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July 30, 2010

August 3, 2010
Planning and Development
Item No. 8

Via Email

Chair Janet Wolf, and
Members of the Board of Supervisors
123 East Anapamu Street
Santa Barbara, CA 93101

Re: Decker Appeal of Montecito Planning Commission Denial
09APL-00000-00032

2010 JUL 30 AM 10:50
COUNTY OF SANTA BARBARA
CLERK OF THE BOARD OF SUPERVISORS

Dear Chair Wolf and Members of the Board of Supervisors:

I write in support of virtually all of the neighbors of the proposed Decker project at 680 Stonehouse Lane to urge you to support *unanimous* decision of the Montecito Planning Commission and the *unanimous* decision of the Board of Architectural Review rejecting the proposed project as completely inconsistent with Montecito's applicable Guidelines.

Overview

In four lengthy hearings the MBAR *repeatedly* advised the applicant to make *major* modifications to comply with the Guidelines and to achieve an approval project. Amazingly, the applicant simply, stubbornly insisted that the MBAR was wrong, that he was right, and that the project should be approved without material change.

After the first hearing at which the MBAR told the applicant the plans were not acceptable, the applicant returned for a second full hearing with the *identical* set of plans. When the Chair of the MBAR told him again that the project was incompatible with the neighborhood and that the MBAR was ready to deny the project, the applicant requested the opportunity to erect story poles, believing they would demonstrate the project's compatibility. Far from assuaging concerns, the story poles only reinforced the MBAR's conclusions. It is fair to say that the members of the MBAR were appalled by the story poles. Yet the applicant remained intransigent, returning to the MBAR yet again to insist on virtually the same design.

On appeal to the Montecito Planning Commission ("MPC") applicant raised the same arguments the MBAR repeatedly rejected four times already. Not surprisingly, the MPC unanimously confirmed all of the findings of the MBAR and denied the appeal.

Now the applicant appeals to the Board of Supervisors yet again making all the arguments that were carefully considered in the five hearings below and soundly rejected.

The problems with the proposed design are not minor. In virtually all respects the MBAR and the MPC found the project un-approvable, concluding that it could not make five of the mandatory Design Review Findings. To quote just one of its findings, both the MBAR and the MPC found,

“J. The proposed project is inconsistent with the Montecito Architectural Guidelines and Development Standards. The project is 7.6%¹ above the recommended maximum floor area and is not in scale with surrounding development. The proposed residence is too tall, too wide, and too bulky, and is not consistent with the style that inspired the design. The finished floor elevation is too high. The height of the structure, the length of the roofline, and the large, high pitched roof are not compatible with surrounding houses or with the mountainous backdrop of the neighborhood. The residence is not oriented or designed to minimize grading or to make use of existing site topography.” (Emphasis added.)

In this letter we will first summarize why the MBAR and MPC rejected the project. Then we will explain why the appellant’s statistical arguments—his main arguments on appeal—are misleading at best, incorrect at worst, and in any event, beside the point.

The appeal has no merit and should be denied.

Massing, Size, Bulk, and Scale

The fundamental issue is not statistical, as the appellant thinks, but whether the massing, size, bulk and scale, when viewed from the ground level, are compatible with the existing neighborhood. The MBAR and MPC repeatedly told the applicant that the project was completely incompatible.

We will explain below that the appellant’s statistics on size are extremely misleading, and cannot be taken at face value. But it is important to first address what was most important to the MPC and the MBAR.

The Applicant’s FAR Argument The applicant’s first argument before the MPC was that the project was “only” 7.6% over the Guidelines and therefore should be approved. The MPC and the MBAR *unanimously* rejected the argument. It *is* true that there are homes in the area that are larger and smaller than the maximum recommended size of the current Guidelines. There is considerable variety. A few of the homes, especially those on very small lots, are over the Guidelines; but many are significantly under. As noted in the Staff Report, the median home is below the maximum recommended Guideline size.

¹ Note that this applicant figure, as discussed below, appears to be significantly in error and is in event extremely misleading.

The applicant seems to think that the MBAR applies the Guidelines in a rote fashion, simply enforcing numbers, calculating averages and medians, rejecting projects that are over the Guidelines, and approving them if they are under. But the MPC and the MBAR have never done that. Rather, the members make a judgment, based on their professional expertise, whether a proposed project fits well into the neighborhood, using the Guidelines as a measure of recommended community standards. It is a crucial distinction.

