



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

File #: ZA 18-057, **Version:** 1

PLN160840 - OLEKSY

Public hearing to consider after-the-fact development on slopes of 25% or greater including patios, and a storage shed; and to allow new development on slopes of 25% or greater for an additions to a single-family dwelling

Project Location: 363 Calle De Los Agrinemsors, Carmel (Assessor's Parcel Number 189-532-010-000), Carmel Valley Master Plan

Proposed CEQA action: Categorically Exempt per Section 15303 of the CEQA Guidelines

RECOMMENDATION:

It is recommended that the Zoning Administrator adopt a resolution to:

- 1) Find the project is an addition to a single-family residence and residential accessory structures which qualifies as a Class 1 Categorical Exemption pursuant to Section 15301(e) of the CEQA Guidelines; and there are no exceptions pursuant to Section 15300.2; and
- 2) Approve a Combined Development Permit consisting of:
 - a. Use Permit and Design Approval for after-the-fact development on slopes of 25% or greater for two patios totaling 1,127 square feet, a 90 linear foot concrete border wall, and a 240 square foot storage shed; and
 - b. Use Permit and Design Approval for development on slopes of 25% or greater for a 635 square foot addition to the single family dwelling, a 307 square foot attached carport, a 525 square foot two-car detached garage, and a 186 square foot wooden deck.

The attached draft resolution includes findings and evidence for consideration (**Exhibit C**). Staff recommends approval subject to 13 conditions of approval.

PROJECT INFORMATION:

Agent: Terry Latasa

Property Owner: John & Kristin Oleksy

APN: 189-532-010-000

Parcel Size: 41,960 sq. ft.

Zoning: Low Density Residential, 2.5 acres per unit with Design Control, Site Plan Review, and Residential Allocation Zone overlay districts or "LDR/2.5-D-S-RAZ"

Plan Area: Carmel Valley Master Plan

Flagged and Staked: No

SUMMARY:

The subject property is located approximately 0.80 miles west of Carmel Valley Road and 1.25 miles southwest of Carmel Valley Village Center. The property is situated on a hillside in a rural area surrounded by dense vegetation and trees. The 41,960 square foot parcel adjoins the southerly portion of the Robles Del Rio Carmelo Subdivision. The project consists of clearing a code violation for construction of unpermitted border wall, patios and a storage shed. In addition, the project includes a request to allow construction of an addition to the single-family dwelling, carport, 2-car detached garage and a wooden deck.

DISCUSSION:

On December 19, 2016, an application was submitted to clear a code violation (16CE00284) and obtain the appropriate after-the-fact permits for construction of the border wall and block patios. Staff conducted a site visit on May 16, 2017 and verified the structures in violation and discovered an unpermitted storage shed that was not noted on the citation.

Staff met with the applicant to discuss the details of the violation. During this meeting, the applicant agreed to take appropriate action to clear the violation but requested to include construction of additional structures on site. This application would clear the existing violation unpermitted existing structures and obtain the proper entitlements for the proposed structures.

The proposed project would allow for the unpermitted concrete patios totaling 1,127 square feet, 90 linear feet of concrete border wall (2 feet high), and a 240 square foot storage shed on slopes in excess of 25%. After-the-fact grading was determined to be approximately 76 cubic yards of cut and no fill. Approval of this project would correct the violations on the site and denial this project would require the applicant to restore the site to its pre-violation state.

The applicant also seeks entitlements to allow construction of a 635 square foot addition to the single family dwelling, an attached 307 square foot carport, 525 square foot two-car detached garage, and a 186 square foot wooden deck, all developed on slopes of 25% or greater. The proposed additions are consistent and of comparable size to the single-family dwellings in the adjacent neighborhood area. The surrounding neighborhood also consists of homes on comparable size lots, mostly with development on slopes in excess of 25%.

Staff proceeded to process this application, and analyze the proposed development, including the grading as if none of the work had been performed to determine what would be the appropriate entitlements for the site. Ultimately, staff found that the siting and design of the previously constructed border wall, patios and storage shed is appropriate, and the minor amount of prior grading is reasonable given the constraints on the lot.

