

**DECKER SFD, 680 STONEHOUSE LANE
08LUP-00000-00471; 08MBAR-00000-00145**

REASONS FOR APPEAL TO BOARD OF SUPERVISORS

**MONTECITO LAND USE AND DEVELOPMENT CODE SECTION 35.472.070.F.1 (MLUDCS)
MONTECITO ARCHITECTURAL GUIDELINES, DATED MAY 16, 1995 (MAG)**

APELLANT'S NINETY TWO PAGE POWER POINT PRESENTATION (APPP) SUBMITTED TO THE MONTECITO PLANNING COMMISSION, BUT NOT FULLY PRESENTED AT THE HEARING, IS HEREBY SUBMITTED TO THE BOARD OF SUPERVISORS FOR CONSIDERATION AND REFERENCE HEREIN. ADDITIONAL, PERTINENT INFORMATION MAY BE TIMELY SUBMITTED BY THE APPELLANT PRIOR TO THE HEARING ON THIS MATTER.

GENERAL STATEMENTS AS TO REASONS FOR APPEAL:

MBAR'S MISUSE OF THE MONTECITO ARCHITECTURAL GUIDELINES

The Montecito Board of Architectural Review (MBAR) abused its discretion by making various elements of the Montecito Architectural Guidelines (MAG) mandatory requirements to which the applicant must comply or be denied. The MAG clearly states the architectural guidelines are not mandatory requirements. See MAG, page 5, B. USE OF ARCHITECTURAL GUIDELINES. The MBAR action denied the applicant his right to fair and impartial due process.

DE NOVO REVIEW PROCESS DENIED

An appeal to the MPC of an MBAR denial should provide an applicant with a full and complete "de novo review" of his application, without deference to the MBAR's previous rulings or comments. Applicant was only allowed 30 minutes for the complicated and detailed presentation he required to convey a full and factual presentation as to why his proposed project would be compatible with the neighborhood. The MPC's ruling to uphold the MBAR's denial was based solely on a cursory reading of the MBAR's minutes from the second-to-last hearing (May 4, 2009) on the matter. MPC Commissioner Gottsdanker moved to deny the appeal because she noted a "long list" of MBAR concerns on the minutes from the May 4th hearing. See Staff Report, page 14 & 15. That motion was seconded and, without further discussion, approved unanimously by the Commission. Applicant was not allowed an opportunity to show the MPC how, in fact, 16 of the 20 items on the list, referred to by Commissioner Gottsdanker, were adequately addressed by the time of the subsequent MBAR hearing. Nor was the applicant provided time to address the enumerated comments from the final MBAR hearing, on June 29, 2009, that resulted in the MBAR denial. The MPC hearing was neither fair, impartial nor "de novo". Nor was the decision supported by the evidence presented or that could have been presented by the applicant, given adequate time.

INACCURATE COUNTY DATA

The County's FAR Database is factually inaccurate. It describes the square footage of homes as being "gross" numbers, wherein the Santa Barbara County Zoning Ordinance, Article IV of Chapter 35 requires "net" square footage calculations for FAR comparisons. Even if it were assumed that the square footage numbers noted in the FAR Database were "net" square footage numbers, they vary so greatly from the actual gross square footage numbers on record with the County Assessor as to deem them highly suspect and unreliable. Such inaccurate and misstated statistics deny land use applicant's fair and equal protection under the law. See APPP, page 11, 18 & 19.

APPELLANT'S SPECIFIC RESPONSES TO ATTACHMENT A: FINDINGS, PAGE A-1, STAFF REPORT FOR DECKER APPEAL OF MBAR DENIAL.

a.

- At **7.6%** (using net square footage) above the Montecito Guideline's *recommended* maximum floor area ratio (FAR), the proposed development *is* in proportion to *other* existing structures in the surrounding area.

First, the floor area ratio is only *recommended*, not *required*. See MAG page 12. Secondly, the two, less than one acre properties contiguous to and directly south of the proposed project are **24.1%** and **5.3%** over guideline, respectively. There are also three other homes in the immediate neighborhood that are **14.5%**, **4.8%** and **3.8%** over guideline, respectively. The average guideline overage of these five homes is **10.5%**. The subject proposal is at **7.6%**. The MLUDCS, Section 35.472.070.F.1.a requires the overall proposed structure's shape be in proportion to and in scale with "*other*" structures in the area surrounding the property, not "*all*" other structures in the area. *The MBAR findings are not supported by the evidence.*

- The proposed residence is not too bulky because it is factually comparable in bulk and scale to many existing, surrounding residences. Other than making vague generalizations about the height, width, bulk and scale of the proposed project, the MBAR failed to factually compare the proposed project to other existing residences in the neighborhood. See APPP, pages 21, 22, 23, 44, 45, 46, 47, 48, 49 & 50. Other than a list of FARs for the surrounding properties, the MBAR did not request additional information regarding the bulk and scale of surrounding properties. However, applicant did offer to the MBAR a detailed comparison of one property, close in lot size (630 Stonehouse Lane), which showed the comparison structure to be substantially greater in volume than the proposed structure. See APPP, page 46. The aerial photos (APPP, pages 44-50), showing the subject proposal's footprint over laid that of other homes in the neighborhood, conclusively demonstrate the subject proposal to not be out of scale with other homes in the

neighborhood. Even those on smaller lots. ***The decision is not supported by the evidence presented.***

