

**Revised Attachment B
DRAFT RESOLUTION**

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

In the matter of the application of:

SCHWARTZ MAL (PLN200192 and DA210122)

RESOLUTION NO. 21 -

Resolution by the Monterey County Board of Supervisors:

- 1) Partially Granting an Appeal by Christine Kemp on behalf of Robert Kahn challenging the Zoning Administrator's approval of a Design Approval (HCD-Planning File No. PLN200192)
- 2) Finding that the project qualifies as a Class 3 Categorical Exemption under section 15303 of the CEQA Guidelines, and there are no exceptions pursuant to section 15300.2; and
- 3) Approving a design approval to amend PLN170572 to permit expanding the studio addition from 355 square feet to 531 square feet and a 63-square foot landing; modifying the roof of the studio addition to have 2 skylights instead of 1 skylight; an interior remodel of the southeastern portion of the home, including conversion of the garage to living space and removal and replacement of the garage door with lap siding; construction of a new 447 square foot detached two-car carport; reducing the height of the chimney and re-finishing the chimney with a Carmel Stone or retaining the existing white stucco, to address the presently unpermitted white smooth stucco finish and added flue cap; and construction of a 4 foot tall to 6 foot tall cedar fence; and
- 4) Approving a design approval DA210122 increasing the height of a previously permitted shed from 8 feet to approximately 9 feet, changing its roof pitch, removing its skylights and upper window, painting it brown, changing its approved location.

[Schwartz, 24980 Outlook Drive, Carmel, Carmel Valley Master Plan (APN: 015-522-008-000)]

The Schwartz application (PLN200192) came on for a public hearing before the Monterey County Board of Supervisors on July 27, 2021. Having considered the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Zoning Administrator finds and decides as follows:

FINDINGS

1. **FINDING:** **PROCESS** – The County has processed the subject Design Approval application [HCD-Planning File No. PLN200192] (“project”) in compliance with all applicable procedural requirements.
- a) The project has both Site Plan Review (S) and Design Control (D) overlay zones.
- Pursuant to Title 21 section 21.45.050(C), the Director of Planning, or the Zoning Administrator, may approve “small development projects such as structure additions, accessory structures, decks, fences... and minor modifications to previously approved projects” in the Site Plan Review overlay zone without an administrative permit.
 - Pursuant to Title 21 section 21.44.040, the Director of Planning may approve Design Approvals for “small structures such as additions, accessory structures and similar minor structure and minor modifications to previously approved development projects...” in the Design Control overlay zone.

In accordance with these two code sections, staff reviewed an Administrative Design Approval for the project, PLN200192. A Notice of Pending Approval was distributed on September 29, 2020, indicating that the Director of Planning would approve the permit on October 12, 2020, unless a written request to schedule the application for a public hearing was received by Friday, October 9, 2020.

- b) On October 3, 2020, Robert A. Kahn requested via email that this application be referred to a public hearing. On October 9, 2020, Christine G. Kemp submitted a subsequent request that this application be referred to a public hearing before the Planning Commission. In her October 9, 2020 request, Ms. Kemp indicates that the project requires a Variance or Use Permit for development within the Side and Rear Yard setback, and that the Planning Commission would be the appropriate authority to consider such a request as a Combined Development Permit. However, while a small portion of the existing garage is within the side setback area, pursuant to Title 21 section 21.68.040(A), the enlargement, extension, reconstruction, or structural alteration of a nonconforming structure nonconforming only as to height and yard regulations may be allowed provided that the alteration conforms to all regulations of the district they are in. Further, under Title 21 section 21.68.040(B) ordinary maintenance and repairs of structures nonconforming to setbacks may be allowed as long as no structural alterations are made, and such work does not exceed 50% of the appraised value of the structure in one year:
- The alteration of the southeastern portion of the residence within the setback does not expand the existing nonconformity. This alteration does include the replacement

of an existing door, and the creation of three window openings. These changes are minor modifications which fall under the category of repairs, do not include any structural alterations as defined in Section 21.06.070 of the Monterey County Code, and are not large enough in scope to approach 50% of the appraised value of the home. As such, they do not impact the structural members in a manner that would warrant a Use Permit, or require that the structure be brought into compliance with the setbacks.

- All new structural expansion occurs within the allowable setbacks of the properties zoning, and the setback exceptions detailed in the zoning ordinance, so a variance is not required in this case. Refer to Finding No. 2 evidence “f” for detailed discussion of the setbacks.
- The use is allowable under the base zoning district, and none of the other criteria requiring a use permit are met, so a use permit is not required in this case. As the use allowable under the base zoning district, and not a legal nonconforming use of a structure, Title 21 section 21.68.030 does not apply. Refer to subsequent Finding No. 2 evidence “e” for discussion of the use.

c) In addition, the October 9, 2020 request indicated that there were multiple code violations on the property that must be addressed prior to taking action on the permit:

- Unpermitted painting of the exterior of the home white.
- Unpermitted modification of the chimney.
- Unpermitted modification of the shed rear yard.

Applicant revised their original application to request retroactive approval for the paint color of the primary home and to modify the chimney. Staff researched the existing shed, and were able to determine that the finish and skylights were in line with their original approval, but did not verify the height prior to the hearing. At the hearing, Applicant representatives indicated that the shed was twelve feet, higher than its originally approved height of eight feet in DA190154. While unhabitable accessory structures are permitted up to fifteen feet in height under the base zoning, this is a violation of the original conditions of design approval DA190154, and therefore a violation of the zoning ordinance. The final height of the shed was measured at 12 feet, 11 ½” inches, approximately 13 feet. Seeking appropriate permits to allow the as-built condition of the shed, or to removal of the shed, was included as a condition of approval in the Zoning Administrator approval of this permit. However, as discussed in Finding No. 7 evidence “c”, this does not fully address the zoning violation. To fully address the zoning violation, retroactive approval for the height and present location of the shed is incorporated as Design Approval DA210122. Additionally, in measuring the shed’s height, the location of the shed was also shown to be further from the property line and the primary home than the original approval. The current location of the shed is also being incorporated into this design

approval request. Further, Applicant is also pursuing necessary permits with Building & Safety to permit addition of electrical power to the shed. All of these are discussed in Finding No. 7.

