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Chair Joseph Centeno, and  
Members of the Board of Supervisors  
County of Santa Barbara  
Santa Barbara, CA 93101

***Re: Grassini Project; Case No. 07CDH-00000-00015***

Dear Joseph Centeno and Members of the Board:

We represent Mr. and Mrs. Larry Grassini, the owners of the property located at 1775 Fernald Point Lane and the applicant in the matter before you. This application for a Coastal Development Permit for the Grassinis' proposed single family dwelling addition was approved by the Montecito Planning Commission on December 17, 2008. This followed conceptual approval of the project by the Montecito Board of Architectural Review on May 5, 2008. The Klink's appeal is currently scheduled for hearing at your meeting on June 23, 2009.

It should be telling that of all of the owners of neighboring properties given notice of the Grassinis' application, only the Klinks have expressed any objection to the project. The FAR guidelines themselves point out that in some neighborhoods, the recommended maximum house sizes in the guidelines may not reflect the appropriate level of development. In those cases, the determining factor is always compatibility with the neighborhood. The Montecito Planning Commission properly determined that the modest addition proposed by the Grassinis is indeed compatible with the neighborhood. There are no grounds raised by the Klinks in their appeal which warrant reversal of the Montecito Planning Commission's decision and denial of this project by the Board of Supervisors.

**Approval by the Montecito Planning Commission.**

The Montecito Planning Commission held two extensive hearings on this project. The original staff report was fully supportive of approval. The staff report submitted for the Commission's June 18, 2008 hearing recited the comments from the Montecito Board of Architectural Review at its own May 5, 2008 hearing. The Montecito Board of Architectural Review commented that the proposed addition was a "Nice project" and a "Good example of applicant, design team, and Montecito Board of Architectural Review working together."

Nevertheless, the Klinks objected to the project for the first time when it came before the Montecito Planning Commission for hearing on June 18, 2008 not only to the size of the addition, but also to what their attorney and architect termed zoning violations and encroachments by the Grassinis. The Grassinis' architect was present at the hearing without legal counsel and was unprepared to respond to the breadth of the Klink's primarily legal objections to the project. Although the Commission voted to request staff to prepare alternative findings to deny the project at that time, it did not take the final action to adopt findings supporting denial. The application was ultimately heard on its merits by the Montecito Planning Commission on December 17, 2008. In the meantime, the Grassinis made modifications to the project which were responsive to the comments made by members of the Commission at the first hearing.

The Grassinis had earlier eliminated the entire portion of the second story addition over the east wing of their house. The Grassinis now reduced the size of the proposed addition again by 106 square feet, to an amount less than half the size of their original proposal. Their residence even with the addition would now be in closer compliance with the FAR guidelines for Montecito than nearly all of its neighboring properties on Fernald Point Lane, including several projects recently approved by the Montecito Planning Commission. The project was pulled back from the string line on the ocean side of the property, thereby reducing any impact it has on the views of the neighbors and the public. Windows were either removed or relocated pursuant to the recommendations of the Klinks' own architect to meet the Klinks' privacy concerns. The Grassinis removed the temporary storage shed, patio bricks and plantings the Klinks had previously complained about as zoning violations or encroachments. The revised plans submitted by the Grassinis architect incorporated additional survey work to more accurately locate on the plans all of the improvements on the property.

All parties acknowledge that the tiny gardener's cottage at the very back of the Grassinis' property on the other side of the concrete flood control channel encroaches for a few feet onto the Klink's property. The legality of this encroachment is not in question. The Klinks' own predecessors in title formally recognized the legitimacy of the encroachment when they granted the prior owners of the Grassinis' property an easement for the encroachment in 1976 in a deed in the public record. The gardener's cottage was built in 1929. It is so old that it predates the adoption of zoning ordinances in Santa Barbara County and is therefore a legal nonconforming structure.

The Klinks' representatives complained however that the Grassinis had additionally placed a temporary storage shed on their property as well as a brick "patio", plants, and associated irrigation. The storage shed, the loose bricks, the plants, and the irrigation system have now all been removed by the Grassinis. There is no encroachment other than the legally recognized encroachment of the very end of the gardener's cottage. Whether or not these items removed by the Grassinis ever constituted an encroachment or a zoning violation, they simply no longer exist.

