



PLANNING & DEVELOPMENT
APPEAL FORM

SITE ADDRESS: 755 Sand Point Road, Carpinteria

ASSESSOR PARCEL NUMBER: 005-460-043

Are there previous permits/applications? no yes numbers: See County permit history
(include permit# & lot # if tract)

Are there previous environmental (CEQA) documents? no yes numbers: _____

2018 APR 16 PM 4:01
COUNTY OF SANTA BARBARA
PLANNING & DEVELOPMENT

1. Appellant: Raemer Crest, LLC and Brilliant Projects, LLC Phone: _____ FAX: _____

Mailing Address: See Attorney, below, for contact information E-mail: _____
Street City State Zip

2. Owner: Janice Feldman Phone: 805-566-0372 FAX: _____

Mailing Address: 755 Sand Point Road, Carpinteria, CA, 93013 E-mail: _____
Street City State Zip

3. Agent: (Attorney for Applicant/Owner) Howard Weinberg Phone: (310) 363-7775 FAX: _____

Mailing Address: 2550 Via Tejon, Suite 2B, Palos Verdes, CA 90274 E-mail: _____
Street City State Zip

4. Attorney: Marc Chytilo, Law Office of Marc Chytilo, APC Phone: 805-682-0585 FAX: _____

Mailing Address: P.O. Box 92233, Santa Barbara, CA, 93190 E-mail marc@lomcsb.com
Street City State Zip

18APL-00000-00011
Case / FELDMAN DEMO/REBUILD & GARAGE APPEA
Super / 755 SAND POINT RD
Appli / 4/16/18
Proje / CARPINTERIA
Zoning / _____
005-460-043

COUNTY USE ONLY

Companion Case Number: _____
Submittal Date: _____
Receipt Number: _____
Accepted for Processing _____
Comp. Plan Designation _____

COUNTY OF SANTA BARBARA APPEAL TO THE:

BOARD OF SUPERVISORS

PLANNING COMMISSION: COUNTY MONTECITO

RE: Project Title Feldman New Residence

Case No. 13CDH-00000-00001, 13MOD-00000-00001, 15NGD-00000-00006

Date of Action April 4, 2018

I hereby appeal the approval approval w/conditions denial of the:

Board of Architectural Review – Which Board? _____

Coastal Development Permit decision

Land Use Permit decision

Planning Commission decision – Which Commission? County _____

Planning & Development Director decision

Zoning Administrator decision

Is the appellant the applicant or an aggrieved party?

Applicant

Aggrieved party – if you are not the applicant, provide an explanation of how you are and "aggrieved party" as defined on page two of this appeal form:

Representatives for Appellants appeared and testified at the April 4, 2018 Planning Commission

hearing and raised objections regarding the Project including the legal adequacy of the MND.

Reason of grounds for the appeal – Write the reason for the appeal below or submit 8 copies of your appeal letter that addresses the appeal requirements listed on page two of this appeal form:

- A clear, complete and concise statement of the reasons why the decision or determination is inconsistent with the provisions and purposes of the County’s Zoning Ordinances or other applicable law; and
- Grounds shall be specifically stated if it is claimed that there was error or abuse of discretion, or lack of a fair and impartial hearing, or that the decision is not supported by the evidence presented for consideration, or that there is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.

See attached letter. _____

Specific conditions imposed which I wish to appeal are (if applicable):

- a. _____
- b. _____
- c. _____
- d. _____

Please include any other information you feel is relevant to this application.

CERTIFICATION OF ACCURACY AND COMPLETENESS Signatures must be completed for each line. If one or more of the parties are the same, please re-sign the applicable line.

Applicant's signature authorizes County staff to enter the property described above for the purposes of inspection.

I hereby declare under penalty of perjury that the information contained in this application and all attached materials are correct, true and complete. I acknowledge and agree that the County of Santa Barbara is relying on the accuracy of this information and my representations in order to process this application and that any permits issued by the County may be rescinded if it is determined that the information and materials submitted are not true and correct. I further acknowledge that I may be liable for any costs associated with rescission of such permits.