- d) On April 19, 2021, the project was reviewed by the Carmel Valley Land Use Advisory Committee (LUAC) at a duly noticed public meeting. Based on the LUAC Procedure guidelines adopted by the Monterey County Board of Supervisors, this application warranted referral to the LUAC because the project is a Design Approval subject to review at a public hearing. The LUAC, after consideration of the project materials and comments from the public, voted 6 – 0 to recommend approval of the project with change the following changes:

- That the skylights include shades.
- That the skylights be non-reflective.
- That the Carmel stone on the chimney be a muted tan.

To address these recommendations, Applicant has modified the proposal to:

- Include shades for the skylight.
- Specify that the glass be a Low-E glass, which have a slight greyish tint.
- Include a tan Carmel stone finish for the chimney.

After the Zoning Administrator hearing, the applicant further modified its proposal to:

- Reduce the height of the chimney, and potentially retain their existing smooth coat white stucco on the chimney. This departs from the LUAC’s recommendation. However, the reduced mass of the chimney addresses the private viewshed concerns and the material finish is in line with the neighborhood character and would match the finish of the residence. Refer to Findings No. 3 & 4 for further discussion of the design.

To ensure that the skylight shade and low-e glass changes are executed, a special condition “PDSP001” is being included, which requires that Applicant furnish evidence that the shades and glass were installed as specified, prior to building final.

- e) On April 29, 2021, the Zoning Administrator heard the project and continued the project to a date certain of May 13, 2021, to allow Applicant time to incorporate the recommendations of the Carmel Valley Land Use Advisory Committee into his proposal.
- f) On May 4, 2021, Applicant submitted a revised plan set to address the recommendations of the Carmel Valley Land Use Advisory Committee.
- g) On May 13, 2021, after review of the application and submitted documents, and a duly-noticed public hearing at which all persons had the opportunity to be heard, the Zoning Administrator found that the project qualifies as a Class 3 Categorical Exemption pursuant to section 15303 of the CEQA Guidelines and approved a Design

Approval for the project. (Monterey County Zoning Administrator Resolution 21-025)

- h) On June 1, 2021, Christine Kemp, on behalf of Robert Kahn, timely appealed the May 13, 2021 Zoning Administrator decision. pursuant to MCC section 21.44.070 and 21.45.060. The appeal challenges the Zoning Administrators approval, contending lack of a fair or impartial hearing, that the findings or decision are not supported by the evidence, and that the decision was contrary to law. The appeal contentions are addressed in Finding No. 8.
- i) On July 26, 2021 the Applicants representatives submitted a revised plan set to HCD-Planning. This plan set:
 - Modified the height of the shed to be approximately 9 feet and changed its roof slope.
 - Indicated a brown paint finish for the shed.
 - Removed the skylights and upper windows of the existing shed.
 - Reduced the height of the height of the Chimney to 111' – 0" and added a new termination cap for the chimney which cap will not be located on the top of the reduced chimney.
 - Modified the chimney finish to allow either Carmel stone or retention of the existing white smooth coat stucco.

The appellant also submitted a letter indicating that they support the project as modified by the revised plan set.

2. **FINDING:**

CONSISTENCY - The proposed project, as conditioned, is consistent with the policies of the Monterey County 2010 General Plan, Carmel Valley Master Plan, and Monterey County Zoning Ordinance (Title 21).

EVIDENCE:

- a) The proposed project involves the addition of a 531 square foot studio with 2 skylights and a 63 square foot landing to an existing 2,645 square foot single-family residence. The project also includes a remodel of the plan southeastern portion of the residence, including the conversion of the existing garage to habitable space. As part of this scope the garage door will be removed, and the opening will be replaced with lap siding to match the existing finish of the home. A new 447 square foot detached two-car carport will be built in the front of the home, and a new cedar fence ranging from 4 feet to 6 feet in height will be added to the plan eastern property line. The Chimney will be reduced in height to the elevation 111' – 0", and may be re-finished with Carmel stone or retain its white stucco finish, to address the unpermitted stucco finish and installation of a flue cap. The request also includes retroactive approval to paint the exterior of the primary residence a white "swiss coffee" color, approval to increase the approved height of the shed permitted through design approval DA190154 from 8 feet to between 10 feet and 4 inches to 8 feet and 2 inches (described herein as approximately 9 feet), and retroactive approval to change the location of a to the location depicted on the project plans sheet A3.8. The project grading is approximately 20 cubic yards of cut and 20 cubic yards of fill.

These design approvals amend the previously approved PLN170572 & DA190154, which had approved of a 355 square foot studio addition with a skylight, addition of a 1,236 square foot deck, and replacement of the of the exterior siding, doors, and windows, and installation of a 8-foot-tall backyard shed.

The change scope between plans included in file nos. PLN170572 & DA190154 and these permits (PLN200192 & DA210122) is the addition of an additional 176 square feet of studio addition, addition of a 63 square foot landing, the addition of the remodel scope in the southeastern portion of the residence, the addition of the 447 square foot 2-car carport, the addition of the cedar fence, a request for approval to reduce the height of the chimney and either retain the existing white stucco or re-finish the chimney with the tan Carmel stone, a request for retroactive approval to re-paint the exterior of the residence, and a request to increase the height of the shed from 8 feet to approximately 9 feet and paint it brown. The addition of the 1,236 square foot deck and the replacement of the exterior siding, doors, and windows for the primary residence (excepting the modifications to the southeastern portion of the residence) have already been executed under PLN170572.

