



Legislation Details (With Board Report)

File #:	RES 23-063	Name:	PLN180523-AMD1 - Isabella 2 LLC (Appeal)
Type:	BoS Resolution	Status:	Passed
File created:	4/7/2023	In control:	Board of Supervisors
On agenda:	4/18/2023	Final action:	4/18/2023

Title: PLN180523-AMD1 - ISABELLA 2 LLC
Public hearing to:

- Consider denial of an appeal by The Open Monterey Project from the February 9, 2023 decision of the Zoning Administrator to approve a Minor and Trivial Amendment to a previously approved Combined Development Permit;
- Consider a previously adopted Mitigated Negative Declaration (SCH No. 2020029094), and find that the preparation of a subsequent environmental document is not required, pursuant to CEQA Guidelines section 15162; and
- Approve a Minor and Trivial Amendment to a previously approved Combined Development Permit (PLN180523, Board of Supervisors Resolution 21-273) consisting of: 1) a Coastal Administrative Permit and Design Approval to allow construction of a 1,837 square foot two-story single-family dwelling and associated site improvements; 2) a Coastal Development Permit to allow development within 750 feet of known archaeological resources; 3) a Coastal Development Permit to allow the modification of parking standards, including no covered parking and authorization to allow parking within the front setback to count toward the required parking; 4) a Coastal Development Permit to allow the removal of four Coast live oaks; and 5) a variance to increase the maximum allowed floor area ratio from 45 percent to 51 percent.

Project Location: 26308 Isabella Avenue, Carmel, Carmel Area Land Use Plan, Coastal Zone
Proposed CEQA Action: Consider a previously adopted Mitigated Negative Declaration and find that the preparation of a subsequent environmental document is not required, pursuant to CEQA Guidelines section 15162.

Sponsors:

Indexes:

Code sections:

Attachments: 1. Board Report, 2. Attachment A - Project Discussion, 3. Attachment B - Draft Resolution, 4. Attachment C – Vicinity Map, 5. Attachment D - Notice of Appeal, 6. Attachment E – Planning Commission Resolution No. 21-015, 7. Attachment F – Board Order Resolution No. 21-273, 8. Attachment G – California Coastal Commission Appeal, 9. Attachment H - Zoning Administrator Resolution RESza_23-007_PLN180523-AMD1_020923, 10. Attachment I – Adopted Mitigated Negative Declaration (SCH No. 2020029094), 11. Attachment J – Carmel Highlands LUAC minutes for April 5, 2021 and December, 12. PowerPoint Presentation, 13. Completed Board Order Item No. 20, 14. Completed Resolution Item No. 20, 15. REVISED Completed Resolution Item No. 20

Date	Ver.	Action By	Action	Result
4/18/2023	1	Board of Supervisors		

PLN180523-AMD1 - ISABELLA 2 LLC

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15162; and

c. Approve a Minor and Trivial Amendment to a previously approved Combined Development Permit (PLN180523, Board of Supervisors Resolution 21-273) consisting of: 1) a Coastal Administrative Permit and Design Approval to allow construction of a 1,837 square foot two-story single-family dwelling and associated site improvements; 2) a Coastal Development Permit to allow development within 750 feet of known archaeological resources; 3) a Coastal Development Permit to allow the modification of parking standards, including no covered parking and authorization to allow parking within the front setback to count toward the required parking; 4) a Coastal Development Permit to allow the removal of four Coast live oaks; and 5) a variance to increase the maximum allowed floor area ratio from 45 percent to 51 percent.

Project Location: 26308 Isabella Avenue, Carmel, Carmel Area Land Use Plan, Coastal Zone

Proposed CEQA Action: Consider a previously adopted Mitigated Negative Declaration and find that the preparation of a subsequent environmental document is not required, pursuant to CEQA Guidelines section 15162.

RECOMMENDATION:

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

- a) Deny the appeal of The Open Monterey Project from the Zoning Administrator's approval of a minor and trivial amendment to a previously approved Combined Development Permit;
- b) Consider a previously adopted Mitigated Negative Declaration (SCH No. 2020029094), and find that the preparation of a subsequent environmental document is not required, pursuant to CEQA Guidelines section 15162 of the; and
- c) Approve a Minor and Trivial Amendment to a previously approved Combined Development Permit (PLN180523, Board of Supervisors Resolution 21-273) consisting of:
 - 1) A Coastal Administrative Permit and Design Approval to allow construction of a 1,837 square foot two-story single-family dwelling and associated site improvements;
 - 2) A Coastal Development Permit to allow development within 750 feet of known archaeological resources;
 - 3) A Coastal Development Permit to allow the modification of parking standards, including no covered parking and authorization to allow parking within the front setback to count toward the required parking;
 - 4) A Coastal Development Permit to allow the removal of four Coast live oaks; and
 - 5) A variance to increase the maximum allowed floor area ratio from 45 percent to 51 percent.