The Klinks' representatives also argued that the gardener's cottage can no longer be considered a legal nonconforming structure. The Klinks' lawyer and their architect both claimed that structural alterations were made to the cottage in 1994. This contradicted the somewhat obvious point that all work done on the cottage at approximately that time and since then had been both permitted and inspected by the Building and Safety Division for Santa Barbara County. The work would not have passed inspection by the Building and Safety Division had it exceeded the authority of the permits. The permits would not have been issued by the Building and Safety Division had the work rendered the structure illegal.

The Grassinis demonstrated that there were no zoning violations on their parcel which could provide grounds for denial of their application. As County Counsel informed the Commission at the hearing, the legality of the gardener's cottage is not at issue for the consideration of the Grassinis' application for the proposed second floor addition to their residence

Members of the Montecito Planning Commission saw from the comparison of the Grassinis' project with surrounding house that the Grassinis' house with the addition would exceed the FAR guidelines less than its neighbors and would cover a much smaller percentage of the Grassinis' lot. After viewing photographs of houses on either side of the Grassinis' house, the Montecito Planning Commission also saw that the Grassinis' house is set back from the beach much further than adjacent houses and is not nearly as visible to the public. The Montecito Planning Commission therefore concluded that the project was indeed compatible with the neighborhood.

The Klink's attorney made the same procedural objections raised in this appeal that the Montecito Planning Commission lacked authority to vote to approve the project at the December 17, 2008 hearing. County Counsel dismissed these objections and advised the Montecito Planning Commission that it would be perfectly appropriate to vote to approve the project. After carefully considering every conceivable issue relating to the Grassini's application, the Montecito Planning Commission approved it by a 3-1 vote in the only vote which counted.

**Compliance with Montecito Architectural Guidelines and Development Standards.**

The Residential Architectural & Landscape Design Guidelines for Montecito provide with respect to size, bulk and scale that:

“The floor area of a proposed house should be in scale with development on similar sized parcels in the immediate area.”

Although the guidelines then make reference to Table 1 indicating recommended maximum house net floor area for various lot sizes, the footnote to the Table makes it clear that these recommendations are not always determinative. The footnote states:

“Note: In certain neighborhoods, the recommended maximum size in Table 1 may not reflect the appropriate level of development. In those cases, neighborhood compatibility shall be the determining factor.”

The Grassinis’ architects, Appleton & Associates, have prepared updated FAR studies comparing the neighboring Fernald Point Lane properties to the Grassini residence with the proposed addition. These are drawn from Santa Barbara County records and show the size of neighboring residences, parcel sizes, and the percentage by which each residence exceeds the house square foot guideline. The studies also show the percentage for the overall ratio of each house to its lot. These FAR studies are attached to this letter as Exhibit A.

The FAR studies for the neighborhood, particularly for those other homes inside the gate on Fernald Point Lane, demonstrate that the Grassini residence with the proposed addition would indeed be compatible with the neighborhood. These are all relatively large homes on relatively small waterfront parcels in an exclusive neighborhood. As the FAR study for the homes inside the gate on Fernald Point Lane shows, more than half of the houses are 72% or more in excess of the maximum square foot recommendations, with the highest being 144% over the guidelines. The Grassinis’ project would be 46% over the square foot guidelines, significantly less than the neighborhood average of 67% over the guidelines.

Although some of these houses, like the Grassinis’, are older homes, some reflect recent approvals by Santa Barbara County. In 1997, the County approved a major addition to the Adizes residence at 1807 Fernald Point Lane inside the gate which increased its overall size by more than 40% and its height from 11 feet to 25 feet. As the FAR study shows, this property is 95% over the FAR guidelines. The Grassini house with the proposed addition would be roughly equivalent in size on a parcel two and a half times larger. In April of 2005, the Montecito Planning Commission approved an essentially new house for the Schwartz residence at 1727 Fernald Point Lane outside the gate (04CDH-00000-00007). The new Schwartz residence is larger than the Grassini project and exceeds the FAR guideline by 41%.

In June of 2006, the Klinks themselves, as the Grassinis' neighbors immediately to the east, obtained approval from the Montecito Planning Commission for an addition to the second floor and remodel of their existing home at 1787 Fernald Point Lane inside the gate (04CDH-00000-00042). Although the Klink's project has not yet been built, their home is already 72% in excess of the FAR guidelines, so the addition approved by the Montecito Planning Commission will bring it even further out of compliance with the maximum square foot recommendations. The Klinks also obtained approval to build an entirely new house on a small, unimproved lot at 1795 Fernald Point Lane separate from the lot occupied by their residence. This new home would be the only house in the neighborhood which would meet the FAR guidelines.

