

**FINAL MINUTES
REGULAR PLANNING COMMISSION MEETING
AUGUST 11, 2009
CORTE MADERA TOWN HALL
CORTE MADERA**

COMMISSIONERS

PRESENT: Chair Bruce Mace
Commissioner Patrick Pagnillo
Commissioner Sloan Bailey

STAFF

PRESENT: Bob Pendoley, Planning Director
Larisa Roznowski, Associate Planner
Dan Bell, Senior Planner
Nancy Salcedo, Minute Recorder

1. OPENING

A. Call to Order

B. Pledge of Allegiance

C. Roll Call

All the Commissioners were present with the exception of Commissioners Esteb and Schwartz.

2. PUBLIC COMMENT: None

3. CONSENT CALENDAR: None

4. CONTINUED HEARINGS:

- A. 501 CORTE MADERA AVENUE, DESIGN REVIEW APPLICATION NO. 08-008, TED CHRISTENSEN AND MICHELLE SLADE (OWNERS)-To construct a 4,961 Gross Floor Area (GFA) new residence which includes 3,568 sq. ft. of habitable area, a 618 sq. ft. attached garage and a 775 sq. ft. unfinished non-inhabitable area. (Zoning R-1-A Low-Density Residential District.) (Planner: Larisa Roznowski)**

Associate Planner Roznowski presented a review of the Design Review Application. She explained that the applicant is requesting Design Review Approval to construct a 4,961 Gross Floor Area (GFA) new residence which includes 3,568 sq. ft. of habitable area, a 618 sq. ft. attached garage and a 775 sq. ft. unfinished non-inhabitable area. On June 9, the Commission held a hearing on the originally proposed residence and expressed concerns regarding the apparent massing of the northern side elevation and retaining walls that support the driveway. The Commission also wanted to receive a history of the tree removal that occurred on the site in the area of the proposed building footprint. As a result of the hearing, the applicant was directed to: explore revising the driveway so the retaining walls are lowered, thereby reducing the bulk from the side view; explore reducing the massing of the northern side building elevation by reducing the building height; and explore reorienting the garage in a different manner, such as to the left of its current location, to reduce the massing of the retaining walls.

In response to the Commission's request for a tree removal history of the site, the applicant submitted an accounting of cut trees on-site and states trees removed were eucalyptus, and the others were small trees, either below or at permit size, many of which were uprooted and/or storm damaged, or were heavily leaning. Staff's documentation of the trees measured at the stump concludes the site may have contained 5 or 6 potential Tree Permit-sized trees. Proposed removal of trees as part of a design review application are customarily reviewed and permitted if they are proposed as part of the application. Staff recommends that unless this application is denied, the tree removal is not an enforcement issue.

In response to the Commission's direction, the entire residence has been lowered by 3' by lowering the building pad by 3', thereby decreasing the amount of fill proposed, resulting in a net reduction of imported fill as compared to the June 9th proposal. The slope of the driveway has been decreased resulting in a 1' height reduction of the retaining walls below the garage. The 1' curb wall along the top of the driveway has been removed. The cumulative result of the drop in elevation for the house by 3', the modified driveway slope, and removal of the 1' curb wall amounts to a 5' total reduction in the height of the retaining walls near the northern side property line.

A new retaining wall is now proposed along the upper portion of the access easement ranging from 3' to 7' in height. Other minor revisions include changes to exterior finishing materials for the exterior of the garage, and an extension of the trellis outrigger above the garage door. The landscaping plan has been modified to include 11 Mediterranean cypress rather than the 4 deodar cedars originally proposed, in an effort to reduce leaf litter on the neighboring property. Two additional Mediterranean cypress trees are proposed at the driveway level in front of the finished retaining wall to aid

screening. Staff recommended the use of Pittosporum species as an evergreen alternative to cypress, adding that they are widely used in Marin County for screening. The overall design incorporates the hillside design techniques that the Commission encourages including: cutting and building into the hillside; stepping the building back with decks/patios; articulated building facades; and proposed landscaping for screening. The Commission should assess whether the revised design adequately addresses the Commission's concerns. A Resolution with supportive findings and conditions has been attached for adoption. However, if the Commission believes the massing of the residence and retaining walls as seen from the northern side of the property still needs to be reduced, there are several options for further consideration.

One option is to lower plate heights and lower or eliminate vaulted ceilings and clerestory windows. Another option would be to lower the slope of the driveway from the access easement to the center of garage. Creating a split level on the Upper Level as part of this lowering of the building could also aid in reducing the height of the house on one side. Relocation of the garage to the right would also reduce height.