A draft resolution, including findings and evidence, is attached for consideration (**Attachment B**). Staff recommends approval subject to 22 conditions, including three mitigation measures.

PROJECT INFORMATION:

Property Owner: Isabella 2 LLC

Agent: Rob Carver, Studio Carver Architects

APN: 009-451-015-000

Zoning: Medium Density Residential, 2 units per acre, Design Control Overlay, 18-foot height limit (Coastal Zone) [MDR/2-D (18)(CZ)]

Flagged and Staked: No

SUMMARY:

The subject property is a vacant lot located on Isabella Avenue, near the intersection of Isabella Avenue and 16th Avenue in the unincorporated area of Carmel Point. The surrounding residential neighborhood has been developed with dwellings and accessory structures.

The proposed Minor and Trivial Amendment (PLN180523-AMD1) revises the scope of work (Combined Development Permit PLN180523) previously approved by the Monterey County Planning Commission on May 26, 2021, and the Board of Supervisors on August 24, 2021 (Resolution Nos. 21-015 and 21-273, respectively **Attachments E and F**). The Board of Supervisors denied the appeal and adopted a Mitigated Negative Declaration (SCH No. 2020029094) for the project at that time. The Board of Supervisors' decision on the Combined Development Permit was appealed to the Coastal Commission (**Attachment G**). Prior to the Coastal Commission taking action on the appeal, the applicant notified Coastal Commission staff that revisions to the previously proposed project were being made to resolve the appeal contentions. To process the modification, the applicant seeks the granting of a Minor and Trivial Amendment to the approved Combined Development Permit. More detailed background on the project is provided in the attached Discussion (**Attachment A**).

The proposed Amendment (PLN180523-AMD1) involves the construction of a 1,837 square foot two-story single-family dwelling and associated site improvements including 484 square feet of decks, removal of 4 Coast live oaks, and 114 cubic yards of grading. The project also involves development within an area of known archaeological resources, modification of parking standards to allow both required parking spaces to within the front setback (uncovered) and increase the allowed floor area from 45 percent to 51 percent. In comparison to the previously proposed approved project (PLN180523), the proposed amendment shrinks the residence's floor area by 48 square feet, reducing the required floor area ratio variance from 58.4 percent to 51 percent (45 percent is allowed), and reduces grading (114 cubic yards compared to 304 cubic yards). Additionally, the proposed amendment increases decking from 318 to 484 square feet and eliminates the previously proposed 6-foot chimney and internal staircase. All other project components are the same: development within 750 feet of a known archaeological resource, removal of 4 Coast live oaks, modification to the required parking standard to allow both required parking spaces within the front setback and no covered parking. All necessary public facilities are available to the project site; sewer service will be provided by the Carmel Area Wastewater District. Potable water service will be provided by a California American Water Company.

On February 9, 2023, the Zoning Administrator considered the previously adopted Mitigated Negative Declaration, found the proposed Minor and Trivial Amendment did not require subsequent environmental review pursuant to CEQA Guidelines section 15162, and adopted a Minor and Trivial Amendment to the previously approved Combined Development Permit (Zoning Administrator Resolution No. 23-007; **Attachment H**). Although no public members commented during the hearing, Molly Erickson, on behalf of The Open Monterey Project, submitted an objection prior to the meeting contesting the Zoning Administrator's jurisdiction to act on an item that had been appealed to the Coastal Commission, requested the item not be heard on February 9, 2023, and objected to the proposed FAR variance. These concerns were raised in the above-mentioned appeal and are addressed below.

Appellant, The Open Monterey Project, represented by Molly Erickson, timely appealed the Zoning Administrator's February 9, 2023, decision approving the Minor and Trivial Amendment. The Appellant contends that the Zoning Administrator's decision is not supported by the evidence and that the decision is contrary to law. The specific contentions raised by the Appellant, none of which staff have concluded have merit, are identified below and are addressed in more detail in the Draft Resolution (**Attachment B**).

This hearing is de novo. Staff recommends denial of the appeal and approval of the proposed permit amendment. Staff has prepared a draft resolution to deny the appeal, certify that the previously adopted Mitigated Negative Declaration has been considered, and approve the amendment to the Combined Development Permit.