- b) The property is located at 24980 Outlook Drive, Carmel (APN: 015-522-008-000), Carmel Valley Master Plan. The parcel is zoned Low Density Residential, with Building Site, Design Control, Site Plan Review, and Residential Allocation zoning overlays or “LDR/B-6-D-S-RAZ”.
- c) The project has been reviewed for consistency with the text, policies, and regulations in:
 - the 2010 Monterey County General Plan;
 - The Carmel Valley Master Plan; and
 - Monterey County Zoning Ordinance (Title 21).
- d) Communications were received during staff review of the project indicating inconsistencies with the text, policies, and regulations in the applicable documents. Staff reviewed these communications and has addressed these inconsistencies. Refer to evidences “e” and “f”, as well as Finding No. 2, Finding No. 7, and Finding No. 8.
- e) Allowable Use. Pursuant to Title 21 section 21.14.030, allowable uses in the LDR zone include “The first single family dwelling per lot;” and “Non-habitable accessory structures and accessory uses to any permitted use;”
 - The addition of the studio and the remodel of the southeastern portion of the home are additions to the living space of the first single family dwelling on the lot, and as such are an allowable use.
 - The 2-car carport and fence are both non-habitable accessory structures to the single-family home, and as such are allowable uses.
 - The existing shed was permitted as a storage shed in DA190154. The applicant intends to maintain this shed as a non-habitable structure.

- f) Review of Development Standards. The development standards for the base LDR zoning district are identified in Title 21 section 21.14.060, and the development standards of the building site B-6 zoning district are identified in Title 21 section 21.42.030. Pursuant to Title 21 section 21.42.020, the regulations of the B-6 zoning overlay shall be applied “in lieu of the building site area and setbacks in the combining district...” for primary structures:

The allowable setbacks per Title 21 section 21.42.030(F)(2) are as follows:

- The minimum front setback shall be 30 feet. As shown on sheet A1.0 of the proposed project plans, the proposed studio addition is outside of this setback area. The detached 2-car carport encroaches into this setback. However, under section 21.62.040(N), encroachment into this setback may be permitted for detached carports in cases where, “the elevation of the front half of the lot at a point 50 feet from the centerline of the traveled roadway is seven feet above or below the grade of said centerline,...” Here, the elevation at a point at the centerline of Outlook Drive is 85 feet and 6 inches, while the elevation 50’ from centerline drive extending into the Schwartz property is approximately 95 feet. This is greater than 7 feet higher than the centerline of Outlook Drive, and therefore this setback exception is allowable.
- The minimum side setback shall be 10% of the lot width. As the width of the property is 123 feet and 10 ½ inches, the allowable side setback is 12 feet and 4 ½ inches. As shown on the site plan A1.0, the proposed 531 square foot studio addition is within this allowable setback.
 - o The 63 square foot deck for this addition does encroach into the required setback.
 - o The 4 to 6 foot tall fence also runs along the plan east property line. However, pursuant to the definition of structures in Title 21 section 21.06.1220, a fence under six feet in height is not a “structure” and is therefore not subject to the setback requirement.
- The minimum rear yard setback shall be 20 feet. As shown on sheet A1.0 of the proposed project plans, the scope of work for the project is outside of this setback area.

Pursuant to Title 21 section 21.14.060(C)(3)(a), the minimum setback for non-habitable accessory structures on the rear half of a lot is 1 foot. The location of the existing shed is 3 feet and 7 inches from the property line. Additionally, under MCC section 21.14.060(C) the minimum distance between primary and accessory structures is 10 feet. The existing distance between the shed is 12 feet and 2 and ½ inches.

Pursuant to Title 21 section 21.14.060(C)(1)(b), the maximum allowable main structure height is 30 feet. The proposed highest point of the main structure is 14 feet and 11 ¾ inches.

Pursuant to Title 21 section 21.14.060(C)(3)(b), the maximum height of non-habitable accessory structures is 15 feet. The proposed height of the shed is 10 feet and 4 inches.

Pursuant to Title 21 section 21.14.060(E), the maximum allowable lot coverage on lots greater than 20,000 square feet is 25%. The property is 25,114 square feet in this case and maximum coverage would be 6,278 square feet. The proposed lot coverage is 16.7%, or 4,199 square feet.

Therefore, as proposed, the project meets all required development standards.

- g) Design. See Finding No. 2.
- h) Cultural Resources. The project site is in an area identified in County records as having a moderate archaeological sensitivity. However, the area of proposed development has been disturbed by previous structural, hardscape, and landscape development. Therefore, there is no evidence that any cultural resources would be disturbed, and the potential for inadvertent impacts to cultural resources is limited and will be controlled by application of the County's standard project condition (Condition No. 3), which requires the contractor to stop work if previously unidentified resources are discovered during construction.
- i) The application, plans, and supporting materials submitted by the project applicant to Monterey County HCD-Planning for the proposed development found in project file PLN200192.

3. **FINDING:** **DESIGN** – The design of the proposed project assures protection of the public viewshed, is consistent with neighborhood character, and assures visual integrity without imposing undue restrictions on private property.

- EVIDENCE:**
- a) Pursuant to section 21.44, Title 21 (Zoning Ordinance) of the Monterey County Code (MCC), the proposed project site and surrounding area are designated as a Design Control Combining District (D District), which triggers regulation of the location, size, configuration, materials, and colors of structures and fences to assure protection of the public viewshed and neighborhood character.
 - b) Neighborhood Character. The neighborhood is comprised of single-family homes of a variety of traditional materials and styles. The proposed addition is in scale with the other homes in the neighborhood and is consistent with the designs in the area. Refer to evidence c) for discussion of the finishes.