In conclusion, the project is compatible with the intensity of residential development in the neighborhood. Architectural features and landscaping would compliment the site and make the project an attractive addition to the area. Staff recommends a Condition of Approval for the alternate tree species replacement. Staff recommends that the Commission hear public testimony, consider the revised proposal and accompanying materials. If the Commission should decide that the application adequately addresses the items requested of the applicant, a resolution with findings and conditions is provided for approval. Alternatively, the Commission may provide direction to applicant for further revisions if supportive Design Review findings cannot be made with the current proposal.

Chairman Mace opened the public hearing and requested a presentation from the applicant.

Ted Christensen, owner, said Associate Planner Roznowski had adequately summed up the proposed changes. In looking at suggestions and then conversing with engineers, he had opted to lower the building pad and re-slope the driveway, rather than reducing plate height. This approach has lowered the walls along the front by 5', which he understood as a primary concern. He said that relocating the garage to reduce the massing would require a Spancrete structure, along with supporting posts under the kitchen, and would render the area where garage is now as unusable. He said that the cost of such an engineered structure could be hundreds of thousand of dollars, and that

he didn't feel it made any logical sense. He added that this would detract from guest parking.

He said that he had extended the trellis and added trees to make the wall less massive, and changed the garage's ledgerstone finish material to a larger size to make it look less busy, thus less massive.

He referred to the tree accounting, which Associate Planner Roznowski had reviewed, and added that the property has over 300 remaining trees, which will not be removed.

He said he had also been asked to review the sunlight study regarding light in the Benstead's rear yard. He said the engineer who compiled the report was present tonight for questions, and that the report reflects there would be no sunlight impairment in the Benstead's yard. He is proposing to develop 20 percent of the property, which is substantially low, and that by draining the reservoirs, he would be helping the town. After much thought he believes this proposal would benefit the area, and he hopes he has addressed all of the Commission's issues. He also agreed to provide a lighting plan. He concluded that telephone, sewer and water utilities exist as a result of the lot subdivided to the west of property.

Commissioner Bailey asked the applicant to expand on the option of relocating the garage.

Mr. Christensen explained that this required a poured-in-place concrete slab for the kitchen to sit on, and that this would have to be watertight. The continuous walls come all the way down and are load bearing of the house above. He said moving the garage would effectively require building another structure, and that this would push the wall further down the slope and make it higher, while making the driveway smaller.

Kelly Benstead of 425 Corte Madera Avenue said this design represents the worse case scenario. She explained that she had lived in her home for 15 years and in Corte Madera for 25 years. The proposal would result in a 17' retaining wall 12' off her back fence, with another 22' wall 5' behind that. She provided the Commission with photographs of her husband as a reference point for distance and scale standing against 17' and 22' freeway walls in the background. She added that from her property, she would be looking uphill toward the proposed structure, making it seem even taller.

She said that, though the staff report says privacy is hardly impacted, no one would want to look at such retaining walls. On top of the 22' retaining walls is a 5,000 sq. ft. house. The structure is too massive for the location. One should design a house to fit

into the slope. The site provides an opportunity for gorgeous views with little impact on neighboring properties, yet this proposal maximizes the impact on neighboring homes, and uses her back yard as a buffer between houses. She said the photos submitted by the applicant are misleading as they were taken from existing grade, but that one must go up 40' to get the full effect of the proposal. She said that ultimately, the reservoirs are the Town's responsibility. She said the recent Zoning Ordinance amendment changes the way height is measured and that she now feels as though Corte Madera no longer has a height limit. She said this proposal is an unintended consequence of the ordinance amendment, and that height should be measured from existing grade. She said this proposal sets a dangerous precedent, and that the walls are absurd. She requested that the application be denied and that the house be redesigned.

Michael Hooper of Madrone Avenue in Larkspur said he appreciates the applicant's redesign effort, but he still thinks it's too big too tall and orients in the wrong direction. Rather than seeking to fit the plans onto the lot, the house should be designed for the lot. This proposal has too many impacts, and too many issues to be resolved tonight, and there are additional drainage and access issues. The Commission cannot approve the design until they know how utilities will be provided.

Leonard Rifkind, representing attorney for the Benstead's, noted that Commissioner Bailey had recused himself from the June 9 hearing but that he is sitting with the Commission at tonight's hearing. He said that he and Commissioner Bailey are representing clients in a lawsuit.