Marc Chytilo, Law Office of Marc Chytilo, APC  April 16, 2018

Print name and sign - Firm Date

Marc Chytilo, Law Office of Marc Chytilo, APC April 16, 2018

Print name and sign - Preparer of this form Date

Print name and sign - Applicant Date

Print name and sign - Agent Date

Print name and sign - Landowner Date

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LAW OFFICE OF MARC CHYTILO, APC

ENVIRONMENTAL LAW

April 16, 2018

Supervisor Das Williams, Chair
Santa Barbara County Board of Supervisors
105 E. Anapamu Street
Santa Barbara, California 93101

RE: Appeal of Planning Commission's Approval of the Feldman New Residence and Mitigated Negative Declaration (Case Nos. 13CDH-00000-00001, 15NGD-00000-00006, 13MOD-00000-00001); 755 Sand Point Road, Carpinteria

Chair Williams and Supervisors:

This office represents Raemer Crest, LLC and Brilliant Projects, LLC, owners of lands on Sand Point Road (Appellants) in this appeal of the Planning Commission's approval of the Feldman New Residence located on a sand spit adjacent to Carpinteria Slough at 755 Sand Point Road.

SUMMARY OF APPEAL

This appeal seeks the Board's *de novo* review of the Planning Commission's approval of a Modification from height regulations and a Coastal Development Permit (CDP) to allow the demolition of an existing 1,774 square foot home at 755 Sand Point Road and the construction of a 5,995 square foot house and 5,800 square foot lower level, attached 1,335 square foot garage, and 486 square foot pool and hot tub, widening of the access driveway to 20 feet, new fire hydrant, and 350 cubic yards of cut (Project), and the Mitigated Negative Declaration (MND) adopted for the Project.

755 Sand Point Road is sited on a peninsula of land facing the Pacific Ocean on the south side and the Carpinteria Slough/Salt Marsh, aka El Estero, to the north. The current ground elevation is approximately 6' above mean sea level (MSL), and the house is proposed to be elevated with a ground floor elevation of approximately 16.8 feet MSL to limit exposure to projected increasing sea levels and other coastal hazards associated with its location.

This appeal raises objections to the Project's approval including its inconsistency with Coastal Policies, the Coastal Act and the Coastal Zoning Ordinance, and the MND's failure to comply with the California Environmental Quality Act (CEQA). The primary substantive issues concern coastal hazards, biological resources and visual resources, although other issues, including cultural, historical, access, and land use are also implicated. The Project is proposed on a lot that has benefitted from an unpermitted rock revetment installed in 1983 to protect this lot and others on Sand Point Road from wave and storm surge from the Pacific Ocean. The Coastal Commission has issued

a Notice of Violation that is outstanding and applies specifically to 755 Sand Point Road, among others, and bears directly on the adequacy of the MND and Approval Findings.

This Appeal seeks rejection of the height modification, denial of the CDP, direction to the applicant to reduce the Project's size and height and to prepare an environmental document in compliance with CEQA for any future revised project.

APPEAL ISSUES

The following issues will be presented in this appeal. Additional evidence will be presented in advance of the hearing. Other issues may be added.

1. CEQA Issues

The Planning Commission adopted an MND for the Project. CEQA only allows Project approval with an MND if feasible and specific mitigation measures are so clearly effective that no substantial evidence can be produced that the revised project may still have significant environmental effects.

The Project is located in an extremely vulnerable and hazardous location on a sandspit surrounded by water on three sides, near or over sensitive biological and cultural resources and in a prominent location that is visible to tens of thousands of daily travelers on Highway 101, Amtrak's Pacific Surfliner and from a soon-to-be constructed bikepath on the northern margin of the Carpinteria Salt Marsh. Here, substantial evidence, including comments by Coastal Commission staff, supports a fair argument that the Project may result in numerous significant environmental impacts, and accordingly CEQA requires that an Environmental Impact Report (EIR) be prepared (Pub. Res. Code § 21080 (c-d)).