- c) Material and Color Finishes. The proposed material finishes include lap siding painted a white “swiss coffee” color, for both the addition and primary residence, either a white smooth coat stucco or tan Carmel Stone for the chimney, a brown “bear colorful leaves” for the shed, and a stained cedar for the carport and fence. Both lap siding and smooth coat stucco are traditional building materials consistent with the material textures of other homes in the neighborhood. The white is a neutral color, consistent with the material finish of other homes along Outlook Drive, and the Carmel Stone is a tan earth tone, in line with other residence in the area. The cedar is a natural wood tone, compatible with the surrounding natural environment and neighborhood. The repainted brown for the shed finishes is a muted earth tone which blends with the character of the valley.
- d) Visual Resources. The project site is within an area of high visual sensitivity, as designated on Figure 14 (Greater Monterey Peninsula Scenic Highway Corridors and Visual Sensitivity Map) of the 2010 Monterey County General Plan. The proposed project is an addition to an existing single-family residence, well below the allowable building site coverage and below the height approved in the previous design approval PLN170572. Additionally, the project includes finish changes to white, a neutral color, a tan natural stone, a brown paint which is earth tone, and cedar, which is a natural color. The existing shed is not observable from any public viewing areas. Therefore, as proposed, the project would not result in substantial adverse visual impacts, and the project is consistent with the applicable scenic resource policies of the 2010 General Plan and the Carmel Valley Master Plan.
- e) Carmel Valley Master Plan Policy CV-1.20. Refer to Finding No. 4.
- f) The project planner reviewed the application materials, plans, and County GIS records to verify that the proposed project on the subject parcel conforms to the applicable plans and MCC, and will not adversely impact the neighborhood character or scenic/visual resources.
- g) The project planner conducted site inspections on April 1 and June 17, 2021. The planner reviewed the project site, revised finishes, location of the proposed addition, and other homes within the neighborhood. Based on this visual inspection the project planner verified that the proposed project is consistent with the criteria for design approval established in Design Control District.
- h) Based on the evidence described above, the proposed structure and use are consistent with the surrounding residential neighborhood character (i.e., structural design features, colors, and material finishes). The proposed development would also not have a significant impact on a public viewshed. As proposed, the project assures protection of the public viewshed, is consistent with neighborhood character, and assures visual integrity.
- i) The application, plans, and supporting materials submitted by the project applicant to Monterey County HCD-Planning for the proposed development found in project file PLN200192.

4. **FINDING:** **CARMEL VALLEY MASTER PLAN POLICY CV-1.20** – The project, as proposed and conditioned, is consistent with Land-use Policy CV-1.20 of the Carmel Valley Master Plan.
- EVIDENCE:**
- a) The Carmel Valley Master Policy CV-1.20 indicates that proposed development conspicuous from outside of the property consider several guidelines. These are considered in evidence “b” through “h” below.
 - b) The proposed development encourages and furthers the letter and spirit of the Master Plan. No inconsistencies were identified in the review process indicating to the contrary.
 - c) The development is visually compatible with the character of the Valley and the immediate surrounding area, a developed single-family neighborhood. The proposed project is compatible with the character of this neighborhood. Reference Finding No. 3, Evidence “b” and “c”.
 - d) Materials and colors selected for use in construction are compatible with the structural system of the building and with the appearance of the building’s natural and man-made surroundings. The stained wood finish of the carport and fence are compatible with the natural environment, while the white finish of the home and chimney is compatible with the single-family homes in the neighborhood. The brown selected for the shed is an earth tone. The potential Carmel stone selected for the chimney is tan, intended to be a muted tone.
 - e) “Structures should be controlled in height and bulk in order to retain an appropriate scale.” (CV-1.20(d)) The height and bulk of the structure are appropriate and in scale with homes in the neighborhood. The change in roof profile reduces the height of the building from the previously approved PLN170572. The studio addition follows the plane of the front section of the home. Moreover, the detached carport is a single story lower than the existing roof. The additional height for the shed would raise the total permitted height to approximately 9 feet, which is within scale for a one-story accessory structure and 6 feet below the allowable height maximum.
 - f) “Development, including road cuts as well as structures, should be located in a manner that minimizes disruption of views from existing homes.” (CV-1.20(e)) The location of the chimney is unchanged, with the chimney height reduced to 111’-0” and the flue cap removed. The studio addition is being expanded closer to the adjoining property line with the east property owner, however, the extent of this expansion is in plane with the front portion of the structure, and the overall height of this addition is being reduced from the approved PLN170572. The existing sheds as-built condition is further from the property line than was originally depicted in DA190154, being 3 feet and 7 inches. This, combined with the 6-foot Cedar fence being installed along the plan east property line and proposed reduction in height, will reduce disruption of views for the existing neighboring residence.
 - g) The project minimizes erosion and/or modification of landforms. Except for the property fence, all development takes place in areas previously disturbed by development, which minimizes modifications to landforms and potential erosion. The studio addition is replacing an existing concrete patio, while the new 2-car carport is being installed

in a paved driveway. Erosion is also controlled through the inclusion of an erosion control / construction management plan, which is shown on sheet G1.6 of the project plans.

- h) “Minimize grading through the use of step and pole foundations.” (CV-1.20(g)) The foundation for the expansion is a continuation of the existing foundation of the home. Grading has been minimized to approximately 20 cubic yards of cut and 20 cubic yards of fill.

5. **FINDING:** **ENVIRONMENTAL REVIEW** – The project is categorically exempt from environmental review and no unusual circumstances were identified for the proposed project.

- EVIDENCE:**
- a) California Environmental Quality Act (CEQA) Guidelines section 15303 categorically exempts new construction and conversion of small structures, including single-family residences.
 - b) The project consists of the remodel of and addition to an existing single-family dwelling, construction of accessory structures (a 2-car carport and a fence), and retroactively permitting the increase in height and change in location to an existing shed, on a residentially zoned parcel within a developed neighborhood. Therefore, the proposed development is consistent with CEQA Guidelines section 15303.
 - c) None of the exceptions under CEQA Guidelines section 15300.2 apply. There is no substantial evidence of an unusual circumstance because there is no feature or condition of the project that distinguishes the project from the exempt class. The project does not involve a designated historical resource, a hazardous waste site, or development located near or within view of a scenic highway. Moreover, staff review has not found substantial evidence that would support a fair argument that the project has a reasonable possibility of having a significant effect on the environment or that it would result in a cumulative significant impact.
 - d) No adverse environmental effects were identified during staff review of the development application.