Commissioner Bailey stated he knew Mr. Rifkind and that he had originally recused himself to avoid the appearance of impropriety. He said that he had since consulted with both the State Bar Ethics Commission and the Town Attorney, who advised him to request that Mr. Rifkind specify the grounds that he believes he should recuse himself on, such as financial interest, common law interest conflict, or bias.

Mr. Rifkind said he was concerned that Commissioner Bailey may be biased, as he and Commissioner Bailey were opponents in a lawsuit.

Commissioner Bailey made the statement for the record that he did not consider himself biased. He said he had no financial interest, and no common law interest conflict. He said he had not found himself to be biased or prejudiced.

Mr. Rifkind concluded that, if Commissioner Bailey thought he could be fair and impartial he would move on. He said he would like the Commission to focus on findings that must be made, and asked the Commission either to deny the project or continue

the hearing. He said that the purpose of design review is to review whether a project is visually harmonious; requires a minimum amount of grading; and are in relation to other structures in terms of size and bulk. He said the project is unique in its proposed import of 1,600 cubic yards of fill. He said that, where new construction projects normally propose grading, the applicant appears to be making a pedestal. He said the Planning Commission is required to make 8 findings, and that the opposition questions whether findings #1, #2, #3, #4, #7, #8 can be made. He said the Commission must make the finding that the proposal conform with General Plan (it must minimize perception of bulk; and follow the natural landform.)

Chairman Mace clarified that the proposal includes a net positive of 460 cubic yards of fill.

Mr. Rifkind continued that regarding tree removal it is appropriate to ask permission prior to tree removal. Regarding the Hillside Lands Overlay District findings, he said the Commission is required to make all 4 findings, and that the opposition questions that the Commission can make findings #1 and #3. He said regarding finding #1 that reports provided conclude there is unreinforced concrete reservoirs on the hillside, designed to survive two year storm, and that the finding #3 could not be made due to the project's visual impact.

He said there are also easement access and CEQA issues. He said there are no access easements due to a 1986 lot line adjustment done by the previous owner resulting in one person owning both properties. Mr. Rifkind stated that if one person owns both properties there could be no easement, as one cannot grant oneself an easement. He said the Commission must insure that the applicant has access. He said regarding CEQA that with the reservoirs and their potential for damn failure, this is not typical home.

Alan Daun of 425A Corte Madera Avenue on the Benstead property said Kelly Benstead is his daughter. He said he had received no notice of hearings. He said he is a retired architect, and that Mr. Christensen's property is a magnificent site with sweeping views. He said the project's problems occurred because the design compounds the site's challenges and that the house is not made for the site. He said the rendering is beautiful, but that it masks the wall to a point that is misleading. He said it was curious that the rendering did not show a protective guardrail for a car or person. The rail would add at least three feet to height of the wall, and the addition of a car or van to the rendering would add another 2 feet in height.

Michael Martineau, project engineer, said that the reason for the import of fill is the cut to allow the house to be set back into hillside. He said that the soil conditions

comments made by Mr. Rifkind were refuted by the body of fact contained in the soils report.

Guy Benstead of 425 Corte Madera Avenue said that many of his concerns had already been stated. He said there were portions of the staff report missing from his packet, including Section 2, Color Perspectives and Elevations; and Section 11, Site Plans, and Grading and Drainage Plan, so he couldn't comment on those changes. He said source documents in Attachment 8 of the engineer reports had portions highlighted in yellow, which the original documents don't have, and said highlighting had been added by someone other than he or the engineer. He asked why the concept of the second unit being part of floor plan had not been mentioned as part of the staff report. He asked about the significance of having a stand-alone structure, and said the project proposed should be one unit.

Regarding the trees, Mr. Benstead provided an aerial photograph of the neighborhood, and pointed out that the houses were surrounded by trees. He hoped to retain privacy of all neighbors and remedy the reservoirs. He said he wonders when the issue of the reservoirs will be addressed, adding that the applicant had said he would fence them years ago. He said the issue of the ordinance change sets an important precedent. He said the right design could mitigate the impact on the neighbors, and concluded that the proposal is still too big, and is oriented in wrong direction.

Hearing no further public comment, Chairman Mace asked for the applicant's rebuttal.

Mr. Christensen said that the title company has assured him that he has water easements through the Benstead's property, and that a second off-site easement exists as part of the sewer easement. He said he takes personal offense to having the proposal, which has won a number of awards, is nicely articulated, and is cut significantly into the hillside, called a tract house. He said he feels the design works within the criteria, and that he worked with the neighbor to landscape. He said the site is visible only from the Benstead's back yard, while their pool looks to east.