The FAR studies show that the Grassini residence with the proposed addition would occupy a much smaller percentage of its lot than any other house on Fernald Point Lane inside the gate. The neighborhood average for single family dwelling floor area to lot size is 29%. Seven of the ten properties inside the gate have an FAR in excess of 25%, while four exceed 35%. The Grassini house with the proposed addition would amount to only 12%. The floor area of the Grassini house with the proposed addition is clearly in scale with development on similar sized parcels in the immediate area. Although some of the much bigger estate sized parcels outside the gate on Fernald Point Lane include two and even three acres, the houses even on those properties still exceed the FAR guidelines on average by approximately the same amount as the Grassini project would.

The location of the Grassini residence on its lot should also be considered when determining neighborhood compatibility. The Grassinis' house sits much further back from the beachfront than any of the other residences in the immediate neighborhood. Nearly all of the other houses sit right on the beachfront and occupy their lots from sideline to sideline when viewed from the beach. Nearly all of the other residences include second and third stories across their beachfront facades. The Grassini home now only has a second story over its western wing, over only approximately a quarter of its southern façade. Even with the addition, the second story façade will not extend over the first floor eastern wing of the house.

The second floor addition was pulled back on the ocean side by an additional two feet from the string line in the revision to the Grassini project plans approved by the Montecito Planning Commission. This setback of the second story should prove to be more aesthetically pleasing and will minimize the impact on public views from the beach for the purposes of Coastal Land Use Policy 4-5. Even with the proposed addition, the Grassini residence will be less obtrusive to its neighbors and the public walking on the beach than the other houses in the neighborhood.

The size of the other houses inside the gate on Fernald Point Lane on relatively small beachfront parcels show that the recommended maximum house net floor area recommendations from the FAR guidelines do not necessarily reflect the appropriate

level of development in this neighborhood. Recent approvals of other projects in the neighborhood similarly concluded that exceeding the FAR guidelines may be appropriate for these beachfront houses on Fernald Point Lane. There is nothing about the proposed addition to the Grassini residence which would render it incompatible with similar surrounding properties, either inside or outside the gate. The Grassini project is compatible with the neighborhood.

**Neighbor's Privacy Concerns.**

The revised plans specifically address the privacy concerns which have been voiced by the owners of the neighboring parcel, the Klinks. The Klinks did object through their attorney at the June 18 Montecito Planning Commission hearing to the Grassinis' application in part over compliance with the FAR guidelines. However, in his letter to Mr. Grassini dated May 29, 2007 and copied by him at the time to the members of the Montecito Planning Commission, Mr. Klink stated that the size of the project was not objectionable and that his primary concern was with the impact of the proposed addition on his privacy, light and views. Mr. Klink wrote:

“...I would not oppose your project on the FAR grounds alone, as I feel that despite the current large main house, cabana, and two guest houses, that your parcel is nevertheless large enough to accommodate some additions.

My sole concern, as I mentioned, is to be able to work with you to determine possibilities for additions that, simply put, would not rob our 80 year-old mutual peaceful protection of privacy, light and views ...”

At the June 18<sup>th</sup> hearing, the Klink's architect, Vadim Hsu, made a presentation in which he criticized the placement of the two east facing bedroom windows on the proposed addition. Mr. Hsu argued that privacy would be an issue due to the potential view out the bedroom windows out to a future balcony on the Klink house if they built one. He declared that the elimination of the east facing bedroom windows on the Grassinis' proposed addition would be paramount. He suggested their replacement by a higher single window in the bedroom addition would be a viable solution to the privacy problem but would still let light into the bedroom.

Appleton & Associates have followed Mr. Hsu's recommendations exactly in the revision of the project plans approved by the Montecito Planning Commission. Their revision deletes both east facing windows from the bedroom wall of the addition. It substitutes in a smaller window six feet six inches above the bedroom floor. This will allow light in the room but is too high up to allow anyone in the room to look out onto the Klink's property. The only eye level windows on the east side of the addition now are located in the proposed sitting room. This room is set back even further from the Klink's property and is situated too far to the south to overlook their house or private portion of their yard. Since the proposed second floor addition is now set back so far from the

eastern edge of the house, any view down into the Klinks' property is obstructed by both the Grassinis' own first floor roof and by their existing chimney. Likewise, any view from the Klinks' second story windows towards the ocean over the Grassinis' house is already obstructed by the peaked roof over the single story part of their own house and will not be affected by the Grassinis' addition.