6. **FINDING:** **HEALTH AND SAFETY** – The establishment, maintenance, or operation of the project applied for will not under the circumstances of this case be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.

- EVIDENCE:**
- a) The project has been reviewed by HCD-Planning, and conditions have been recommended, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood.
 - b) Necessary public facilities are available. The existing single-family dwelling has public water and sewer connections provided by the California American Water Company and the Carmel Area Wastewater District, respectively, and the new residence will continue to use these same connections.

- c) The application, plans, and supporting materials submitted by the project applicant to Monterey County HCD-Planning for the proposed development found in project file PLN200192.

7. **FINDING:** **NO VIOLATIONS** – The subject property is not in compliance with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of the County’s zoning ordinance. Three zoning violations exist on the property, which will be remedied by approval of this permit. As this permit remedies the zoning violations on the property, it is part of the administrative remedy for the violation, and as such may be issued pursuant to MCC section 21.84.120. These are addressed in evidences “a”, “b”, and “c” below. No other zoning violations or are known to exist on the property and no notice of violation is recorded on the property.

- EVIDENCE:**
- a) Primary Home Color. The primary home was painted a white “swiss coffee color” without a permit. Applicant has modified their application to request permission for this change.
 - b) Chimney. The chimney was re-finished with a smooth coat stucco and painted white without a permit. Applicant has modified their application to request include either retroactive approval for the white stucco finish or permission to re-finish with a tan Carmel stone. A metal mechanical flue cap and spark arrestor was also installed on top of the chimney without a permit. Applicant has modified their request to include a reduction in height of the chimney to 111’-), remove the top flue cap and spark arrestor and install a new termination cap not located on the top of the chimney.
 - c) Shed. In correspondence received from the public, it was indicated that the height, structure, and finishes of an existing shed on the property were different from and in violation of their original planning approval, DA190154. In researching this approval, county staff reviewed the elevations and finish materials attached to the approval resolution for DA190154 and determined that the finishes and skylights were installed as per the original approval. Staff did not independently verify whether the height of the shed was higher than its originally approved height of eight feet prior to the May 13, 2021 Zoning Administrator hearing. At the hearing, Applicant’s representatives indicated that the shed was twelve feet high, four feet higher than allowed under the original approval. While the underlying zoning permits unhabitable accessory structures up to fifteen feet, Applicant’s non-compliance with the terms and conditions of the original permit being installed higher than originally approved violated the conditions of the original permit DA190154, and as such is a violation of the provisions of the zoning ordinance. To address this, a project specific condition, “PDSP002”, was applied by the Zoning Administrator which would require the Applicant to either:
 - secure the necessary land use entitlements to legalize the shed prior to the issuance of building permits, or;
 - remove the shed and furnish evidence of its removal to the chief of planning prior to the issuance of building permits.

However, as discussed in Finding No. 8, addressing a zoning violation through a condition requiring application for further entitlements does not cure the zoning violation, and pursuant to MCC 21.84.120, no department may issue permits where there is a zoning violation on the property unless such permit is, in whole or in part, a cure for said violation. After the hearing, the height of the shed measured 12 feet and 11 and a ½ inches, and was slightly further from the property line and the main house than was indicated on the originally permitted plans. To address this, approval of the increase in permitted height of the shed to approximately 9 feet is included as design approval request DA210122.

In her October 9, 2020 request, Ms. Kemp claimed that unpermitted electrical had been added to the shed. Code enforcement staff contacted the property owner, who verified this. This violation is being processed through code enforcement case 21CE00023. The property owner has since disconnected the electrical. However, to abate this violation Applicant will need to secure a building permit to either demolish the shed's electrical or to legalize it. No planning entitlements are required for that action and the shed may be permitted with or without electrical for the purposes of this permit. Applicant has indicated their desire is to maintain this shed with power, and as such the addition of electrical is shown on the site plan on sheet A1.0. Non-habitable accessory structures are an allowable use in the LDR zone.

- d) The project planner conducted site inspections on April 1 and June 17, 2021.
- e) The application, plans, and supporting materials submitted by the project applicant to Monterey County HCD-Planning for the proposed development found in project file PLN200192.

8. **FINDING:** **APPEAL** – Upon consideration of the documentary evidence, the staff report, the oral and written testimony, and all other evidence in the record, the Board responds as follows to Appellant's contentions:

EVIDENCE: a) Appellant (Christine Kemp on behalf of Robert Kahn), pursuant to MCC sections 21.44.070 and 21.45.060, timely filed an appeal from the May 13, 2021, decision of the Zoning Administrator (see also Finding No. 1, Process). The appeal challenged the Zoning Administrator's approval of the Schwartz Mal Permit, contending that the project lacked a fair or impartial hearing, that the findings or decision were not supported by the evidence, and that the decision was contrary to law.

In sum, in his Notice of Appeal submitted on June 1, 2021, Appellant contends that the permit should not be issued as doing so would effectively condone the prior, unpermitted work; that procedural irregularities, specifically the project description and information presented to the Land Use Advisory Committee, resulted in the lack of a fair hearing; that the project as proposed is not consistent with the design review criteria established by the Carmel Valley Master

Plan and Design Control overlay zone; that a variance or use permit is required for the proposed work within the side yard setback; and that the issuance of a permit is contrary to law as there are code violations on the property.

The County finds that Appellant's contentions regarding the code violation for the height of the shed are with merit; to address this a request to modify the height of the shed to approximately 9 feet is incorporated into this action with a design approval request DA210122. The County finds that Appellant's other contentions are without merit because the contentions are speculative and not supported by either the evidence or the Monterey County Code.

See the text, references, and summaries of the Appellant's contentions (with duplicative statements removed) and the County's responses to those contentions in the evidences below.

- b) Appellant's Contention regarding Schwartz Illegal Actions in Violation of County Permits & Schwartz Should Be Required to Adhere to their Approved Plans. Refer to Pg. 1 & 2 of Attachment C of the Notice of Appeal.