Commissioner Bailey asked if he had made any effort to talk to the Benstead's in last couple of years.

Mr. Christensen said he had not, but that he had said greeted Mrs. Benstead at the site at one point, and that she had made a comment about trimming a limb hanging over property. He had it removed. He said that he did intend to address the reservoirs, but that he preferred to do so at the construction stage.

Jana Haehl of 499 Corte Madera Avenue said the utilities easement Mr. Christensen spoke of run through her property. Said she and her husband had granted a sewer, telephone, cable, electricity and gas public utilities easement through their property to the houses at the top of the driveway, and that this is available to Mr. Christensen. However there is no water line extending beyond her home at Corte Madera Avenue. She said she and her husband had granted the easement with the understanding that the trench would only be dug once. She said she vigorously objects to retrenching, as she has since landscaped the area. The Water District may not even allow it because of low water pressure issues in the area.

With no further public comments, Chairman Mace closed public comment period.

Commissioner Bailey asked staff about their analysis regarding engineering difficulty of reorienting the garage. Associate Planner Roznowski said that staff had done no analysis of its own to assess the difficulty of reorienting the garage. Rather, staff accepted the comments per a statement made in a letter submitted by the applicant.

Commissioner Bailey asked about the comment made by the Benstead's about precedent, and whether there was a similar condition that staff is aware of. Planning Director Pendoley said he did not know of any. He also said he was concerned about some of numbers cited in regard to retaining wall height. He said he checked grading drawings and that no 22' walls are proposed, they are all substantially lower now. Commissioner Bailey asked if there were a 17' wall 12' away from the Benstead property.

Planning Director Pendoley and Associate Planner Roznowski said there is now 9' wall proposed, and 5' further back a 10' wall at the corner closest to the Benstead property. Regarding the Zoning Ordinance amendment and measuring height, Planning Director Pendoley said he has been working with the Town for the last eight years, and that it has been the Town's ongoing practice to measure height from finished grade. The ordinance amendment does not change the way height is measured, but rather reflects this review of actual practice. He said the proposal would not set a new precedent.

Commissioner Bailey asked whether the drainage issues and easements for utilities had been addressed.

Associate Planner Roznowski said the drainage issues had been addressed in the Public Works Department's review of the proposal. She said the Town does not evaluate private easements, rather the project review process insures that the applicant obtain title insurance. Beyond that, easement issues are considered a private matter.

Commissioner Bailey asked regarding Mr. Rifkind's comments on reservoirs, whether the hydrology studies were extensively reviewed by the Public Works Department. Planning Director Pendoley said the Public Works Department had determined the project and grading would have no effect on the reservoirs.

Commissioner Bailey asked about the guardrail required.

Planning Director Pendoley said the Building Code would require a guardrail.

Commissioner Bailey asked about Mr. Benstead's statement that the proposed design included a stand-alone unit.

Associate Planner Roznowski said the sink and refrigerator had been deleted, and that this was a proposal for Design Review of a single-family residence. The applicant would have to apply for a Second Unit Permit should they propose to add a sink and refrigerator for a second unit.

Commissioner Bailey asked his fellow Commissioners whether they felt the applicant had addressed their concerns.

Chair Mace said he had noted some responsiveness.

Commissioner Bailey asked how much would have been appropriate.

Chair Mace said the Commission had not intended to redesign, but had asked for responsible answers to concerns.

Commissioner Bailey said he thought it was a pleasing design. The issue is the apparent massing. He noted that no effort had been made to lower plate height, which is a remaining concern.

Commissioner Pagnillo said he would like to see a reorientation of the garage. He did not think it would be as bad as the applicant envisioned. There is enough room for off-street parking.

Chair Mace said there may be 5 or 6 issues remaining. He said he regretted that the opposition to this project had gone further than usual, and that things had gotten personal. It was time consuming to review the submitted materials and determine which was personal and what was important. He said the Commission does not review private easements or their maintenance, nor does the Commission consider challenges

to prescriptive easement rights. The Commission is reviewing this proposal as a single-family residence. He said that the building was cut 12' deep at the back of the house to set it into the hillside. He said that his measurement of the retaining wall height was 15' from the toe of the bottom retaining wall to the top of the retaining wall, plus a 42" railing would be added. With something in front larger than in back, the result appears propped, and that the cut and fill should be switched. He said privacy and sunlight are not an issue, as there are many instances with closer proximity. He said the Commission does not challenge engineering. He suggested more cut on the upslope, to lower mass and height.