Staff is not recommending restoration of the unpermitted grading work based on the engineer's recommendation, concluding that restoration is not feasible and would increase erosion potential, resulting in a risk to public health and safety (**Exhibit E & F**). However, the findings of the report also indicate the ascending and descending slopes adjacent to the proposed building additions are considered stable and free of excessive erosion or other negative geologic or geotechnical characteristics.

The property is zoned for a low density residential use, which allows development of single-family dwellings, with habitable and non-habitable accessory structures as allowed uses pursuant to Monterey County Code (MCC) Sections 21.14.030; 21.44.020; and 21.45.040. The Design Control and Site Plan zoning overlay requires the granting of a Design Approval for the unpermitted construction and proposed dwelling addition. The after-the-fact development and proposed development on slopes in excess of 25% requires approval a Use Permit pursuant to MCC Section 21.64.230.

Pursuant to the requirements of the Monterey County Zoning Ordinance Section 21.84.140 (Fees of retroactive permit application), after-the-fact permits to abate violations require a penalty fee of twice the amount normally charged for the application. Since grading was done prior to the issuance of the proper entitlement, the double-fee was applied to this application.

Project Issues:

Staff conducted a site visit on May 16th, 2017 and confirmed that over 90% of the site contains slopes in excess of 25%. In fact, certain areas are around 45%. During the site visit, it was evident that ground disturbance and grading was done on site without the proper entitlements. Furthermore, the site is heavily surrounded vegetation and trees (Oaks and Pines). An arborist report was prepared by Certified Arborist, Frank Ono dated October 9th, 2017 (**Exhibit D**) and submitted with the application. This report assessed impacts to trees onsite and the forest's stability and sustainability that have been, or would be, affected by the proposed project.

In accordance with Section 21.84.130 of the Monterey County Zoning Ordinance (Title 21) restoration is required when there is a violation for grading, vegetation removal or tree removal. The fundamental goal of restoration is the re-vegetation of native plants and the reconstruction of natural land features which may have been altered in violation of County Code. Therefore, alternatives to restoration of the property shall not be considered unless the applicant can show that restoration would endanger the public health or safety, or that restoration is unfeasible due to circumstances beyond the control of the applicant or the property owner. Although, grading was done prior to obtaining the proper entitlement; all applications for after-the-fact permits are treated with the same requirements as if they are new submittal irrespective of the unpermitted disturbance. In this case, after a site visit and review of experts' reports, staff concludes and concurs that siting of the unpermitted development is in the most suitable location of the property. Construction of the concrete patios was designed to wrap around the oaks without disturbance, further demonstrating that protective measures were used to avoid relocation or removal of the protected oaks. For these reasons, staff would have recommended approval of this project if they had come in for permits prior to doing the work.

Pursuant to the requirements of the Section 21.64.260 - Preservation of Oaks & Other Protected Trees of Title 21 and Carmel Valley Master Plan Policy CV-3.11, native oaks, madrones and redwoods are protected tree species; Monterey pines are not. Although the site is heavily covered with trees, there is no evidence that protected trees were removed or affected by the unpermitted or proposed construction. Observation of the unpermitted development did not appear to have a negative effect to the existing trees. No damage occurred to trees observed during the construction. In fact, removal of the concrete wall and patios (restoration) would require considerable excavation and most likely create damage to adjacent trees. Based on this analysis, an after-the-fact tree removal permit was not required and the arborist did not recommend replacement planting.

The Arborist concluded that the proposed structures are sited in areas that maintain the existing oak forested environment; allowing the forest to continue to exist and generate over time. However, in order to ensure trees in proximity of the proposed construction activities are protected, a condition of project approval (Condition No. 4) has been incorporated in the project requiring implementation and maintenance of a tree protection plan during construction.

Upon review of the submitted information and site visit, staff finds that the proposed structure was appropriately sited on a relatively constrained and steep parcel and concurs with the conclusions made in the technical reports. That is, restoration is unfeasible due to circumstances described above and would cause more environmental harm. The current site is the most logical and appropriate site for the proposed development.