Review of the project was based on currently adopted policies and codes. Approval of the subject project would abate all zoning violations on the property.

Applicant seeks approval of the white finish, potential modification of the chimney to a tan Carmel stone, and reduction in chimney height as part of this design approval request. Approval of the project would abate all present zoning violations for the chimney.

The shed's skylights and finish were previously permitted by design approval permit DA190154. Electrical has been disconnected from the shed. However, to fully abate the electrical code violation, a building permit will be required to either permanently install electrical, or ensure it has been appropriately demolished and capped. This would be pursued after the issuance of the currently sought land-use entitlements.

The change in shed height was neither previously permitted nor disclosed at the May 13, 2021 Zoning Administrator hearing. Therefore, the County finds that the contention regarding the height of the shed is with merit. To address this, approval to modify the chimney to approximately 9 feet in height is included as design approval request DA210122. Additionally, the addition or removal of electrical to a shed does not change the land use as defined in the zoning ordinance.

Refer to Finding No. 3 for discussion of the design, Finding No. 4 for discussion of design consistency with Policy CV-1.20 and Finding No 2 evidence e) for the use of the shed.

- c) Appellant's Contention regarding After the Fact Permits. Refer to Pg. 2 of Attachment C of the Notice of Appeal. In short, Appellant

contends that the LUAC did not have accurate information upon which to base their recommendation, as the project description did not differentiate between new work and after the fact work, the plans were not accurate regarding the height and mass of the Chimney, and Schwartz purportedly misled the LUAC in stating that the Carmel Stone had already been approved for the chimney façade.

Refer to the discussion in evidence d) below regarding the project description and LUAC.

- d) Appellant's Contention that there was the Lack of Fair and Impartial Hearing. Refer to Pg. 3 of Attachment C of the Notice of Appeal.

Project plans and project descriptions change through the planning process. Further, the agenda description for a project and the resolution description are different, with the agenda description intended to be more summary in nature.

The project description sent to the LUAC represented the scope of the project at the time the meeting agenda was sent, and was intended as a summary of project activities. It did not include discussion of the violations or the scope of work as being after-the-fact. The description, project plans, and supplemental materials are used together as bases for advisory and decision-making bodies' decisions. The project plans routed to the LUAC distinguished between what was originally permitted in PLN170572, what was requested as a part of PLN200192, and work requested after the fact in the "Scope of Work" section on the cover page, sheet G1.0. Additionally, both Applicant and interested members of the public had the opportunity to speak on pertinent project issues that would affect the recommendation of the LUAC. The minutes of the LUAC reflect both its decision-making process and ultimate recommendation.

Applicant elected to modify his proposal to include Carmel Stone prior to the meeting. This proposed modification was presented to the LUAC at its April 19 meeting. While a white Carmel stone was shown on the approved building permit plans 17CP03455, the LUAC recommended that the Carmel stone be a muted tan. This color change differs from previous permits and is reflected in the current description of the project.

After the LUAC meeting, Applicant modified the project description to both be clearer and reflect the most current iteration of the project. Additionally, Applicant modified project plans to incorporate the LUAC's recommendations. The appropriate authority, here the Zoning Administrator, has discretion to determine whether changes made to a project warrant referral back to the LUAC after LUAC's recommendations. Here, the Zoning Administrator found that changes to the project did not warrant referral back to the LUAC.

- e) Appellant's Contention that The Findings and Decision Not Supported by Evidence, Resolution Finding No. 1 evidence j. Refer to Attachment C of the Notice of Appeal Pg. 4.

- Changes to the project plans and description after the LUAC recommendation are part of the planning process. Here, the LUAC recommended approval with changes. Also refer to evidence d) above.
- f) Appellant's Contention that The Findings and Decision Not Supported by Evidence, Resolution Finding No. 1 evidence c: *"Resolution Finding 1; Evidence c) states the Project is consistent with the County Code Ordinance Title 21 and the Carmel Valley Master Plan, yet the Project's illegally painted bright white color is not an earthtone color and is not keeping with the neighborhood character, or the visual integrity of the surrounding development as required by the County's Design Approval criteria. (Title 21, Section 21.44.010, Design Approval Criteria)."*

The Carmel Valley Master Plan Policy CV-1.20 establishes design guidelines to be considered in design review for new developments. The policy indicates that: "Materials and colors used in construction shall be selected for compatibility with the structural system of the building and with the appearance of the building's natural and man made surroundings." MCC 21.44.010 is the purpose section of the Design Control Overlay District zoning, and indicates that the intent of the zone in areas where design approval is "appropriate to assure protection of the public viewshed, neighborhood character, and to assure the visual integrity of certain developments..."

Specific colors are not specified in either the Carmel Valley Master Plan design guidelines or the purpose section of the Design Control District. The white selected is in line with the neighborhood character, as white is a neutral shade and many other homes in the neighborhood are either painted white or have white elements. Refer to Finding No. 3 for further discussion of the design and Finding No. 4 for discussion of consistency with Carmel Valley Master Plan Policy CV-1.20.

- g) Appellant's Contention that The Findings and Decision Not Supported by Evidence, Resolution Finding No. 3 evidence a:

"Resolution Finding 3, Evidence a) states the Project is consistent with the Carmel Valley Master Plan, yet the illegal stucco with reflective white paint and surface and enlarged chimney violate the Carmel Valley Area Plan policy CV-1.20 by creating a large white reflective structure with too much mass and bulk, and causing a disruption of views from the Kahns' existing home. Under policy CV-1.20, the following guidelines apply: ..."

[Refer to Carmel Valley Master Plan Policy CV-1.20.]

The Chimney is proposed to be either a tan Carmel Stone muted in tone, in accordance with the Carmel Valley Land Use Advisory Committee's recommendations, or a smooth coated white stucco. The height of the chimney is proposed to be reduced, reducing the mass and bulk of the chimney. .