Coastal Hazards. The Project is located on a site that will be permanently inundated due to projected sea level rise during its expected lifetime based on current projections. The Project's location, and the design features and mitigation measures required by virtue of that location, will cause it to result in significant adverse impacts to the environmental and natural resources of the area. Proposed and existing infrastructure required for the Project including the access road, sewer line, and electrical service will be at or beneath the sea's surface during the Project's expected life based on projected sea level rise. Significantly, the Project will be subjected to storm surges, large waves, king tides, as well as fresh water flooding from flows into and out of the Carpinteria Salt Marsh. Immersion of the sewer line can cause sewage discharge, as will rupture at any point in the line during storm events. Lower portions of the house include storage areas exposed to large waves and storm surges that will discharge debris and jetsam to surrounding waters, posing structural hazards to other structures, impeding first responders and jeopardizing the environmentally sensitive habitat areas in the Carpinteria Salt Marsh and surrounding area. The entirety of the lot will eventually become part of the public trust and the structure will have to be removed and the site restored. The MND's analysis

of this issue is inadequate, and the Wave Run-Up Study (Streamline West, October 2017) fails to analyze the potential for storm surges in addition to sea level rise (SLR) and their potential impacts. Mitigation including MM-Geo-01 is both inadequate to reduce coastal hazard related impacts below significant levels, but as discussed in the Coastal Commission's MND comments, the design including break-away walls itself may cause potentially significant impacts to the environment including the sensitive resources of Carpinteria Slough. The inadequate Wave Run-Up Study and coastal hazard impact analysis and mitigation also results in potentially significant impacts due to conflicts with applicable policies including CLUP Policy 3-1, 3-8, and Coastal Act § 30253 (incorporated into the County's LCP via Policy 1-1). (*See* Guidelines Appendix G § IX (b) (*see Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 930.) This substantial evidence supports a fair argument of potentially significant coastal hazard and land use impacts.

Biological Resources. The Project intrudes into the 100-foot buffer required to protect an environmentally sensitive onsite wetland. While a code exemption may make this permissible, that does not support a conclusion the Project will cause no significant impacts to environmentally sensitive habitat areas. Coastal Commission staff identified potentially significant impacts to biological resources resulting from this intrusion, and requested that the footprint of the residence be scaled back to avoid impacts to the environmentally sensitive on-site wetland and achieve consistency with CLUP Policies 2-11, 3-19 and 9-9 and sections 30230, 30231, and 30240 of the Coastal Act. The Project analyzed in the MND and approved by the Planning Commission continues to intrude into this sensitive wetland area, resulting in numerous potentially significant impacts.

Cultural Resources. The Project is in a known sensitive cultural area. Pylon installation and Project grading will impact areas likely containing cultural resources. The MND does not adequately identify, analyze, or mitigate these potentially significant cultural resource impacts.

Visual Resources. The Project, including the Modification to allow portions of the dwelling's roof ridges and peaks to extend beyond the maximum height allowed by the CZO of 28 feet, and will create a substantial unnatural visual feature within a view corridor that fits the definition of a protected View Corridor Overlay District. § 35-96. The Project's design includes development across the entirety of the lot's frontage from setback to setback, is visually prominent and pronounced. The Project will block views of the Ocean and the horizon from Highway 101, the Amtrak Surfliner, and the new coastal bike path connecting Santa Claus Lane. Conflicts with applicable visual policies also result from the new residence's size, height, and view obstruction including CLUP Policy 4-4 and Coastal Act section 30251. The MND does not adequately identify, analyze, avoid or mitigate these potentially significant visual impacts.