He said three things had been done to result in a 3' lower design, and that though the Commission does not usually send people away with specific numbers, he was hoping for a 10' drop in height. He said the applicant must consider ways to move the whole house down significantly. He said the rendering comment is true and that it is misleading. He said he took offense to the applicant's comment that foliage on the wall will make it disappear. This is not true. Regarding Mr. Rifkind's comment about the General Plan, he said that the Commission is aware of their requirement to review projects for compliance with the General Plan, and that this was their practice. He concluded that a preliminary drainage plan was not enough for a project like this.

Commissioner Bailey said he thought the height had been lowered by 5', but Chair Mace mentioned 3'. Planning Director Pendoley said the house itself had dropped 3'.

Commissioner Bailey asked Commissioner Pagnillo about reorienting the garage.

Commissioner Pagnillo said that for the neighbors below this would lower the wall height and change the angle of headlights at night so as not to affect neighbors.

Commissioner Bailey said the Commissioners agree on reorienting the garage, though he acknowledged the cost and difficulty. He asked about lowering the house.

Chair Mace said he would like to see the applicant address plate height, retaining walls and consider flipping the cut and fill.

Commissioner Bailey said he is not a big fan of asking people to keep coming back, but that these are important considerations.

Chair Mace said he likes this house and he has heard this echoed in comments from the public, but that too many concessions were made to fit the house to the site. He said he would like to see it come back with a drop in height, reorientation of garage,

acceptable plan for trees, and for the town not to act as liaison between neighbors and the applicant where possible.

Commissioner Bailey encouraged the applicant and opposition to make another effort to address concerns. He said the Commission would comply with their job to make a decision.

The applicant asked for what purpose the Commission wanted to see the garage reoriented, and whether it was to lower the height of the wall.

Chair Mace said that by reducing the turning radius they would be reducing the apron and minimizing the width of house. This would move the retaining wall back away from neighbors. Moving the garage entry to side is more conducive to cars pulling in and out.

Planning Director Pendoley asked for clarification regarding the garage orientation, and if the intention was to result in moving the retaining wall closer to the house and radically reducing the height of the most offending part of wall.

Mr. Martineau asked for an aggregate number. He said he was unsure whether the garage reorientation direction was to lower the height of the retaining wall.

Chair Mace said to an aggregate number for him would be to reduce home in height aggregate number of 5' using more cut, less fill, or reduce plate heights.

Planning Director Pendoley explained there are two walls, the top of wall would remain at the same level, but finish grade would come up as the wall moves closer to the house, resulting in less wall exposed as wall moves up hill. Should the Commission wish to continue the public hearing, he said he would recommend to continuation to a date uncertain.

MOTION: Motioned by Commissioner Pagnillo, seconded by Commissioner Bailey and approved unanimously to continue the public hearing to a date uncertain.

5. NEW HEARINGS

A. PUBLIC HEARING TO ADDRESS ADDING CHAPTER 17.68, LOT LINE ADJUSTMENTS, TO THE MUNICIPAL CODE (Planner: Larisa Roznowski)

Associate Planner Roznowski reviewed that the Commission had conducted a workshop to review the draft ordinance on July 28. As directed by the Commission, the ordinance has been revised to vest the decision authority with the Zoning Administrator. Staff conferred with the Town Attorney on the proposed language that would have the Zoning Administrator refer applications to the Commission in the event of “a significant policy issue or substantial public controversy.” The Town Attorney has advised keeping this language in the proposed ordinance. With this exception, the draft ordinance is consistent with the Commission’s July 28 direction.

The Commission opened the public hearing. There was no public comment.

MOTION: Motioned by Commissioner Pagnillo, seconded by Commissioner Bailey to adopt the Resolution No. 09-012 recommending that the Town Council enact an Ordinance adding Chapter 17.68, Lot Line Adjustments, to the Municipal Code.

6. ROUTINE AND OTHER MATTERS

A. NOMINATE A COMMISSIONER TO SERVE ON THE CITIZEN’S ADVISORY COMMITTEE FOR THE HOUSING ELEMENT Nominated Commissioner Schwartz, which was seconded and approved.

B. REPORTS AND ANNOUNCEMENTS

i. Commissioners.

ii. Director

C. MINUTES: Planning Commission Meeting Minutes of July 28, 2009 Motioned, seconded and approved.

7. ADJOURNMENT: The meeting was adjourned at 9:15 p.m. The next Planning Commission Regular Meeting is to be August 25, 2009.