In this case, the MBAR found the project way too massive, *not* just because it was a specified numerical percentage over the size Guidelines, but because they concluded it *appeared* too massive, had an unnecessary and inappropriate impact on the neighbors, and used the site inappropriately.

In some cases the MBAR *does* approve houses that exceed the size Guidelines, even significantly so. But they do so only when the massing does not have an adverse, inappropriate, and unnecessary effect on the neighbors and neighborhood, and because it can't be seen due to terrain and natural vegetation. That is exactly what the Guidelines contemplate. Size in excess of the Guidelines does no "harm" if the size, bulk and scale do not impact the neighborhood. But the converse is also true: A project that technically meets the Guidelines may nevertheless be too massive. The goal is not numerical precision, but neighborhood compatibility. The applicant's cynical approach to manipulating the statistics does not address the project's visual design incompatibility.

The Montecito Guidelines provide that for a project that exceeds the maximum recommended size—as this one admittedly does—the burden is on the applicant to demonstrate compatibility. The applicant failed to do so.

The claims by the applicant that the neighbors' views and privacy are unaffected were repeatedly considered and rejected by the MBAR. The letters submitted by the neighbors summarize their neighbors' concerns very well. The project would significantly affect the views enjoyed by the neighbors to the south, Kathy and Les Draine at 2224 East Valley Road, and will affect the views, air and light, and privacy of the neighbors to the east, Shirley and Bobby Purkait at 625 Stonehouse Lane. The proposed project uses the lot inappropriately and unnecessarily affects the neighbors. As the MBAR has already stated, the heights are too great, the roof mass is excessive and it is too pitched, and the house is not properly sited to the existing grade.

The Applicant's Argument Comparing the Project to Its Neighbors. The appellant's second argument before the MPC was that the proposed project should be allowed because it is comparable to the house at 660 Stonehouse Lane.

The applicant also owned 660 Stonehouse Lane, drew the plans for that project, and sold the lot with the plans. It is correct that that house is significantly over the Guidelines (19.9% over). But it is not a valid comparison to the lot in question. The 660 Stonehouse Lane house, which would in any event not be approved today, is located on a long flag lot, at the extreme northwest of the other homes on Stonehouse Lane, far removed from any of the other homes on Stonehouse Lane and

visually separate. As a result, though it is oversized, it does not have a materially adverse visual impact on its Stonehouse Lane neighbors. Yet even that house has proved to be quite controversial because the vegetation and orchard that screened the house from its Romero Canyon neighbors to the west has all been removed, and the residence now impacts those neighbors adversely.

In contrast to the 660 Stonehouse Lane house, the proposed project would be right in the middle of other homes on Stonehouse Lane and East Valley Road. It would dramatically block views from the Draines' home toward the mountains—the prized view from their home—and would dramatically and unnecessarily block the views, light, air and space toward the west from the Purkaits' home. It is simply an inappropriate design for this lot.

It is odd that the appellant argued before the MPC that the MBAR had not asked for adequate information to assess the bulk of the proposed project. Besides studying the plans, the MBAR did a special site visit to view very complete story poles erected by the applicant that did show the size, bulk and scale of the proposed residence. They were appalled.

Abuse of Discretion Applying Guidelines. Appellant's third argument was that the MBAR abused its discretion by failing to follow the Guidelines that require comparison to existing homes on similar sized lots. As staff notes, however, the MBAR routinely compares the size of proposed projects to surrounding properties, and determined in this case that the applicant failed to demonstrate that the project cannot be viewed by surrounding properties. In making his argument, the appellant quotes only part of the Guidelines, but does not quote the Guideline's governing standard that an over-Guideline project can only be approved if the applicant demonstrates "that the project cannot be viewed by surrounding property owners due to siting or that its spatial volume (mass, bulk and scale) when taken together with its lot size, setbacks and landscaping does not make it incompatible with similar surrounding properties." That standard cannot be met. The house would be very large, very intrusive, and would have a major impact on its neighbors.

Abuse of Discretion Regarding Style. Appellant's fourth argument was that the MBAR abused its discretion in commenting that the project is not true to the style that inspired its design. The only reason the MBAR made this comment was to respond to the applicant's argument that the project, with its very high, steep roof that so impacts the neighbors, *had* to have that design to match the style that inspired it. The MBAR did not reject the *project* because the design does not match its inspiration; it rejected appellants *argument* that the design had to be this way to match its inspiration. If there is any area in which the MBAR should have discretion, it is evaluation of aesthetic and architectural aspects. In fact, they were highly critical of the aesthetics, the high, relatively unbroken ridge line, etc. The appellant simply wants you to ignore the MBAR's judgment.