Cumulative Impacts. The Project's impacts, combined with the impacts of other known and reasonably foreseeable projects (including but not limited to projects proposed at 501, 645 and 711 Sand Point Road, the removal of the 1983 seawall and modifications to the Casa Blanca seawall, the widening of Highway 101, circulation and recreational improvements at Santa Claus Lane, and the bike path from Santa Claus Lane to Carpinteria Avenue), will have cumulative impacts to visual,

biological, cultural and coastal resources and cause cumulative increased coastal hazard risks. These potentially significant cumulative impacts are not adequately identified, analyzed, or mitigated in the MND.

Under these circumstances, CEQA requires that an EIR be prepared, which would necessarily include an alternatives analysis including a reduced size alternative that would both shrink the Project's footprint to avoid impacts to the on-site wetlands and Carpinteria Salt Marsh, and lower the height and mass to preserve scenic coastal views to avoid significant Project impacts, among other things.

2. Coastal Issues

The Project fails to accord with a number of Coastal Act policies and requirements, fails to conform to the Local Coastal Plan including the CLUP policies referenced above and in the CCC comment letters, conflicts with requirements of the Coastal Zoning Ordinance and ignores sea level rise guidance and policy. Located on lands that will be submerged with rising sea levels and battered by coastal storms, the Project approval ignored the Public Trust Doctrine and eventual reversion of the project site to Public Trust status. The Project approval ignored the existence of an unpermitted 1983 rock revetment seawall that has unnaturally impeded littoral sand movement and damaged coastal resources in violation of the Coastal Act. The Project relies on the existence of another rock revetment seawall allegedly installed in 1964, prior to the Coastal Act. No Vesting Determination has been submitted establishing the extent of the original 1964 seawall, and there is no evidence regarding post-1972 modifications, maintenance and expansions to this seawall. See 14 Cal. Code of Regs. § 13200-13208; Public Resources Code § 30608.

The Project ignores the 2015 Coastal Commission Sea Level Rise Policy Guidance and other authority regulating development in flood-prone areas. A robust analysis of future projected changes to the Project's setting is required. The Project is oversized for its vulnerable location and must be redesigned as a smaller structure that suits the site constraints. Expectations associated with such a large structure are incompatible with the realities of sea level rise and this constrained site. Principles of adaptation and resiliency require reduction in the size and permanency of new development located in areas that will inevitably be flooded and title will be eventually relinquished to the state.

An alternatives analysis is required by coastal authority, including a reduced size alternative Project, to avoid conflicts with coastal policies and requirements.

3. Local Planning and zoning ordinance issues

The Coastal Zoning Ordinance allows approval of a CDP only where the subject property and development on the property are in compliance with "all laws, rules, and regulations" (*see Findings, p. A-6*). The project parcel has been identified as the site of an illegal, unpermitted seawall that has had significant adverse impacts on coastal resources for over three decades. The seawall falls within the Coastal Act's broad definition of "development" and it was placed on the sandy beach beyond the

allowable setback without the benefit of a CDP. A Notice of Violation has been issued by the Coastal Commission, however the violation remains unabated and there are no approved plans or permits for its remedy. The Project may not be considered for approval until such time as a CDP is issued for the seawall removal, the seawall is removed and thereby the violation is abated and the property becomes into compliance with "all laws and regulations," and all fees and penalties are paid.

The Mitigation Measures and Conditions of Approval are inadequate to mitigate the Project's impacts and assure conformity with applicable land use policy requirements and regulatory requirements. The Findings are inadequate to support approval of the Project.

For all of the above reasons, we respectfully request that the Board of Supervisors approve this appeal, deny the Project, direct the preparation of an EIR and direct the Applicant to make revisions to the Project to conform to the site's numerous and substantial constraints.

Respectfully Submitted,

LAW OFFICE OF MARC CHYTILO, APC

A handwritten signature in black ink, appearing to read 'Marc Chytilo', is written over a horizontal line.

By: Marc Chytilo
For Appellants Raemer Crest, LLC and Brilliant
Projects, LLC