

BEFORE THE TOWN OF CORTE MADERA PLANNING COMMISSION

In the Matter of:

An appeal of the Planning Director's interpretation that the time to appeal the approval of Design Review Permit No. 09-014 and Variance Permit No. 09-006 **at 113 Willow Avenue** expired on November 20, 2009, and no appeals to the project can be accepted after that date.

Resolution No. 09-022

Appeal No. 09-002

Adoption Date: January 26, 2010

Appeal Period Ends: February 8, 2010

WHEREAS, on August 19, 2009, an application was filed with the Corte Madera Planning Department to construct first- and second-story additions at 113 Willow Avenue; and

WHEREAS, Corte Madera Municipal Code Section 18.36.040 provides that where the provisions of Title 18 require that a public hearing be held pursuant this Section, notice of the date, time, place and hearing body of such hearing, including a general description of the matter to be considered and location to be affected, shall be given; and

WHEREAS, Corte Madera Municipal Code Section 18.36.040 further provides that notice of the public hearing shall be given not fewer than 10 days nor more than 30 days prior to the date of the hearing and be provided in the following manner: 1) notice shall be posted in at least three public places in the town; and 2) be sent through the United States mail with postage prepaid to all persons shown on the last equalized assessment roll of the county as owning real property within 300 feet of the property which is the subject of the hearing; and

WHEREAS, Government Code Sections 65091 and 65094 as applied to the Town generally set forth the same notice requirements as Section 18.36.040; and

WHEREAS, on October 30, 2009, public hearing notices for the November 10, 2009 Planning Commission hearing for Design Review Permit Application No. 09-014 and Variance Permit Application No. 09-006 at 113 Willow Avenue addressed to all persons shown on the latest County Assessor's Tax Roll of owners owning real property within 300 feet of the property as indicated on the mailing label list that was prepared by Town staff using the Notification Application through www.MarinMap.org which provides current County Assessor's Tax Roll owner information, which included Betty L. Vandever Trust and James W. Vandever at 107 Redwood Avenue, Corte Madera, CA 94925, were deposited by Town staff in the United States mail with prepaid postage, and were posted by Town staff in three public places described by Municipal Code Section 1.08.010; namely, Corte Madera Town Hall located at 300 Tamalpais Drive, Corte Madera, CA 94925, the U.S. Post Office located at 7 Pixley Avenue, Corte Madera, CA 94925, and Corte Madera Fire Station #13 located at 5600 Paradise Drive, Corte Madera, CA 94925, in accordance with Corte Madera Municipal Code Section 18.36.040; and

WHEREAS, the public hearing notices for the November 10, 2009 Planning Commission hearing for Design Review Permit Application No. 09-014 and Variance Permit Application No. 09-006 at 113 Willow Avenue included the information that the hearing would occur at 7:30 P.M. on November 10,

2009, in the Town Hall Council Chambers at 300 Tamalpais Drive, at which time and place the Planning Commission would consider the design review application to construct a 393 square foot first-story addition and a 1,023 square foot second-story addition to a 1,400 square foot one-story, single-family residence and one-and-one-half car garage on a 5,500 square foot lot and variance application to waive a second, independently accessible off-street parking space at 113 Willow Avenue (among other information regarding the application) and stated that plans may be reviewed at the Planning Department, that copies of the staff report may be obtained from the planning department at Town Hall, 300 Tamalpais Drive, and included a proposed site plan and rendering of the proposed front elevation of the project; and

WHEREAS, on November 10, 2009, the Corte Madera Planning Commission held a public hearing on the item, heard testimony from the applicant and interested parties, and voted to conditionally approve Design Review Permit 09-014 and Variance Permit No. 09-006 at 113 Willow Avenue; and

WHEREAS, the Procedural Notes on the Agenda for the November 10, 2009 Planning Commission hearing stated that any decision by the Planning Commission at that hearing may be appealed to the Town Council within ten calendar days; and

WHEREAS, Corte Madera Municipal Code Section 18.34.050(a) provides that an appeal of a Planning Commission decision shall be made within 10 calendar days of the date of the decision; and

WHEREAS, Corte Madera Municipal Code Sections 18.30.080 and 18.28.070 provide that an approval becomes effective 10 days after the date of decision unless an appeal has been made or the matter has been called up for review; and

WHEREAS, the tenth calendar day after the Planning Commission decision on November 10, 2009 was at the end of the day on November 20, 2009; and

WHEREAS, the last day to appeal the November 10, 2009 Planning Commission decision was November 20, 2009; and

WHEREAS, no appeal to the Planning Commission's decision on November 10, 2009, was filed with the Town on or before November 20, 2009 and the matter was not called up for review; and

WHEREAS, the conditional approval of Design Review Permit 09-014 and Variance Permit 09-006 became effective on November 21, 2009; and

