill material in the front yard and increasing the size of the front patio area. The Sims believe the fill material place the neighbors in a position to look down into their patio, creating an invasion of their privacy. On June 17, 2015, the Sims submitted a Design Approval application for a six-foot tall redwood fence (PLN150582). Alternative design concepts were encouraged by staff, including limiting the fence to a certain portion of the property, reducing the height of the fence, but in the end as will be discussed below, a 6 foot tall redwood fence would not have a deleterious impact on the neighborhood character or upon a scenic view. The Design Approval was approved on December 11, 2015.

PROJECT ANALYSIS:

Staff's analysis of the Design Approval application determined that the proposed fence was consistent with Chapter 20.44 (Design Control) of the Monterey County Zoning Ordinance and the Visual Resource Chapter (Section 2.2) of the Carmel Area Land Use Plan. The findings for approval of the fence require that the proposed fence not adversely affect the public viewshed, neighborhood character, or visual integrity of the area. Scenic Road is designated as a scenic viewshed by the Carmel Area Land Use Plan (LUP). The LUP protects views of the shoreline and ridgelines from all public viewing areas along Scenic Road. The Design Control Chapter of the Zoning Ordinance provides regulations for the siting, location, color and materials of structures to ensure protection of the neighborhood character and viewshed.

The fence does not impact views of the shoreline or ridgelines from Scenic Road or at the intersection of Isabella Avenue and Scenic Road. The Sims property is located on the landward side of Scenic Road, so no development on the property blocks ocean views. Scenic Road is a one lane road traveling south past the Sims property. The road meanders along the coast, and as a result the only real view of the fence will be looking along the fence line. The fence will not obstruct views on Scenic to ridgelines or other scenic vistas because it will barely be visible to travelers on Scenic Road.

The fence would have very minor impact on the view shed on Isabella Avenue. **Figure 1** provides an aerial view of the vicinity near the intersection of Isabella Avenue and Scenic Road. As shown in **Figures 2, 3 and 4** (red line indicates the fence height), as one travels on Isabella Avenue, approaching Scenic Road, views of the ocean and beach are obscured by existing vegetation and improvements on the Rhein's and Sim's properties. In the location of the proposed fence, the Rhein property has landscaping along a retaining wall between the Sims and Rhein properties. The fence will not significantly impact the scenic quality and visual access to the shorelines or ridgelines, as it only affects a couple of inches of visibility for a very limited distance on Isabella Avenue. The fence will only affect visibility of a small portion of the sand dune along Scenic Road just north of Carmel River Beach, no views of the actual beach; ocean or mountains will be obscured from Isabella Avenue. Therefore, the fence does not constitute a significant impact to visual resources and is consistent with the viewshed policies within the Carmel Area Land Use Plan.

Consistent with the Design Control Chapter of the Zoning Ordinance, the fence is made of natural redwood which is a material and color found throughout the neighborhood including Scenic Road. The fencing will be placed on the side yard property line adjacent to an existing retaining wall with landscaping located on top of the retaining wall. As stated, the fence will not significantly impact the public viewshed, and the color, material and location of the fence are common in the area. Therefore, the fence will not adversely impact neighborhood character or the visual integrity of the area, and is consistent with the Design Control Chapter of the Zoning Ordinance.

Figure 1



Figure 2



Figure 3



Figure 4



APPEAL:

Pursuant to Section 20.44.070, Design Control Chapter of the Monterey County Zoning Ordinance, a Design Approval is appealable to the Board of Supervisors. A Notice of Appeal was filed on December 22, 2015 by Andrew Swartz of Spiering, Swartz and Kennedy representing the appellants, Timothy and Kathy Rhein (**Attachment E**). The Notice of Appeal alleges that the findings and decision are not supported by the evidence, and the decision is contrary to law. The following is a summary of the contentions made by the appellant followed by staff's response to each contention:

Contention No. 1: A Coastal Development Permit is required because the proposed Sims' fence is a "structure" as it is not less than six feet (Section 20.06.1200, Zoning Ordinance).

- **Response:** The argument presented by the applicant is that the definition of "Structure" taken from Title 20 states a fence is not a structure if it is "under six feet in height." Therefore a fence of six feet tall would not fall under the exemption from the requirement to obtain a Coastal Development Permit (Section 20.70.120.A.1, Zoning Ordinance). The County has consistently interpreted a fence of up to 6 feet in height to fall under this exemption. So when a six foot tall fence is approved it is a fence of up to six feet in height, and not over six feet. This fence will not exceed six feet in height and thus a Coastal Development Permit is not required.

Contention No. 2: The fence is not exempt from Coastal Development Permit requirements because it is within 50 feet of the edge of a coastal bluff (Section 20.70.120.A.1, Zoning Ordinance).