Refer to Finding No. 3 for further discussion of the design and Finding No. 4 for discussion of consistency with the Carmel Valley Master Plan policy CV-1.20.

h) Appellant's Contention that The Findings and Decision Not Supported by Evidence, Resolution Finding No. 1 evidence e:

“Resolution Finding 1; Evidence e) states no variance is required, yet the existing nonconforming garage is being converted to habitable use creating structural expansions within the setback area. The existing home is already non-conforming as to the side yard setback on the east side of the property, adjacent to the Kahn property, where the majority of this work is occurring. In particular, the project proposes to convert the existing non-habitable garage into habitable living space for a fourth bedroom and expanded third bathroom. The existing garage encroaches into the east side yard setback as shown on new Plan Sheets A1.0 and A2.1.

Pursuant to Title 21 section 21.68.030.A, the non-confirming use of a structure can only be changed to the same or a more restrictive use, and to do so, requires a use permit. Here the use is being changed from non habitable to habitable living space. It also appears the garage conversion area is over 120 sf., above the threshold of sub-section C, notwithstanding the issue of converting the space from non-habitable to habitable space. Accordingly, the change in use requires either a use permit to allow the change in non-conforming use, or a variance to allow the use. For the reasons set forth above, the proper hearing body was the Planning Commission, not the Zoning Administrator, with a Combined Development Permit for a variance or use permit.”

The work within the side setback is limited to a small portion of the existing garage, to convert it to habitable space. Both a Single-Family Home, and non-habitable attached accessory structures (such as garages, which are defined as accessory structures per the definitions section 21.06.580 are allowable uses under the base zoning district. A “non-conforming use of a structure” is a use which would not be allowed under the zoning district but was legally established at the time of its commencement. (21.06.1340) The garage encroachment into the side setback is nonconforming as to yard regulations only, not a non-conforming use of a structure. The use permit requirement from the referenced section 21.68.030(A) only applies to non-conforming uses of structures, and is therefore not applicable in this case.

Pursuant to MCC section 21.68.040(B), nonconforming structures nonconforming as to setbacks may be maintained or repaired so long as no structural alterations are made and such work does not exceed 50% of the appraised value of the structure in any one year period. Minor structural repairs are proposed to add windows and a door along the wall of the (former) garage. These minor changes will not change the use of the property or alter the footprint of the structure relative to the setback. Additionally, the scope of this project is not of a size that would approach 50% of the appraised value of the home. Therefore, a use permit would not be required for this work. Additionally, as the non-conforming setback is not being expanded, a variance is not required.

Since neither a use permit nor a variance would be required for the project, the Zoning Administrator was the appropriate authority to hear the permit as a Design Approval request.

Refer to Finding No. 1 Process for further discussion of how the appropriate entitlements were identified, Finding No. 2 Evidence e) for the allowable use, and Finding No. 2 Evidence f) for discussion of the setbacks.

- i) Appellant's Contention that The Findings and Decision Not Supported by Evidence, Resolution Finding No. 6 evidence c. "Resolution Finding 6 - Evidence c) acknowledges there are existing unresolved code violations on the site, including two shed violation related to unpermitted height and unpermitted electrical connection, yet the Project was allowed to move forward in violation of Title 21 section 21.84.120, which requires no further permitting be allowed until existing violations are remedied. These acknowledged shed violations are in addition to the paint and chimney violations also existing on the site.

Staff has had since October 3, 2020, when the County was notified of the shed violations, as to both illegal height and illegal electrical hookup, to investigate these clear violations, yet these admitted glaring unresolved code violations were minimized as a reason to prevent the Project from going forward, contrary to the Monterey County code, with staff even suggesting the shed violations could be remedied, on the spot, at the May 13th ZA meeting with no Public Notice at all. There was no legal basis to allow the Project to go forward with these known and admitted code violations on site."

Refer to Ms. Kemp's correspondence that the application be referred to hearing dated October 9, 2020. (Attachment C, Appeal, starting on pg. 17) This correspondence indicates that selected paint colors, skylights, and added electrical may violate County permits. This correspondence does not address shed height.

Planning staff reviewed the Design Approval for the shed DA190154 and confirmed that the skylights and white finish were part of the original approval. Staff also conducted a site visit on April 1, 2021 and confirmed that the shed color and skylights conformed to this approval. Code enforcement staff contacted the property owner, who verified that electrical had been installed without permits, and the electrical services was subsequently disconnected. However, to abate this violation Applicant will either need to secure a building permit for demolition of the electrical or to legalize it. This issue is being addressed in code enforcement case 21CE00023. The addition or removal of electrical to a shed does not require design approval and is not subject to a discretionary planning entitlement, as it does not impact the design of structures, as regulated by the "D" and "S" districts, and a shed is considered non-habitable accessory structure, which is principally allowable under the base LDR zoning, Title 21 section 21.14.030.

The issue regarding the height of the shed was discussed at the April 19, 2021 Carmel Valley LUAC meeting. At the meeting, Ms. Kemp

attested that the shed had been enlarged to 12 feet tall, while Applicant's representative maintained that the shed was 8 feet tall. Staff did not verify the height of the shed prior to the May 13, 2021 Zoning Administrator hearing. At the Zoning Administrator hearing, Applicant's representatives conceded that the height of the shed was 12 feet tall, 4 feet higher than its original approval. To address this, the Zoning Administrator imposed a project specific condition "PDSP002 – SHED", which would have required Applicant to either remove the shed or secure the necessary planning entitlements to have it legalized prior to the issuance of building permits.

Under MCC section 21.84.120, discretionary entitlements may not be approved where there is an outstanding violation of the Title, unless said entitlements are, in whole or in part, part of the administrative remedy for said violation. The Zoning Administrator found that, with the inclusion of the project specific condition, PDSP002, which would require Applicant to seek appropriate land use entitlements for the shed or remove the shed prior to the issuance of building permits, the project would conform with MCC section 21.84.120.

