



Legislation Details (With Board Report)

File #: RES 20-186 **Name:** PLN180289 MILLER
Type: BoS Resolution **Status:** Passed - RMA Administration
File created: 10/20/2020 **In control:** Board of Supervisors
On agenda: 11/5/2020 **Final action:** 11/5/2020
Title: PLN180289 - MILLER
Public hearing to consider an appeal by Rebecca Tweten from the July 29, 2020 Planning Commission decision approving an application by Eric Miller for the construction of a two-story single family dwelling with an attached garage (approximately 6,341 square feet) and the removal of three (3) oak trees, including one landmark tree.
Project Location: 24275 Via Malpaso, in the Monterra Ranch subdivision, Greater Monterey Peninsula Area Plan.
Proposed CEQA action: Categorically Exempt per §15303 (a) of the CEQA Guidelines

Sponsors:

Indexes:

Code sections:

Attachments: 1. Board Report, 2. Attachment A - Detailed Discussion, 3. Attachment B - Draft Resolution, 4. Attachment C - Vicinity Map, 5. Attachment D - Plans, 6. Attachment E - LUAC Minutes, 7. Attachment F - Forest Management Plan, 8. Attachment G - Biological Review, 9. Attachment H - Planning Commission Res. 20-028, 10. Attachment I - Notice of Appeal, 11. Attachment J - Title Letter, 12. PowerPoint Presentation (Christine Kemp), 13. PowerPoint Presentation, 14. Item No. 15 Completed Board Order, Resolution, Conditions and Sketch- Plans

| Date | Ver. | Action By | Action | Result |
|-----------|------|----------------------|--------|--------|
| 11/5/2020 | 1 | Board of Supervisors | | |

PLN180289 - MILLER

Public hearing to consider an appeal by Rebecca Tweten from the July 29, 2020 Planning Commission decision approving an application by Eric Miller for the construction of a two-story single family dwelling with an attached garage (approximately 6,341 square feet) and the removal of three (3) oak trees, including one landmark tree.

Project Location: 24275 Via Malpaso, in the Monterra Ranch subdivision, Greater Monterey Peninsula Area Plan.

Proposed CEQA action: Categorically Exempt per §15303 (a) of the CEQA Guidelines

RECOMMENDATION:

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

1. Deny the appeal of Rebecca Tweten from the July 29, 2020 Planning Commission decision approving a Combined Development Permit [RMA Planning File No. PLN180289 - Miller]; and
2. Find the project to construct a single-family dwelling qualifies as a Class 3 Categorical Exemption per Section 15303 (a) of the CEQA Guidelines and none of the exceptions under Section 15300.2 apply.
3. Approve a Combined Development Permit consisting of:
 - 1) Administrative Permit and Design Approval to construct a new single-family dwelling with attached garage (approximately 6,340 square feet);
 - 2) Use Permit to remove three oak trees including one landmark tree 26 inches in diameter; and
 - 3) Use Permit to allow development on slopes greater than 25% (approximately 800 square feet).

The attached draft resolution includes findings and evidence and is subject to thirteen (13) conditions of approval. (**Attachment B**).

PROJECT INFORMATION:

Agent: Carla Hashimoto

Property Owners: Eric Miller and Greta A. Miller, Trustees of the Miller Trust

Appellant: Rebecca Tweten, represented by Christine Kemp

APN: 259-101-066-000

Parcel Size: 1.79 acres

Zoning: RDR/B-6-UR-D-S

Plan Area: Greater Monterey Peninsula Area Plan

Flagged and Staked: Yes

SUMMARY:

Eric and Greta Miller (Applicants) submitted an application to develop a vacant lot in the Monterra Ranch Subdivision. Plans include a two-story, single family home with attached garage on 1.79 acres. The site is sloped and populated with native Oak trees; however, development has been sited within an established Building Envelope. As designed, this project will require the removal of three (3) Oak trees (6 inches in diameter, 10 inches, and 26 inches), and will impact about 800 square feet of slopes exceeding 25%.

The recorded Monterra Ranch Final Map delineated a Building Envelope to establish the area where development was preferred (allowed) to occur. Multiple lot line adjustments occurred within this development following recording of the Final Map. There is a dispute between the Applicant and a neighbor (Appellant) about the correct property boundary.

On July 29, 2020, the Planning Commission considered the application for a Combined Development Permit. At the hearing, Ms. Christine Kemp, representing Rebecca Tweten (Appellant), argued that this project should not move forward while a case is currently pending in the courts regarding a dispute over property boundaries arising from previously approved Lot Line Adjustments that reconfigured the subject parcel. Appellant further argued that the proposed house would not meet the site development standards as designed in the disputed lot configuration.

Staff researched the deeds and history of the lot configuration for the property and found that deeds and legal parcel boundaries are correct as shown on the proposed plans submitted by Applicant. At County's request and on behalf of applicant, a title company supplied a detailed analysis of the issue and documentation.