The MPC considered all of the appellant's arguments rejected them, and made the same findings for denial that had led the MBAR to deny the project. The *unanimous* decision of the MPC to reject the proposed project was completely correct and should be affirmed.

The Applicant's Statistical Arguments

We expect that the applicant's response will be statistical—that he will attempt to persuade you with numbers that the project should be approved, because that is the approach he has used in all the hearings below.

We do not think this case (or any case) should be evaluated based simply on numbers. The applicant's lot is situated squarely among other Stonehouse Lane and East Valley Road homes, each of which respects its neighbors and has been carefully sited and designed so that each home can enjoy views and privacy that are the hallmark of Montecito, without adversely affecting its neighbors. Indeed, several of the larger houses were deliberately designed to work together so that they do no impact one another.

By contrast, the applicant proposes a very large, two-story home squarely in the middle of adjacent smaller lots, with an extremely high, pitched roof, that is completely inappropriate for the lot in question. It is oriented in a way that fights the grade, places the front door against the private living spaces of its immediate neighbors, requires a high retaining wall at the southeast corner and a finished floor elevation at that point 6.5' above natural grade, has a high retaining wall to support a long driveway against the neighbor's property to the east, has its garage obtrusively directly facing Stonehouse Lane, and, because of its mass and bulk, unnecessarily blocks views, air and light from the neighboring properties and impacts the privacy of their backyard entertainment and family areas. The MBAR's criticisms were harsh.

Because the applicant relies so heavily on a numerical analysis, it is unfortunately necessary to look carefully at his calculations. His calculations are both misleading and simply incorrect.

To avoid a too-lengthy discussion in the body of this letter, we attach a detailed Appendix that reviews all of the applicant's figures and clearly explains the distortions and apparent errors. The Appendix establishes these three points regarding the applicant's statistics:

Data Manipulation. The most serious problem with the applicant's arguments below is that he brazenly and cynically manipulates the size Guidelines formulas to try to argue that the house is not oversized, without actually making meaningful changes to the exterior massing.

At the first two MBAR hearings, the applicant conceded that the proposed house was 7,161 sq. ft. in size and 19% over the maximum recommended size, and he told the neighbors that he had no intention of changing it. When the MBAR repeatedly told the applicant that the size, bulk, scale and massing were too great and had to be significantly reduced, he simply altered the plans to show two second floor bedrooms and the connecting hallway as unfinished "attic," so that their square footage would not count in the size calculation. Technically, that paper change lowered the percentage by which the project exceeded the size Guidelines. But since the "change" was primarily to leave rooms

unfinished, without significantly altering the exterior, the change did not materially affect the massing, size, bulk and scale of the project.

On this appeal the applicant may propose leaving additional upstairs rooms unfinished, arguing that the house which was admittedly over the size Guidelines is now under the Guidelines, even though there are no changes to the outside. But playing games with the numbers will not change the reality.

As shown in the Appendix, if we add back in the square footage of the bedrooms and hallways labeled as “attic” before the MPC, but whose mass, bulk and scale still essentially remain in the plan, and include the additional square footage before the MPC, the project would be 22.9% over the Guidelines.

The applicant’s primary arguments on appeal, his statistical ones, are based on inaccurate figures, and are misleading and disingenuous. But even if they were accurate, they are beside the point.

Square Footage. The figures the applicant used for the square footage of the project in the hearing before the MPC are inconsistent with the statistics on the architectural plans, which reflect a project size of 6,779 sq. ft. As set forth in the architectural plan data block reviewed by the MBAR, the project would be not 7.6% over, but 12.6% over the Guidelines’ maximum recommended size.

Guideline Size Comparison. In his table comparing the size of neighboring homes, the applicant ignored the Montecito Guidelines maximum recommended size standard and definition of “net lot area,” and instead uses FARs. The only proper way to compare neighborhood homes is to use the Guideline definition of “net lot area,” the Guidelines maximum recommended size for each lot, and then summarize the extent to which each neighboring home is greater than or less than the maximum recommended size. The resulting figures differ from the applicant’s figures comparing the size of neighborhood homes.