However, to fully remedy the zoning issues on the property requires that the shed changes either be permitted through the appropriate permit process, or the shed be removed. Therefore, the County finds that this contention is with merit. To address this contention and remedy the violation, the Design Approval DA210122 has been incorporated which would permit the modification of the shed to be approximately 9 feet in height. If approved, this would fully ameliorate the existing zoning violation as to the shed without conditioning approval on the requirement for separate entitlements, in line with MCC section 21.84.120.

j) Appellant's Contention that The Decision was Contrary to Law.

"The Project Cannot Proceed Until All Existing Code Violations Are Resolved

Schwartz was already in violation of the County code when they applied for this permit having illegally painted their house an unpermitted white color, as well as enlarged the height, size and mass chimney with a white stucco reflective surface in violation of their County permit. On top of these admitted existing violations, Schwartz admittedly remains in violation of County Codes with regard to other permits issued for their property (see Finding 1, Evidence e) (Res. Pg. 4) "At the hearing, representatives of the applicants confirmed that the shed was twelve feet, high than is originally approved height of eight feet in DA190154." with regard to the shed at the rear of the property adjacent to the Kahn property line. Pursuant to Title 21 section 21.84.120, no further permitting is allowed on the Schwartz property until these existing violations are remedied, yet the County let them proceed. This is contrary to the law as expressly stated in the County Code."

Refer to Finding No. 7 and evidence i) above. The zoning violations regarding the exterior finishes and chimney are being abated as part of this approval. Additionally, the incorporation of the additional shed

height and approval of its current location would abate the zoning violation regarding the shed. Together, these approvals would resolve all planning issues on the property, and Applicant could move forward to the building permit process to rectify the electrical issue in the shed.

- k) Appellant's Contentions in Attachment C, Pg. 11. Refer to Pg. 1 of Attachment B of staff report Attachment C, Notice of Appeal, "Statement of Robert Kahn"

When work is performed without a land-use entitlement, the administrative remedy in such cases is for the property owner to seek the required entitlements. These entitlements are reviewed against existing County Policies and Codes. Refer to evidence d) for discussion of the project description and the LUAC.

- l) Appellant's Contentions in Attachment C, Pg. 12. Refer to Pg. 2 of Attachment B of staff report Attachment C, Notice of Appeal, "Statement of Robert Kahn"

Refer to evidence i) for discussion of the shed.

Modifications to the chimney consisted of re-finishing the chimney with the stucco and adding a flue cap and spark arrestor. The chimney was not otherwise modified, and issuance of this permit will resolve all zoning violations pertaining to the chimney. The County does not consider private CC&Rs in the review of entitlements.

Building and safety inspectors inspect construction to ensure that the building conforms to required building and safety codes. Compliance with design approval is the property owner's responsibility. In this case, as the property owner did not comply with their original design approval, they are being required to seek additional permits as is required by county code.

Whether planning permits seeking to retroactively approve work are combined with ones seeking to permit new work is not dictated by County Code or policy. The project description referred to the LUAC did not characterize the work as a zoning violation or after-the fact, however, the project plans routed to the LUAC distinguished between the original scope and amendment work as well as what work was being requested after the fact. Refer to evidence d) for discussion of the project description and the LUAC.

- m) Appellant's Contentions in Attachment C, Pg. 12. Final paragraph, and Pg. 13. Refer to the final paragraph on Pg. 2 and Pg. 3 of Attachment B of the staff report Attachment C, Notice of Appeal, "Statement of Robert Kahn"

Refer to evidence d) for discussion of the project description and the LUAC. As an advisory body, the LUAC recommended approval with changes for the subject project. Once a project is reviewed by the LUAC, changes to the project are a regular part of the planning process. The appropriate authority retains discretion to decide, whether subsequent LUAC review is warranted.

DECISION

NOW, THEREFORE, based on the above findings and evidence, the Board of Supervisors does hereby:

- A. Partially Grant an Appeal by Christine Kemp challenging the Zoning Administrator’s approval of a Design Approval (HCD-Planning File No. PLN200192);
- B. Find that the project qualifies as a Class 3 Categorical Exemption pursuant to section 15303 of the CEQA Guidelines, and there are no exceptions pursuant to section 15300.2, and;
- C. Approve a design approval to amend PLN170572 to permit expanding the studio addition from 355 square feet to 531 square feet and a 63-square foot landing; modifying the roof of the studio addition to have 2 skylights instead of 1 skylight; an interior remodel of the southeastern portion of the home, including conversion of the garage to living space and removal and replacement of the garage door with lap siding; construction of a new 447 square foot detached two-car carport; reducing the height of the chimney to elevation 111’-0” and either re-finishing the chimney it with a Carmel Stone or retaining the existing white stucco, to address the presently unpermitted white smooth stucco finish and added flue cap; and construction of a 4 foot tall to 6 foot tall cedar fence.
- D. Approve a design approval DA210122 increasing the height of a previously permitted shed from 8 feet to approximately 9 feet, changing its roof pitch, removing it’s skylights and upper window, painting it brown, feet and changing its approved location.

All of which are in general conformance with the attached sketch and subject to 6 conditions of approval.

PASSED AND ADOPTED upon motion of Supervisor _____, seconded by Supervisor _____, and carried this 27th day of July, 2021 by the following vote to wit:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

I, Valerie Ralph, 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 Minute Book _____ for the meeting on July 27, 2021.

Date:

File Number:

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California

By _____

Deputy

COPY OF THIS DECISION MAILED TO APPLICANT ON _____.

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.

NOTES

1. You will need a building permit and must comply with the Monterey County Building Ordinance in every respect.

Additionally, the Zoning Ordinance provides that no building permit shall be issued, nor any use conducted, otherwise than in accordance with the conditions and terms of the permit granted or until ten days after the mailing of notice of the granting of the permit by the appropriate authority, or after granting of the permit by the Board of Supervisors in the event of appeal.

Do not start any construction or occupy any building until you have obtained the necessary permits and use clearances from Monterey County HCD-Planning and HCD-Building Services Department office in Salinas.