- **Response:** The California Coastal Commission defines a coastal bluff as, "the entire slope between a marine terrace or upland area and the sea." Based on this definition, the fence is within 50 feet of a coastal bluff. However, the County has not required development on the landward side of Scenic Road to obtain a Coastal Development Permit for development within 50 feet of a coastal bluff. Scenic Road provides a physical barrier between development on the landward side of Scenic and the coastal bluff. Typically the development on the landward side of Scenic within this 50 foot zone is landscaping, fences, and driveways. The requirement for the Coastal Development Permit is to address situations where the lot goes out to or over the coastal bluff and development can occur in a manner that may have an impact on the bluff, beach or marine environment below. With a physical barrier (Scenic Road) between the bluff and development, there is no need for that type of review. This has been the practice of the County, and the California Coastal Commission staff has not objected to this interpretation based on past review of entitlements along Scenic Road which are appealable to the Coastal Commission.

Contention No. 3: The Coastal Development Permit application for the fence must be considered by the Planning Commission (Section 20.44.040.E, Zoning Ordinance).

- **Response:** Section 20.44.040.E, Design Control Chapter of the Zoning Ordinance, states "The Planning Commission is the appropriate authority to consider Design Approval applications for those structures which have the greatest potential to impact public views such as structures along scenic highways or road corridors, in areas designated as critical viewshed, or which may be prominent from common public viewing areas. As stated above in the Project Analysis section, the fence does not impact the viewshed along Scenic Road or Isabella Avenue. Therefore, the Director of RMA-Planning is the

appropriate authority (Section 20.44.040.D, Zoning Ordinance). In this case the Board is the appropriate appeal authority.

Contention No. 4: The Design Approval finding of “consistency” with the neighborhood character is not the necessary finding. The required finding for Design Approval is “protection” of the neighboring character. Protection of the neighborhood character essentially requires no harm result to the neighborhood character. Critical to the Scenic Road neighborhood character is the existing openness between properties affording view opportunities both public and private. The original application acknowledged the neighborhood character by proposing only a four foot fence within 25 feet of the road. County planners orally confirmed to Mr. & Mrs. Rhein that fences no higher than four feet would be approved near Scenic Road.

- **Response:** The Design Approval Chapter of the Monterey County Zoning Ordinance, as well as the Visual Resources Section of the Carmel Area Land Use Plan, does not contain policies or regulations that protect private views. These policies and regulations ensure protection of public views from Scenic Road and protect the neighborhood character. The project analysis found that the fence does not obstruct views of the shoreline or ridgelines from Scenic Road or Isabella Avenue, and the colors and materials of the fence are natural and are consistent with fences and locations of fences along Scenic Road. There are other fences in the immediate vicinity within the front yards and so this is not unprecedented from a neighborhood character perspective. The discussion between the County planner and Rheins was based on Policy 2.2.4.10.c of the Carmel Area Land Use Plan which requires the height and bulk of a structure to be modified as necessary to protect the viewshed. The planning department conducted a thorough analysis and found that a six foot fence does not have any additional impact on the scenic viewshed or neighborhood character than a four foot fence at this location. The fence does not obstruct or significantly impact the viewshed.

Contention No. 5: The six foot height of the proposed fence within 25 feet of Scenic Road intentionally, unfairly and maliciously blocks public and private views from and along Isabella and Scenic Road and offers no privacy protection to the Sims.

- **Response:** As stated, the fence does not impact views from Scenic Road and the intersection of Scenic Road and Isabella Avenue which is a designated scenic corridor. However, the fence will obstruct private views from Mr. and Mrs. Rhein’s property but these are not protected views.

Contention No. 6: The approved six foot fence would conflict with the visual integrity of the neighborhood which is a designated scenic area. If six foot fences were permitted up to the edge of the road on all properties along Scenic Road the cumulative impact would dramatically disrupt and alter the integrity and character of the neighborhood.

- **Response:** *See Response No. 4*

Contention No. 7: Section 5.3.1 and 5.3.2 of the Carmel Area Land Use Plan states that one of the “General Policies” is to protect “existing visual access from scenic viewing corridors (e.g. Highway 1, Scenic Road...)...should be permanently protected as an important component of shoreline access and public recreational use.”

- **Response:** Section 5.3.1 and 5.3.2 of the Carmel Area Land Use Plan protects visual access along scenic viewing corridors for public access purposes. As stated in responses above, the

fence is on private property outside of public access points. Therefore, the project will not impact visual access from scenic viewing corridors and from major public viewpoints.

RECOMMENDATION:

Staff recommends denial of the Rhein appeal and approval of the Sims Design Approval because the Sims fence project is consistent with the Monterey County General Plan, Carmel Area Land Use Plan, and Chapter 20.44, Design Control, of the Monterey County Zoning Ordinance.

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