Orientation, Height, Landscaping, Lot Use

The foregoing comments address—and we think dispose of—the applicant’s principal arguments to the MPC. But he also took issue with each of the remaining findings of the MBAR. The MBAR found the project’s height, roofline length, and roof pitch not compatible with surrounding homes. The applicant disagreed. The MBAR found the project incompatible with the surrounding landscape and setting. The applicant disagreed. The MBAR concluded that the proposed vegetation could not adequately screen the project from neighbors. The applicant disagreed. The MBAR rejected the basic configuration of the project, concluding that it was fighting the site, resulting in a finished floor elevation 6.5’ above existing grade at the southwest (closest to the neighbors), an 118-foot long retaining wall ranging in height from 4 to seven feet to support the long driveway along the east side, a raised motor court, and unnecessary grading. The applicant just

disagreed, arguing that the finished floor “only reaches 6.5 feet above existing grade at one singular point,” and ignoring the other MBAR objections.

If the MBAR or the MPC had thought that small adjustments could bring the design into compliance, it would have told the applicant how to make such modifications. But the MBAR and the MPC found the project completely inappropriate, and incompatible in numerable respects. The problems are not minor, but major.

The appellant stubbornly insists that the proposed design is appropriate. But nobody else does. It would be one thing if the MPC’s and the MBAR’s decisions were hasty, if somehow the applicant had not had an adequate opportunity to present his arguments to the MBAR. But the opposite is the case. The MBAR conducted four lengthy hearings plus a story pole visit. At the conclusion of every meeting they gave the applicant direction that he had to make major changes to comply with the Guidelines and achieve neighborhood compatibility. He applicant remains intransigent.


Conclusion

Not a single member of the MPC or the MBAR thought the project could be approved. The problems are numerous and fundamental to the entire design. The Findings adopted by the MPC and the MBAR clearly articulate the numerous grounds for denial. The Staff Report analyzes each of the appellant’s counter arguments and rejects them.

The decisions of the MPC and the MBAR rejecting the project are correct. It is important that you uphold the MPC’s decision.

We respectfully ask that you affirm the *unanimous* decisions of the MPC and the MBAR and reject the appeal.

Sincerely,



Derek A. Westen
Attorney at Law

cc. Shirley and Bobby Purkait
Kathy and Les Draine

APPENDIX
ANALYSIS OF APPLICANT DATA AND STATISTICS

Data Manipulation

Although the corrected calculations discussed above technically follow the Guidelines, they reflect the applicant's disingenuous manipulation of the figures. For the first two MBAR meetings, the applicant conceded that the proposed project would have a size of 7,161 sq. feet and that the project was 19% over the size Guidelines. The MBAR repeatedly told the applicant that the size, bulk, scale and massing were too great and had to be significantly reduced.

For the third meeting the applicant finally made a change. He altered the plans to show two second floor bedrooms and the connecting hallway as unfinished "attic," so that their area (about 695 sq. ft.) would not count in the size calculation. Technically, that lowered the percentage by which the project exceeded the size Guidelines from 19% to 12.7%. But since the "change" was primarily to leave rooms unfinished, without significantly altering the exterior, the change did not materially affect the massing, size, bulk and scale of the project.¹

If we add back in the square footage of the bedrooms and hallways now labeled as "attic," but whose mass bulk and scale still essentially remain in the plan, the project would be 22.9% over the Guidelines.²

Address	Acres Actual	Square footage	Guidelines	Percent Over/Under
2222 EVR	0.87	4,935	3,965	24.5%
2224 EVR	0.80	4,000	3,795	5.4%
610 SHL	1.36	4,447	4,912	9.8%
615 SHL	1.15	3,780	4,555	17.3%
620 SHL	1.30	5,507	4,810	14.5%
625 SHL	1.09	4,002	4,453	10.1%
630 SHL	1.67	5,645	5,439	3.8%
640 SHL	1.51	4,500	5,167	12.9%
660 SHL	2.04	7,278	6,068	19.9%
680 SHL	2.01	6,779	6,017	12.7%
Calculation if unfinished bedrooms and hallway are included:				
680 SHL	2.01	7,394	6,017	22.9%

¹ The revised design did lower a portion of the roof line on the north portion of the house, which is an improvement. But the change is not terribly significant, and that portion of the house, facing Stonehouse Lane, has the least impact on the neighbors.

² The architectural plan data blocks show that the applicant not only marked some areas "attic," to lower the size statistics, but increased some other sizes. If the bedroom space labeled "attic" is added back in, the resulting house is somewhat -+larger than the first plan, raising the overage from 19% to 22.9%.

The average of all the comparison homes is within 2 percent of the maximum recommended size.