WHEREAS, on November 23, 2009, one of the neighbors, Ms. Cynthia Vandever, at 107 Redwood Avenue, visited the Corte Madera Planning Department and stated her intent to appeal the Planning Commission's decision to conditionally approve Design Review Permit No. 09-014 and Variance Permit No. 09-006 at 113 Willow Avenue; and

WHEREAS, on November 23, 2009, the Planning Department staff informed Ms. Vandever at the Planning Department that the appeal period for Design Review Permit No. 09-014 and Variance Permit No. 09-006 at 113 Willow Avenue ended at the end of the day on November 20, 2009, and Planning Department staff provided Ms. Vandever a copy of the Planning Commission public hearing notice that was mailed on October 30, 2009, as well as a copy of the mailing label list to which the notice was mailed, through the United States mail with postage prepaid to all persons shown on the

latest County Assessor's Tax Roll of owners owning real property within 300 feet of the property; and

WHEREAS, on November 24, 2009, the Planning Director sent a letter to Cynthia Vandever notifying her of his interpretation of the Zoning Ordinance that the appeal period for Design Review No. 09-014 and Variance Permit No. 09-006 at 113 Willow Avenue expired at the end of the day on November 20, 2009, ten calendar days after the decision of the Planning Commission was made on November 10, 2009; and

WHEREAS, pursuant to Corte Madera Municipal Code Section 18.38.040, an interpretation of the Planning Director may be appealed to the Planning Commission within ten calendar days of receipt of notice of his decision; and

WHEREAS, on December 3, 2009, a timely appeal was filed by Ms. Vandever appealing the Planning Director's interpretation of the Zoning Title that the time to appeal the approval of Design Review Permit No. 09-014 and Variance Permit No. 09-006 at 113 Willow Avenue expired at the end of the day on November 20, 2009, on the grounds that Ms. Vandever was not mailed a public notice nor was the public notice posted in three public places at least ten calendar days prior to the public hearing and decision date of November 10, 2009 to conditionally approve the project; and

WHEREAS, on December 30, 2009, public hearing notices for the January 12, 2010 Planning Commission hearing for Appeal 09-002 at 113 Willow Avenue were mailed through the United States mail with postage prepaid to the appellant, Cynthia Vandever, 107 Redwood Avenue, Corte Madera, CA 94925, to all persons shown on the latest County Assessor's Tax Roll of owners owning real property within 300 feet of the property, and were posted in three public places including Corte Madera Town Hall located at 300 Tamalpais Drive, Corte Madera, CA 94925, the Corte Madera Post Office located at 7 Pixley Avenue, Corte Madera, CA 94925, and Corte Madera Fire Station #13 located at 5600 Paradise Drive, Corte Madera, CA 94925 as required by Corte Madera Municipal Code Section 18.36.040; and

WHEREAS, on December 30, 2009, Planning Commission public hearing notices for the January 12, 2010 Planning Commission hearing for Appeal 09-002 at 113 Willow Avenue included such details as the date, time, place and hearing body of such hearing, a general description of the matter to be considered and location to be affected, and how copies of the staff report may be obtained; and

WHEREAS, on January 7, 2010, the appellant, Cynthia Vandever, sent an email to the Town indicating that she will not be available to attend the Planning Commission hearing scheduled for January 12, 2010, and she requested that the hearing be scheduled to the next available hearing date; and

WHEREAS, on January 7, 2010, public hearing notices were mailed for the Planning Commission hearing for Appeal 09-002 at 113 Willow Avenue stating that hearing for the matter is scheduled for January 26, 2010 and that the January 12, 2010 hearing for the matter was cancelled; the said public hearing notices were mailed through the United States mail with postage prepaid to the appellant, Cynthia Vandever, 107 Redwood Avenue, Corte Madera, CA 94925, to all persons shown on the latest County Assessor's Tax Roll of owners owning real property within 300 feet of the property, and were posted in three public places including Corte Madera Town Hall located at 300 Tamalpais Drive, Corte Madera, CA 94925, the Corte Madera Post Office located at 7 Pixley Avenue, Corte Madera, CA 94925, and Corte Madera Fire Station #13 located at 5600 Paradise Drive, Corte Madera, CA 94925

as required by Corte Madera Municipal Code Section 18.36.040; and

WHEREAS, on January 7, 2010, Planning Commission public hearing notices for the January 26, 2010 Planning Commission hearing for Appeal 09-002 at 113 Willow Avenue included such details as the date, time, place and hearing body of such hearing, a general description of the matter to be considered and location to be affected, and how copies of the staff report may be obtained; and