Coupled with the earlier complete elimination of the entire portion of the proposed addition of the eastern wing of the Grassinis' house, the removal of any eye level windows from the east face of the bedroom addition does everything reasonably possible to address the Klinks' privacy concerns short of eliminating the addition altogether. The Klinks have been in possession of copies of the Grassinis' revised plans since September or October of last year. They have communicated no specific requests or objections about the plans to the Grassinis or their representatives whatsoever since then. Whatever remains of the Klinks' privacy concerns does not constitute grounds for overturning the Montecito Planning Commission's approval of the Grassinis' application.

**Consistency of Approval of the Grassini Project With Past Treatment of the Klinks by Santa Barbara County Planning Authorities.**

The Klinks argue through their attorney that approval of the Grassini project would be inconsistent with the application of the FAR guidelines by Santa Barbara County for the Klinks' own projects. This argument is disingenuous and misleading.

First of all, as described above, the Klinks obtained approval for an addition and remodel to their existing house at 1787 Fernald Point Lane in June of 2006 (04CDH-00000-00042). Since their existing home is already 72% in excess of the FAR guidelines, the addition approved by the Montecito Planning Commission will obviously cause it to be even more out of compliance with the maximum square foot recommendations. The addition approved by the Montecito Planning Commission for the Grassinis will result in closer compliance with the FAR guidelines by the Grassinis than the Klinks approved addition.

Second, the Montecito Planning Commission approvals for the Klinks' adjacent lot at 1795 Fernald Point Lane addressed a unique set of circumstances not comparable to the other homes on Fernald Point Lane. At .3 acres, the 1795 Fernald Point Lane property is less than one third the size of the minimum lot prescribed for that area by the current zoning ordinance. It received a certificate of compliance as a legal lot only through a legal technicality as an historical artifact. Its creation by lot split or subdivision would never be allowed today. It has never been built upon before and has always been regarded as merely part of the Klinks' other property. Because of this, several neighbors objected to development of the lot when the Klinks sought approvals to build on it. Nevertheless, the Klinks were granted approval to build a separate 2,602 square foot house on this narrow, sliver of a lot with its beachfront access.

The neighbors and the Montecito real estate brokerage community still consider the Klinks' approved project for 1795 Fernald Point Lane to be functionally part of the Klinks' 1787 Fernald Point Lane property. In this very high price beachfront neighborhood, the house on 1795 Fernald Point Lane is simply worth more as an oversized guesthouse as part of an estate with the 1787 residence than it would be as the smallest stand alone property in the neighborhood. Since it is on a separate legal parcel, the house approved for the 1795 property is much larger than a guesthouse otherwise allowable under the zoning ordinance on a single parcel. In essence, the combination of 1787 and 1795 Fernald Point Lane is worth more than the sum of its individual parts if valued separately.

This is borne out by the Klinks' own effort to sell the two properties. They are currently listed together in the Coldwell Banker listing for 1787 and 1795 Fernald Point Lane properties. The listing price for the two properties is \$24,750,000.00. There is no separate listing price for the Klinks' 1787 Fernald Point Lane residence alone. In describing the adjunct 1795 Fernald Point Lane property, the advertisement on the Coldwell Banker website states: "Second parcel w/ Coastal Development Permit & plans for 4bd home & pool offers potential to build a complete compound."

The two Klink parcels together total 1.06 acres. The combination of the two is still less than 1.32 acre lot size of the Grassini parcel. The Klinks' existing house on 1787 Fernald Point Lane at 6,724 square feet not counting the addition approved for it in 2006 by the Montecito Planning Commission. When added to the 2,602 square feet approved for the 1795 Fernald Point Lane property, the "complete compound" offered for sale by the Klinks' for the unitary price of nearly \$25 million will total at least 9,326 square feet on an effectively one acre property. This would be more than 100% in excess of the FAR guidelines.

Whether or not "creep" past the FAR guidelines is a problem in Montecito, it is not a problem posed by the Grassini project. The proposed addition will result in a house significantly closer to compliance with the FAR guidelines than nearly all of its neighbors. If anyone is responsible for the "creep" complained of by the Klinks, is the Klinks themselves given the very advantageous approvals they have received in the past few years. The Klinks' complaint that they are the victims of inconsistent treatment by Santa Barbara County would not find agreement from many of their neighbors. It is ironic that the only neighbors objecting to the Grassinis' modest addition, the Klinks, are actively seeking to sell their home and move from the neighborhood.