DISCUSSION:

Staff concludes that the project amendment, as proposed, is consistent with the applicable provisions of the 1982 Monterey County General Plan, Carmel Area Land Use Plan, Carmel Coastal Implementation Plan (Part 4), and Zoning Ordinance (Title 20).

A detailed Project Discussion is included as **Attachment A**, in which County staff has summarized the project's background and primary components including public viewshed and design, cultural resources, modification to parking standards, removal of four native trees, and a variance to increase the floor area ratio to 51%.

The appellant, The Open Monterey Project, filed an appeal raising numerous contentions (**Attachment D**). Staff has grouped the contentions as follows:

- 1) *“County Board took final action. TOMP [The Open Monterey Project] appealed the action [Board decision to approve the project was appealed to the California Coastal Commission (CCC)]. TOMP has not withdrawn its appeal. The code/regulations do not authorize the County to withdraw a FLAN where an appeal has been filed. Zoning Administrator does not have authority to amend a Board appeal that has been designated a final action and that has been suspended. The MND should not have been relied on because the MND and project are on appeal to the CCC and the appeal has not been withdrawn” and “County may not amend an approval whose effectiveness has been suspended by an appeal by a third party.”*
- 2) *“The variance allowing a 51% FAR in the Carmel Area where the max FAR is 45% is not supported and would have significant unanalyzed and unmitigated proeject [sic.] and cumulative effects in light of the many nonconforming parcels/lots...[and] would set precedent...All property owners get 45% and no other variance for new construction has been allowed. The other variances cited in Findings 9/10 [of Resolution No. 23-007] were for decreases to nonconforming existing structures.”*

Staff response: It has been the Coastal Commission's practice to encourage property owners to incorporate modifications into project designs that address Coastal Commission staff concerns. In this case, to resolve the appeal contentions raised to the Coastal Commission, the Applicant made minor revisions to the project that address some appeal contentions raised during review in the prior action. To process an application reflecting the proposed modifications, staff withdrew the Final Local Action Notice (FLAN) sent to the Coastal Commission after the Board approved the previous project and began processing an Amendment to the original permit locally. Withdrawal of the FLAN only affects the Coastal Commission appeal; it does not alter the County's prior decision or the associated CEQA determination. Withdraw of the FLAN simply means that the County is not requesting the Coastal Commission consider the local action “final” at this time (as consideration of modifications are pending). A new FLAN will be sent to the CCC reflecting the revised design if and when the County approves the revised project. Therefore, the Board of Supervisors' action to adopt the Mitigated Negative Declaration on August 24, 2021, is final. No authority to the contrary has been provided to staff.

Pursuant to Monterey County Code (MCC) section 20.78.040, the granting of a variance requires three findings:

- 1) it is an authorized use for the zoning regulations governing the parcel;
- 2) due to special circumstances applicable to the subject property, the strict application of development standards in the Monterey County Codes is found to deprive the subject property of privileges enjoyed by other property owners in the vicinity under identical zoning classification; and
- 3) the variance shall not constitute a grant of privileges inconsistent with the limitations upon other property owners in the vicinity and zone in which such property is situated.

Here, all findings have been made, see the Discussion and Draft Resolution for details (**Attachment A and B**). The granting of the requested variance will not constitute a grant of special privilege and will not set precedent. The adopted IS/MND (SCH No. 2020029094) found that the original project, which included three variances,

would not result in a significant impact and would not contribute to cumulative environmental changes that may occur due to planned and pending development. There are unique circumstances applicable to this project and site. All Variances are reviewed based on the specific circumstances of the project. The proposed amendment represents a reduced scope of work that remains stable with the project description analyzed in the adopted IS/MND. Additionally, none of the conditions described in Section 15162 calling for preparation of a subsequent EIR or negative declaration have occurred. Therefore, the proposed amendment would not result in additional impacts beyond the impacts analyzed in the adopted IS/MND.

