

**CORTE MADERA PLANNING COMMISSION  
STAFF REPORT**

**ITEM NO. 5A      REPORT DATE:    JANUARY 21, 2010  
                         MEETING DATE:    JANUARY 26, 2010**

**SUBJECT:**      **APPEAL NO. 09-002** – 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, ten calendar days after the Planning Commission public hearing on November 10, 2009.

**SITE:**            **113 WILLOW AVENUE**

**APPEALANT:**    **CYNTHIA VANDEVEER, 107 REDWOOD AVENUE**

**APPLICANTS:**   **SCOTT & NICOLE SILVER, 113 WILLOW AVENUE**

**PROCEDURE:**    The Planning Commission's decision is final unless appealed to or called up by the Town Council within ten calendar days.

**SUMMARY:**      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 may be filed after that date. The grounds for the appeal are that the appellant was not mailed a public notice nor was the public notice posted in three public places at least ten calendar days prior to the Planning Commission’s public hearing on the design review permit and variance permit applications on November 10, 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 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 Vandevs at 107 Redwood Avenue, on October 30, 2009, ten calendar days before the public hearing was held. The same Planning Commission public hearing notice was also posted on the same date in three public places: namely, Corte Madera Town Hall, the Corte Madera Post Office, and Corte Madera Fire Station #13. On November 10, 2009, the Planning Commission voted to conditionally approve Design Review Permit Application No. 09-014 and Variance Permit Application No. 09-006 at 113 Willow Avenue (Attachment 8). Any decision of the Planning Commission may be appeal to the Town Council within ten calendar days. No application to appeal the Planning Commission’s decision to approve Design Review Permit No.

09-014 and Variance Permit No. 09-006 at 113 Willow Avenue was filed with the Planning Department on or before November 20, 2009. Therefore, the conditional approval of Design Review Permit No. 09-014 and Variance Permit No. 09-006 became effective on November 21, 2009.

## **BACKGROUND:**

Below is a chronological listing of events pertaining to this application:

### **August 19, 2009**

An application was filed with the Corte Madera Planning Department to construct first- and second-story additions at 113 Willow Avenue.

### **October 27, 2009**

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

### **October 30, 2009**

I interviewed Planning Secretary, Joan Terrell regarding the mailing and posting of notices of the November 10, 2009 Planning Commission public hearing on the project at 113 Willow Avenue. Ms. Terrell related to me the following: On October 30, 2009, notices of the November 10, 2009 hearing before the Planning Commission on 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 she prepared using the Notification Application through [www.MarinMap.org](http://www.MarinMap.org) which provides current County Assessor's Tax Roll owner information (Attachment 4), including Betty L. Vandever Trust and James W. Vandever at 107 Redwood Avenue, Corte Madera, CA 94925, were deposited by Ms. Terrell in the U.S. mail with prepaid postage, and were posted by Ms. Terrell on the bulletin boards in three public places; 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.

Public hearing notices for the November 10, 2009 Planning Commission hearing on Design Review Permit Application No. 09-014 and Variance Permit Application No. 09-006 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, 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 (Attachment 3).

#### **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.

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 (Attachment 5).

#### **November 11 through 20, 2009**

No application to appeal is filed to the Planning Commission decision conditionally approving Design Review Permit No. 09-014 and Variance Permit No. 09-006. The ten day period to appeal the Planning Commission's decision conditionally approving Design Review Permit No. 09-014 and Variance Permit No. 09-006 expired at the end of the day on November 20, 2009.

#### **November 21, 2009**

The conditional approval of Design Review Permit 09-014 and Variance Permit 09-006 became effective on November 21, 2009.

#### **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. At that time, 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 (Attachment 3) that was mailed on October 30, 2009, as well as a copy of the mailing label list to which the notice was mailed (Attachment 4).

**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 (Attachment 6).

Pursuant to Corte Madera Municipal Code Section 18.38.040, an interpretation of the Planning Director denying Ms. Vandever's application to appeal the Planning Commission's decision may be appealed to the Planning Commission within ten calendar days of receipt of notice of the Planning Director's decision, which would expire on December 4, 2009.