### **Conclusion.**

The Grassinis have done exactly what the MBAR and the Klinks' architect asked for by removing the second floor bedroom windows and replacing them with a single

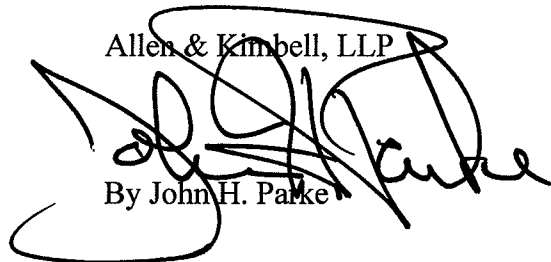


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high level window. They have significantly reduced the size of the proposed addition during the approval process. They have eliminated any question of any zoning violation. They have pulled the project further back from the string line to reduce the impact on neighbor and public views. Most importantly they have submitted a project which more closely complies with the FAR guidelines than almost every other house in their immediate vicinity inside the gate on Fernald Point Lane. The degree of compliance of the Grassini project with the FAR guidelines even compares favorably with the houses on the larger, estate sized properties outside the gate. The size, bulk and scale of the Grassini residence with the proposed addition is fully compatible with their unique beachfront neighborhood.

The Grassinis respectfully submit that the appeal of the approval of their project by the Montecito Planning Commission should be denied and that their application for their addition should now be approved by this Board.

Sincerely,

Allen & Kimbell, LLP  
  
By John H. Parke

Cc: Larry Grassini  
Appleton & Associates



**Neighborhood Comparison for Fernald Point Lane Outside Gate**

Address	Square Footage of Residence	Approx. Size of Parcel (Acres)	House S.F. Guideline	% over House S.F. Guideline	SFD FAR (%)
1639 Fernald Point Lane	4,043	0.5	3,050	33%	19%
1649 Fernald Point Lane	3,637	0.5	3,050	19%	17%
1651 Fernald Point Lane	2,140	0.7	3,550	0%	7%
1655 Fernald Point Lane	6,000	1.09	4,453	35%	13%
1661 Fernald Point Lane	3,438	0.4	2,800	23%	20%
1665 Fernald Point Lane	5,088	1	4,300	18%	12%
1685 Fernald Point Lane	7,309	2.54	6,918	6%	7%
1695 Fernald Point Lane	4,077	1.78	5,626	0%	5%
1705 Fernald Point Lane	2,724	0.57	3,225	0%	11%
1703 Fernald Point Lane	3,590	1.07	4,419	0%	8%
1711 Fernald Point Lane	5,772	1.45	5,065	14%	9%
1717 Fernald Point Lane	3,203	0.43	2,875	11%	17%
1727 Fernald Point Lane	7,250	1.5	5,150	41%	11%
1745 Fernald Point Lane	3,312	0.76	3,700	0%	10%
1755 Fernald Point Lane	9,954	2.3	6,510	53%	10%
1767 Fernald Point Lane	4,122	1	4,300	0%	9%
<b>Neighborhood Average % Over House S.F. Guideline</b>				<b>16%</b>	<b>11%</b>

**Neighborhood Comparison for Fernald Point Lane Inside Gate**

Fernald Point Gate					
1775 Fernald Point Lane	Grassini Residence - See below for data				
1787 Fernald Point Lane	6,267	0.74	3,650	72%	19%
1795 Fernald Point Lane	2,602	0.33	2,625	0%	18%
1801 Fernald Point Lane	8,371	0.65	3,425	144%	30%
1803 Fernald Point Lane	6,865	0.61	3,325	106%	26%
1807 Fernald Point Lane	6,082	0.53	3,125	95%	26%
1809 Fernald Point Lane	3,447	0.21	2,325	48%	38%
1811 Fernald Point Lane	2,860	0.19	2,275	26%	35%
1813 Fernald Point Lane	2,771	0.17	2,225	25%	37%
1815 Fernald Point Lane	4,743	0.3	2,550	86%	36%

<b>Neighborhood Average %</b>			<b>67%</b>	<b>29%</b>
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1775 Fernald Point Lane	7,089	1.32	4,844	46%	12%
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