Design Review:

The project was found to meet all required development standards for the Low Density Residential (LDR) zoning district as identified in MCC Section 21.14.060. Required setbacks in the LDR district for main dwelling units are 30 feet (front), 20 feet (rear), and 10% of the average lot width to a maximum required of 20 feet (sides). Consistent with these requirements, the proposed structural setbacks are approximately 144 feet (front), 14.1 feet (10% of the average lot width proposed lot width is 141' - sides), and 70 feet (rear). The

proposed height for the addition to the single-family dwelling is 9 feet, within the 30 foot maximum allowed height limit. The maximum allowed site coverage is 25%. The property is 41,960 square feet in size, which would allow a maximum site coverage of approximately 10,490 square feet. The total structural coverage (existing, unpermitted development, and proposed development) is 3,956 square feet, or approximately 9.4% of the site. Therefore, as proposed,

The proposed structure is not visible from Carmel Valley Road or from any common public viewing area; therefore, the proposed structures would not have an impact on a public viewshed. Staff has determined that the proposed addition to the residence and accessory structures are compatible with the size, color, siting and mass of surrounding neighborhood character. The simplified architectural design incorporates straight lines with primarily wooden materials to give the structures a rustic cabin-like aesthetic. The development is consistent with the surrounding residential development. Colors and materials are comprised of earthy tones such as grey siding, a beige EPDM membrane (synthetic rubber material) roof, and a rust colored steel fascia; consistent with what is found in the surrounding character of the neighborhood. The siting, design, and colors and material will allow the structures to blend with the natural environment of Carmel Valley. No further landscaping is proposed as existing landscaping will be kept at its natural state to remain consistent with the surrounding forest.

CEQA

California Environmental Quality Act (CEQA) Guidelines Section 15301(e) categorically exempts additions to existing structures provided it would not result in an increase of 50% of the existing floor area or 2,500 square feet, whichever is less. The primary use of the site is residential and the purpose of the project is to add square footage for residential purposes. Therefore, the proposed development is consistent with the parameters of this Class 1 exemption. There are no exceptions pursuant to Section 15300.2. No evidence of significant adverse environmental effects were identified during staff review of the development application. There is no cumulative impact without any prior successive projects of the same type in the same place, over time. There is no significant effect on the environment due to unusual circumstances. The site is not included on any list compiled pursuant to Section 65962.5 of the Government Code to be considered on a hazardous waste site. No known historical resources are found in the geotechnical or archaeological reports which may cause a substantial adverse change in the significance of a historical resource. It is not within a highway officially designated areas as a state scenic highway.

OTHER AGENCY INVOLVEMENT:

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

- Environmental Health Bureau
- RMA-Public Works
- RMA-Environmental Services
- Water Resources Agency
- Monterey County Regional Fire Protection Department

LUAC:

The project was not referred to the Carmel Valley Land Use Advisory Committee (LUAC) for review. Based on the LUAC Procedure guidelines adopted by the Monterey County Board of Supervisors, this application did not warrant referral to the LUAC because it did not meet any of the guidelines for referral.

FINANCING:

Funding for staff time associated with this project is included in the FY17-18 and FY18-19 Adopted Budget for RMA-Planning.

Prepared by: Son Pham-Gallardo, Associate Planner, x5226
Reviewed by: Brandon Swanson, RMA Planning Services Manager
Approved by: John M Dugan, FAICP, RMA Deputy Director of Land Use and Community Development

The following attachments are on file with the RMA:

Exhibit A - Project Data Sheet

Exhibit B - Draft Resolution including:

- B1 - Conditions of approval
- B2 - Site Plans, Floor Plans & Elevations

Exhibit C - Vicinity Map

Exhibit D - Arborist Report

Exhibit E - Grice Engineering Supplemental Letter

Exhibit F - Geotechnical Report

cc: Front Counter Copy; Planning Commission; Son Pham-Gallardo, Associate Planner, Brandon Swanson, RMA Services Manager; Terry Latasa, Agent; John & Kristin Oleksy, Applicant/Owner; The Open Monterey Project (Molly Erickson); LandWatch (Executive Director); John H. Farrow; Janet Brennan; Project File PLN160840