- As the Montecito Guidelines require of the MBAR, it failed to restrict its FAR comparison to other existing homes on *similar* sized lots in the surrounding neighborhood. See MAG, page 11, B. 2 & 3; page 12. ***The MBAR abused its discretion in failing to do so and their decision was not supported by the evidence presented.***
- Comparing a proposed design to that of its design inspiration is not a basis for denial of a project. There is nothing in the Montecito Land Use and Development Code and the Montecito Architectural Guidelines and Development Standards that requires such a comparison or finding. The Guidelines only speak of design elements being consistent within the project and that the height and scale be compatible with the style of the house. The proposed project fully met these criteria. ***The MBAR abused its discretion in basing its denial on such a comparison and failed to properly apply the applicable guideline.***

f.

- The orientation of the residence had been previously accepted by the MBAR and is consistent with the topographical orientation of all other residences in the neighborhood. See APPP page 30-33 showing the identical north/south orientation of the other residences within the neighborhood. ***The MBAR's findings are not supported by the evidence presented.***
- The proposed residence is not within the Hillside District. The proposed residence has no impact on public views of the hillsides or ocean as viewed from any scenic corridor as shown on Figure 37, Visual Resources Map in the Montecito Community Plan EIR (92-EIR-03). ***The MBAR abused its discretion by applying this requirement to the proposed residence.***
- The MBAR erroneously found the height, roofline length, roof pitch not compatible with surrounding homes. The proposed residence is comparable to the surrounding homes as to height, etc. See APPP page 53-57. ***The decision is not supported by the evidence presented.***
- There is no requirement in the Montecito Architectural Guidelines that a proposed residence, which is not within the Hillside District, be compatible with the mountainous backdrop of the neighborhood. ***The MBAR abused its discretion denying the project based on such a requirement.***

g.

- The project's existing vegetation would substantially screen the structure from neighboring properties. Particularly when compared to the landscaping of the surrounding residences. The additional landscaping proposed only serves to augment the already considerable existing

vegetation. Notwithstanding, there is no required finding that the proposed residence be “adequately” screened, the additional proposed landscaping will screen the proposed residence from all other residences surrounding the property. ***The decision is not supported by the evidence presented and is an abuse of discretion.***

- The plain language of section “g” is inapplicable to the stated reason for denial under this section. Nowhere is it stated that landscaping is to be provided to screen the proposed project. ***This is a misapplication of the MAGs and the denial by the MBAR is an abuse of discretion.***

h.

- The MBAR has inappropriately applied Hillside District guidelines to the proposed residence. The denial reasoning cannot be found in the Guidelines’ ten required findings. ***The denial decision reasoning is an abuse of discretion.***
- The finished floor elevation of the proposed residence only reaches 6.5 feet above existing grade at one singular point, in the southwest corner of the house. All other points in the house substantially decrease in elevation above existing grade to a point where the house is set at or below existing grade. All the other homes in the surrounding area demonstrate the same level traversing of the lot’s sloping grade. See APPP page 33. ***The decision is not supported by the evidence presented.***
- As to Section III, Residential Architectural & Landscape Design Guidelines A.3.b., it requires a project’s neighborhood compatibility be evaluated as to the topography of the neighborhood and how other neighborhood structures are sited on the topography. The proposed residence is oriented in the same manner as virtually all the other nine residences within Cross Creek Ranch. The attached graph demonstrates this. See APPP pages 31-33. ***The decision is not supported by the evidence presented.***
- The proposed grading does not create visible scarring. The grading is consistent with that of the surrounding properties as to the quantity of cut and fill and grade change practices through the use of retaining walls. See APPP page 38. ***The denial based on this reasoning is an abuse of discretion.***
- The published minutes of the 7/14/2009 MBAR states that the “orientation of the footprint is acceptable.” ***In the face of their prior acceptance of the orientation of the residence, the denial on this basis is an abuse of discretion.***

j.

The citing of this code section is an unnecessary redundancy. The reasons for denial have all been cited previously and they are rebutted above.

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**CONCISE SUMMARY OF REASONS FOR APPEAL TO
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The Montecito Board of Architectural Review (MBAR) misused the Montecito Architectural Guidelines by making them mandatory requirements. The MBAR used inaccurate and incomplete County data when comparing the proposed project to other homes. The MBAR generally misapplied the Guidelines and the County data in determining its findings for denial of the proposed project.

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COUNTY OF SANTA BARBARA
CLERK OF THE
BOARD OF SUPERVISORS