(Attachment J.) A 1998 Lot Line Adjustment adjusted the lot boundaries and established the lot boundaries of the lot which is the subject of the application. Two subsequent Lot Line Adjustments were approved but were never perfected through the recording of deeds and never went into effect, which means that the legal parcel descriptions were never changed. Transfer of ownership of the subject lot was based on the lot configuration approved by the 1998 Lot Line Adjustment. The Building Envelope is the same regardless of the property boundary, so there is no issue with siting the home. However, there could be some variation of the design (height, setbacks, coverage, etc.) depending on the parcel boundary (size).

Notwithstanding the boundary dispute, Applicant revised the proposed house design so that all development standards would be met under both the existing lot configuration and the disputed Lot Line Adjustment property boundary configuration suggested by Appellant. In other words, the proposed project would conform regardless of the outcome of the pending legal case. With that revision, the Planning Commission approved the

project despite the civil dispute between the applicant and appellant (**Attachment H**, Planning Commission Res. 20-028).

On September 2, 2020, the Appellant, Rebecca Tweten represented by Christine Kemp, timely filed an appeal of the July 29, 2020 Planning Commission decision (**Attachment I**). Similar to the issues raised at the Planning Commission hearing, the appeal contends the project:

- Should not be approved until pending civil litigation is resolved;
- The entirety of the project should be reviewed as a whole, and not piecemealed until the litigation is resolved;
- There is no justification for building on 25% and 30% slopes; and
- The project is too large for the constrained site.

These contentions are further detailed and responded to in the attached detailed discussion (**Attachment A**) and in the Draft Resolution presented to the Board (**Attachment B**). Staff finds the project is consistent with the applicable County land use plans and regulations; appropriate findings can be made for project approval as provided in the draft resolution; and applicant's revised project plans allow for approval of the project notwithstanding the boundary dispute with appellant.

This Board of Supervisors' hearing on the appeal and project is de novo. Staff recommends the Board deny the appeal and approve the Combined Development Permit. Staff has prepared a draft resolution denying the appeal and granting the entitlement subject to conditions of approval (**Attachment B**).

DISCUSSION:

A detailed discussion of the project, appeal contentions, and staff's response to appeal contentions is provided in **Attachment A** to this report.

CEQA:

This project is categorically exempt from CEQA review pursuant to CEQA Guidelines Section 15303(a), Class 3 for limited new development. The project consists of the first single family home with an attached garage. None of the circumstances in Section 15300.2 disqualifying the project from a Class 3 Categorical exemption apply. Other than removal of three oak trees, which is addressed in this report package, the site is not located in a particularly sensitive environment. It is zoned on all sides by residential development and has roadways to interconnect the subdivision. Views from Highway 68 (a scenic highway) are protected and the lot is over one-mile away from the highway. The proposed residential development on residentially zoned land in a previously approved subdivision does not have a cumulative impact, and there are no historical resources and no hazardous waste sites involved. The project will not have a significant effect on the environment and qualifies for a Categorical exemption as one residential home on a residential lot.

OTHER AGENCY INVOLVEMENT:

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

- RMA-Public Works
- RMA-Environmental Services
- Environmental Health Bureau
- Water Resources Agency
- Monterey County Regional FPD

LUAC:

The proposed project was reviewed by the Greater Monterey Peninsula Land Use Advisory Committee on

February 25, 2019. Several issues from the neighbor were raised, including an ongoing lot line dispute as it related to a proposed Accessory Dwelling Unit (ADU). Staff has reviewed the status of the Lot Line Adjustment and determined that the boundaries shown on the survey submitted for the project reflect the current legal configuration of the property (see Attachment A-Detailed Discussion). Moreover, the design has been amended to remove the ADU from the project so that all development standards would be met under both the existing lot configuration and the disputed Lot Line Adjustment property boundary configuration. The project before the Board of Supervisors includes only the construction of the first single family dwelling on the site. The LUAC gave the Miller project a unanimous recommendation of approval (4 ayes, 0 noes and 1 absent).

FINANCING:

The Board appeal fee is \$3,540.00 which was paid by the appellant to cover costs for staff time associated with this appeal.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

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

Check the related Board of Supervisors Strategic Initiatives:

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

Prepared by: Yasmeen Hussain, Associate Planner, x6407
Reviewed by: Craig Spencer and Brandon Swanson, RMA Planning Services Managers
Approved by: Carl P. Holm, AICP, RMA Director

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

- Attachment A - Detailed Discussion
- Attachment B - Draft Resolution, including:
 - Conditions
 - Plans
 - Colors and Materials
- Attachment C - Vicinity Map
- Attachment D - Plans
- Attachment E - LUAC Minutes
- Attachment F - Forest Management Plan
- Attachment G - Biology Review
- Attachment H - Planning Commission Res. 20-028
- Attachment I - Notice of Appeal
- Attachment J - Title Letter

cc: Front Counter Copy; Planning Commission; Craig Spencer, RMA Planning Services Manager; Yasmeen Hussain, Project Planner; Eric and Greta Miller, property owners; Rebecca Tweten, neighbor; Christine Kemp,

interested party; The Open Monterey Project (Molly Erickson); LandWatch (Executive Director); John H. Farrow; Janet Brennan; Project File PLN180289.