WHEREAS, on January 26, 2010, the Corte Madera Planning Commission held a public hearing on the item, heard testimony from the appellant and interested parties.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission of the Town of Corte Madera does hereby **deny the appeal** to the Planning Director's interpretation of the Zoning Title on November 24, 2009, that the time to appeal the conditional approval of Design Review Permit No. 09-014 and Variance Permit No. 09-006 at 113 Willow Avenue had expired on November 20, 2009, ten calendar days after the Planning Commission conditionally approved the project on November 10, 2009, and that no appeals to the Planning Commission's decision can be accepted after that date, and finds that proper public notice was posted in three public places within the Town and mailed to all property owners within 300 feet of the property (including the Vanderveers) shown on the latest County Assessor's Tax Roll at least ten calendar days prior to the Planning Commission's public hearing for the project on November 10, 2009, in compliance with the requirements of the Corte Madera Municipal Code and state law, based upon the factual findings listed below:

1. **Requirement:** Corte Madera Municipal Code Section 18.36.040 states that where the provisions of Title 18 require that a public hearing be held pursuant to this Section, notice of the date, time, place and hearing body of such hearing, including a general description of the matter to be considered and location to be affected, shall be given. Notice shall be given not fewer than ten days nor more than thirty days prior to the date of hearing, or as otherwise consistent with the requirements of state law. The notice shall be posted in at least three public places in the town, and sent through the United States mail with postage prepaid to all persons shown on the last equalized assessment roll of the county as owning real property within three hundred feet of the property which is the subject of the hearing. Public notices that are required to be posted shall be posted at Corte Madera Town Hall, the U.S. Post Office located at 7 Pixley Avenue, Corte Madera, CA 94925, and 5600 Paradise Drive, Corte Madera, CA 94925, in accordance with Corte Madera Municipal Code Section 1.08.010. Government Code Section 65093 provides that the failure of any person to receive notice shall not constitute grounds to invalidate the actions for which the notice was given.

Factual Findings: On October 30, 2009, Planning Commission public hearing notices of the November 10, 2009 Planning Commission hearing for Design Review Permit Application No. 09-014 and Variance Permit Application No. 09-006 at 113 Willow Avenue, including such details as the date, time, place and hearing body of such hearing, a general description of the matter to be considered and location to be affected, the place where the plans may be reviewed, how copies of the staff report describing the proposed changes may be obtained, and a proposed site plan and rendering of the proposed front elevation, were mailed through the United States mail with postage prepaid to all persons shown on the latest County

Assessor's Tax Roll of owners owning real property within 300 feet of the property, including the Vandever at 107 Redwood Avenue, Corte Madera, CA 94925 as shown on the mailing labels and were posted in three public places described by Corte Madera Municipal Code Section 1.08.010; namely, Corte Madera Town Hall located at 300 Tamalpais Drive, Corte Madera, CA 94925, the U.S. Post Office located at 7 Pixley Avenue, Corte Madera, CA 94925, and Corte Madera Fire Station #13 located at 5600 Paradise Drive, Corte Madera, CA 94925.

2. **Requirement:** Corte Madera Municipal Code Section 18.34.050(a) states that any appeal permitted under Title 18 shall be filed with the Planning Department within ten calendar days of the date the decision of the Planning Commission was made. Corte Madera Municipal Code Sections 18.30.080 and 18.28.070 state that a Design Review or Variance approval shall become effective upon the expiration of ten days following the Zoning Administrator's or Planning Commission's action, unless appeal has been made to the Planning Commission or Town Council, or the matter has been called up for review by a member of the Planning Commission or Town Council as provided by Chapter 18.34, Appeals.

Factual Findings: On November 10, 2009, the Corte Madera Planning Commission held a public hearing on the item, heard testimony from the applicant and interested parties, and voted to conditionally approve Design Review Permit No. 09-014 and Variance Permit No. 09-006 at 113 Willow Avenue. Corte Madera Municipal Code Section 18.34.050(a) requires that an appeal be filed within 10 calendar days of the Planning Commission decision that is being appealed. At the end of the day on November 20, 2009, the appeal period for Design Review Permit No. 09-014 and Variance Permit No. 09-006 at 113 Willow Avenue ended, ten calendar days after the Planning Commission's decision to conditionally approve the project. No appeal application was filed with the Planning Department on or before November 20, 2009. Therefore, no appeal to the Planning Commission decision was filed before the appeal period expired at the end of the day on November 20, 2009. No appeal application may be filed after the expiration of the appeal period under the Corte Madera Municipal Code. No appeal having been filed by November 20, 2009, the approval of Design Review Permit No. 09-014 and Variance Permit No. 09-006 became effective on November 21, 2009.

3. **Requirement:** The Design Review Submittal Requirement Checklist states that at least two weeks before a decision may be made regarding an application involving additions to existing structures, the applicant is responsible for erecting story poles to represent the actual height and area of that structure or sign. The story poles installed must shall show the height at each corner of the structure or sign, the maximum height, and the outline of proposed structure or sign with string tied between poles.

Factual Findings: Planning staff conducted a site visit to confirm that the story poles had been erected in compliance with the Design Review Submittal Checklist.

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PASSED AND ADOPTED by the Corte Madera Planning Commission on January 26, 2010,
by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Bruce Mace, Chair

Dan Bell, Interim Planning Director