**December 3, 2009**

A timely appeal was filed by Ms. Vandever appealing the Planning Director's interpretation of Corte Madera Municipal Code Section 18.34.050(a) that the deadline to appeal the approval of Design Review Permit No. 09-014 and Variance Permit No. 09-006 at 113 Willow Avenue expired on at the end of the day on November 20, 2009. The grounds stated in the application for appeal were 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 on November 10, 2009 to conditionally approve the project (Attachment 2).

**December 30, 2009**

Planning Commission 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 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 Government Code Section 65091 and 65094.

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.

**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 (Attachment 9).

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

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.

**January 26, 2010**

The Corte Madera Planning Commission holds a public hearing on the item, hears testimony from the appellant and interested parties.

**MUNICIPAL CODE AND PROJECT APPLICATION REQUIREMENTS & FACTUAL FINDINGS:**

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. Government Code Sections 65091 and 65094 generally set forth the same requirements as provided by Corte Madera Municipal Code Section 18.36.040. Corte Madera Municipal Code Section 1.08.010 establishes that notices required to be posted are to be posted at Town Hall, the U.S. Post Office at 7 Pixley Avenue, Corte Madera, CA, and 5600 Paradise Drive, Corte Madera, CA. 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, 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 (which is included as Attachment 3), 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 Vanderveers at 107 Redwood Avenue, Corte Madera, CA 94925 as shown on the mailing labels used by Town staff to address the notices (which are included as Attachment 4).

On October 30, 2009, the same Planning Commission public hearing notices as described above 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 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.

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. 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 on 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 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.

## **CONCLUSION:**

As described in the Factual Findings above, all of the Corte Madera Municipal Code requirements and the story pole installation requirement were duly met. Public notices were mailed and posted as required, the Planning Commission held a public hearing as required, and the Design Review and Variance application was granted approval on November 10, 2009. Therefore, on November 20, 2009, ten calendar days after the date of the approval, the appeal period for Design Review Permit No. 09-014 and Variance Permit No. 09-006 at 113 Willow Avenue ended. Because no appeal was filed on or before November 20, 2009, the last day of the appeal period, the approval of Design Review Permit No. 09-014 and Variance Permit No. 09-006 became effective on November 21, 2009 and must stand as approved. No appeal may be made after the appeal period expired on November 20, 2009.

**RECOMMENDED COMMISSION ACTION:**

Staff recommends that the Planning Commission **deny Appeal 09-002** of the Planning Director's interpretation that the period 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, and find 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 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, by adopting the attached Resolution with factual findings.

**ATTACHMENTS:**

1. Resolution Denying the Appeal
2. Vandever Appeal
3. Public Notice for Design Review Application No. 09-014 and Variance Application No. 09-006 at 113 Willow Avenue for the November 10, 2009 Planning Commission Hearing, Mailed on October 30, 2009
4. Mailing List Showing County Assessor's Tax Roll of Owners Owning Real Property Within 300 Feet of the Property at 113 Willow Avenue for the Public Notices Mailed on October 30, 2009 for the November 10, 2009 Planning Commission Hearing for Design Review Application No. 09-014 and Variance Application No. 09-006 at 113 Willow Avenue
5. Planning Commission Agenda for November 10, 2009
6. Letter from the Planning Director to Cynthia Vandever, dated November 24, 2009
7. Letter from Riley F. Hurd III on the behalf of Kiki and Scott Silver to the Planning Commission, dated December 22, 2009
8. Planning Commission Resolution No. 09-016 approving Design Review No. 09-014 and Variance No. 09-006 at 113 Willow Avenue
9. Email from Appellant Requesting Rescheduling of January 12, 2010 Planning Commission Hearing Date, received January 7, 2010

cc: Cynthia Vandever, 107 Redwood Avenue, Corte Madera, CA 94925  
Scott & Nicole Silver, 113 Willow Avenue, Corte Madera, CA 94925  
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John Abaci, Town Attorney  
Appeal File: 113 Willow Avenue