Correct Square Footage

The Montecito Guidelines for maximum recommended size utilize a project’s first and second floor square footage, plus the amount by which the garage exceeds 800 sq. ft. The applicant’s first set of submitted plans, reviewed at the first two MBAR hearings, were for a project of 7,161 sq. ft., which was admittedly 19% over the Guidelines. The table below derives those Guideline figures, which the applicant himself used, directly from the data block on the architectural plans, a copy of which is attached hereto.

For the third and fourth MBAR hearings, the applicant submitted modified plans, stating that the revised project’s size had been reduced to 6,466 sq. ft., and concluding that it is now “only” 7.6% over the maximum recommended size.

But the 6,466 square footage figure does not match the data block on the submitted architectural plans reviewed by the MBAR, and therefore appears incorrect on its face. As shown by the attached photos of the data block from the second set of plan, the square footage of the first and second floors, plus the amount by which the garage exceeds 800 sq. ft., is 6,779 sq. ft. We have seen no explanation for the lower figure the applicant uses.³

The following table uses the data from the applicant’s own architectural plan data blocks to derive the correct Guideline square footage for the proposed project.

	Former Plan (sq. ft)	Current Plan (sq. ft)
First Floor	4,987	5,157
Second Floor	1,565	950
House	6,552	6,107
Garage	1,409	1472
Guest House		
Guideline Square Footage		
House	6,552	6,107
Excess Garage	609	672
Guideline	7,161	6,779

³ On October 13, 2009, we requested a copy of the PowerPoint presentation the applicant submitted to the Montecito Association and presumably to the Montecito Planning Commissioners; but he has not provided it to us, so we cannot be certain what figures he is presenting to the Commission.

In the calculations in this Appendix, we use the figure of 6,779 sq. ft.

Guideline Calculations

In addition to using accurate figures, the calculation by which the project and its neighbors exceed or are below the Guidelines must be computed correctly. The appellant calculates FARs and uses that term. But the Guidelines do not use FARs at all, instead they specify a “maximum recommended size” for each parcel. Calculating floor area ratios of neighboring lots, as the appellant does, compares lot coverage, but completely ignores the standard of the Guidelines. The only correct way to apply the Guidelines is to calculate the percentage by which the project exceeds the maximum recommended size. The resulting percentage is *not* the ratio of project size to lot size (*i.e.*, not an FAR), but the percentage by which the project exceeds the maximum recommended size. If a comparison to neighboring parcels is presented, the calculation must be done in the same manner.

There is a second problem that in the hearings before the MBAR the applicant did follow the Guideline definition of “net lot area” for his own lot, but used his own definition of “net lot area” for the neighboring lots, not counting the lot area within private roads and open space. By not following the Guidelines and mixing definitions, the applicant distorted the calculation of the neighbors’ FARs by making their lot size smaller than the figure specified by the Guidelines. Because he has not shared his current calculations with us, we do not know if the applicant is still following this incorrect method. But in the table below we use the figures for parcel size from the County Assessor’s official records, and follow the Guideline definition.

As shown in the summary table below, using 6,779 sq. ft. for the project size and correctly calculating the percentage by which the proposed projects and existing homes exceed or are below the Guidelines, the project is not 7.6% over the Guidelines, as the applicant states, but 12.7% over.

DATA BLOCKS FROM SUBMITTED PLANS

First Submitted Plan:

1. **Residence**
 2. **Accessory Structures**

Residence			
1st Floor	4987	sf	
2nd Floor	1560	sf	
Total	6552	sf	

Accessory Structures			
Garage	1409	sf	x Attached
Guesthouse	738	sf	x Detached
Total	2147	sf	

Formulas:

1.	C = A,	6552	sf	Residence Total
2.	D = B,	2147	sf	Accessory Structure Total

iii) **Total Guideline Development Area (Existing + Now)**
 1. **Residence Total + Garage (when garage is attached and >800 sf) = A**

Current Submitted Plan:

1. **Residence**
 2. **Accessory Structures**

Residence			
1st Floor	6167	sf	
2nd Floor	2314	sf	
Total	8481	sf	

Accessory Structures			
Garage	1677	sf	x Attached
Guesthouse	895	sf	x Detached
Total	2572	sf	

Formulas:

1.	C = A,	6167	sf	Residence Total (excluding basement)
2.	D = B,	2572	sf	Accessory Structure Total

iv) **Proposed Baseflow**
 1. **Import 300 cy**
 2. **Export 0 cy**