Staff has reviewed the contentions and has determined that with granting of a Variance for floor area ratio, the project meets all development standards established in Monterey County Code (MCC) Chapter 20.12 for the Medium Density Residential zoning district, is comparable to other dwellings in the vicinity, and has received proper environmental, public, and County review. Detailed responses to the contentions are included in the Draft Resolution at **Attachment B**.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) REVIEW:

On August 24, 2021, the Monterey County Board of Supervisors adopted a Mitigated Negative Declaration for the construction of the Isabella 2 LLC residence (SCH No. 2020029094; **Attachment I**), pursuant to Resolution No. 21-273. The adopted Mitigated Negative Declaration contemplated the construction of a 2,315 square foot two-story single-family residence within 750 feet of a known archaeological resource, approximately 300 cubic yards of grading, and the relocation of four Coast live oaks. The Mitigated Negative Declaration identified potentially significant impacts to biological resources, cultural resources, geology and soils, land use and planning, and tribal cultural resources. Four mitigation measures were adopted to reduce the identified impacts to a level of less than significant. The proposed project involves the construction of a 1,837-square-foot two-story single-family dwelling and site improvements including the removal of four Coast live oak trees and approximately 114 cubic yards of grading. The project represents a smaller dwelling with less grading in the same location and in with the same architectural design. In the aggregate, the proposed project description remains stable with the scope analyzed in the adopted Mitigated Negative Declaration - the development of a single-family dwelling.

Pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15162, when an EIR has been certified or a negative declaration has been adopted, no subsequent EIR or negative declaration shall be prepared for the project unless the agency determines that substantial changes are proposed, or substantial changes occur with respect to the circumstances under which the project is undertaken. Here, no new information has been presented to warrant further environmental review. None of the conditions described in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred. Mitigation Measure No. 1 (Tree Relocation) does not apply to the proposed project as relocation of four Coast live oaks is no longer incorporated into the project scope. Therefore, only Mitigation Measures 2, 3 and 4 have been carried forward to this Amendment. Mitigation Measure No. 2 required an onsite archaeological monitor at both the project site as well as the tree receiver site. Since tree relocation is no longer proposed, the 26346 Valley View address listed in Mitigation Measure 2 is not applicable. Consideration of the proposed amendment does not delete or alter Mitigation Measure No. 1 or 2 from the adopted Mitigated Negative Declaration.

OTHER AGENCY INVOLVEMENT:

The following agencies have reviewed the project, have comments, and/or have recommended conditions:

- Environmental Health Bureau
- Cypress Fire Protection District

LAND USE ADVISORY COMMITTEE:

Staff referred the previously proposed project (PLN180523) to the Carmel Highlands/ Unincorporated Land Use Advisory Committee (LUAC) for review. The LUAC, at a duly-noticed public meeting at which all persons

had the opportunity to be heard, reviewed the previously proposed project on April 5, 2021, and voted 4 - 0 (4 yes, 0 no, and 2 absent) to support the project with a recommendation to revise the plans to reduce the number of proposed variances. The LUAC and interested members of the public raised concerns related to privacy, tree relocation, drainage, and neighborhood character. The proposed amendment satisfies the LUAC's recommendation to reduce the number of variances. See **Attachment J**.

FINANCING:

Funding for staff time associated with this project is included in the FY2022-23 Adopted Budget within Community Development General Fund 001, Appropriation Unit HCD002, Unit 8543.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

This action represents effective and timely response to our HCD 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:

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

Prepared by: Fionna Jensen, Senior Planner, x6407

Reviewed by: Lori Woodle, Finance Manager I

Approved by: Craig Spencer, Working out of class as Director of Housing and Community Development

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

Attachment A - Project Discussion

Attachment B - Draft Resolution, including:

- Exhibit 1 - Conditions of Approval
- Exhibit 2 - Project Plans, elevations, and colors and materials

Attachment C - Vicinity Map

Attachment D - Notice of Appeal

Attachment E - Planning Commission Resolution No. 21-015 (PLN180523/Isabella 2 LLC)

Attachment F - Board Order Resolution No. 21-273 (PLN180523/Isabella 2 LLC)

Attachment G - California Coastal Commission Appeal No. A-3-MCO-21-0064 (PLN180523/Isabella 2 LLC)

Attachment H - Zoning Administrator Resolution No. 23-007 (PLN180523-AMD1/Isabella 2 LLC)

Attachment I - Adopted Mitigated Negative Declaration (SCH No. 2020029094)

Attachment J - Carmel Highlands LUAC minutes for April 5, 2021 and December 2, 2019

cc: Front Counter Copy; California Coastal Commission; Craig Spencer, Chief of Planning; Fionna Jensen, Senior Planner; HCD Engineering Services; Environmental Health Bureau; Environmental Services; Cypress Fire Protection District; Isabella 2 LLC, Applicant/Owner; Studio Carver Architects, Agent; The Open Monterey Project, Appellant; LandWatch (Director); Project File No. PLN180523-AMD1