



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: P&D
Department No.: 053
For Agenda Of: October 20, 2015
Placement: Set Hearing on 10/20/15
for 11/3/15
Estimated Time: 1 hour on 11/3/15
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Glenn Russell, Ph.D. Director, Planning and Development
Director (805) 568-2085
Contact Info: Alice McCurdy, Deputy Director, Development Review
(805) 568-2518
SUBJECT: County Planning Commission Recommendation for Denial of the O'Neil Residence,
Variance, General Plan Amendment and Rezone, Case No's: 08CDH-00000-00040
12VAR-00000-00012, 08GPA-00000-00007, and 08RZN-00000-00006

County Counsel Concurrence

As to form: Yes

Other Concurrence: N/A

As to form: No

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

On October 20, 2015, set a hearing for November 3, 2015 to consider the County Planning Commission Recommendation for Denial of the O'Neil Residence, Variance, General Plan Amendment and Rezone.

On November 3, 2015 staff recommends that your Board take the following actions:

- a) Make the required findings for denial of the project specified in Attachment-1 of this Board Letter, including CEQA findings;
- b) Determine that denial of the project is exempt from CEQA pursuant to CEQA Guideline Section 15270(b), included as Attachment-2; and,

- c) Deny Case No's. 08CDH-00000-00040, 12VAR-00000-00012, 08GPA-00000-00007, and 08RZN-00000-00006.

Summary Text:

The proposed project is a request for demolition of an existing single-family residence and construction of a new residence with a Variance from setback and parking regulations, as well as a General Plan Amendment and Rezone to change the land use designation and zoning of the property from Recreation to Residential. Based upon the documents submitted by the Applicant and analysis of those documents by the County, no legal access or ability to extend sewer services to the property currently exists. In addition, the property is encumbered with geologic constraints and proposed project is inconsistent with a number of applicable policies of the County Comprehensive Plan, including the Coastal Land Use Plan and Summerland Community Plan in respect to requirements for adequate public services, and protection of visual resources. Therefore, the Planning Commission and staff recommend that the Board of Supervisors deny the project due to inconsistency with applicable County policies and the inability to make the required findings.

Background:

Project Description

The proposed project is a request for demolition of an existing 1,443 square foot single-family residence and construction of a new 2,002 square foot residence (Case No. 08CDH-00000-00040) with a Variance Case No. 12VAR-00000-00012 from the parking and setback regulations to allow: a rear setback of 2 feet 4 inches instead of the required 10 feet; a side setback of 8 feet instead of the required 10 feet; and, zero uncovered parking spaces instead of the required 2 uncovered parking spaces. In addition, the project includes a request for a Local Coastal Plan Amendment (Case No. 08GPA-00000-00007) to change the land use designation of the property from Recreation/Open Space to Residential and a rezone (Case No. 08RZN-00000-00006) to change the zoning of the property from REC to 7-R-1.

History

- **Late 1800's:** Single-story residence constructed on-site.
- **1901:** Through County Ordinance 247 the property adjacent to and directly north of the subject property is quitclaimed by the County to the railroad (Ordinance 247 is included as Attachment-E to the July 23, 2015 staff report [Attachment-3]).
- **1950's:** Property zoned BD-D (Beach Development District).
- **1984:** Under the original Local Coastal Plan, the property is rezoned REC (Recreation) and the residence on-site becomes non-conforming.
- **1992:** Summerland Community Plan is adopted and the REC zoning of the property is maintained.
- **1996:** Property is purchased by the current owner.

- **April 2006:** Property owner applies for 06CDH-00000-00020 to demolish the existing residence and construct a new residence.
- **August 2006:** Due to the non-conforming status of the home, the owner's request to demolish and rebuild the home requires a Rezone (RZN) and General Plan Amendment (GPA). P&D notifies the property owner that a RZN and GPA would not be supportable due to the clear intent of applicable land use designation, zoning and Coastal Policies that the property should be zoned REC (Recreation). No application for a GPA or RZN is submitted and the case is closed.
- **March 2007:** Property owner undertakes unpermitted demolition and construction. Building violation Case No. 07BDV-00000-00020 is opened as a result.
- **July 2008:** Property owner submits application for a GPA and RZN.
- **November 2008:** Property owner submits a Coastal Development Permit (CDH) application.
- **December 2008-December 2014:** CDH application remains incomplete due to lack of sufficient evidence of established legal access to the property, among other reasons.
- **October 2014:** Applicant appeals staff's September 24, 2014 determination of application incompleteness.
- **December 2014:** Application is deemed complete pursuant to Government Code Section 65943 because a decision regarding the appeal of the determination of application incompleteness was not made within 60 days of filing.
- **August 12, 2015:** County Planning Commission recommends denial of the project.

Issue Summary

The owner and agent have not demonstrated legal access or the ability to extend sewer services to the property. The northwestern corner of the lot adjoins the southeastern corner of the publically owned Wallace Avenue at a single point. A single point in space does not constitute adequate, legal access because the applicant could not practically construct a road to access the parcel using a single point. The segment of Wallace Avenue previously located immediately north of the lot was legally quit-claimed by the County to the railroad in the early 20th Century through Ordinance 247. It is therefore held by the Railroad and the applicant has not established that he has an agreement in place with the Railroad to use the property for access. Similarly, the applicant does not possess an easement over or under the adjacent railroad-owned property for the purposes of extending the proposed sewer-line connection from the Summerland Sanitary District.

In addition, the proposed project raises issues with regard to visual resources and geologic hazards. Both the illegally rebuilt and proposed new residence exceed the applicable 15-foot view corridor height limit imposed by the View Corridor Overlay on the site and block ocean views from Highway 101 and other public viewing locations. The geologic report submitted for the project was determined to be deficient by an independent geologic reviewer and appears to underestimate the required bluff-top setback for the proposed, partially constructed development.

As a result of the issues described above, the project would be inconsistent with applicable County policies and the required findings for project approval cannot be made. The project's inconsistency with

applicable policies is discussed in detail in Section 6.2 of the Planning Commission Staff Report dated July 23, 2015, included as Attachment-3 to this Board letter. Findings for denial of the project are outlined in Attachment-1 to this Board letter.

History of Wallace/Finney Avenue

The Applicant has submitted a number of documents that the Applicant purports to establish legal access to the site. Based on analysis of these documents, the County reaches a different conclusion than the Applicant and concludes that legal access does not currently exist. Planning and Development's conclusion that the Applicant has not demonstrated legal access to the parcel is based on the following documents and language contained therein:

The map of the subdivision of Ortega Rancho by H.L. Williams, December 1885, included as Attachment-6, depicts the street crossing Railroad Avenue and continuing south of East End Park to be "Wallace Avenue."

The "Rack Map" or survey made by A.S. Cooper, County Surveyor and marked "City of Summerland, Santa Barbara, CO, California 1888" by which H.L. Williams further subdivided Summerland is included as Attachment-7. This map depicts Railroad Avenue running along the entire length of Summerland, along the northern boundaries of Look Out Park and East End Park. Wallace Avenue is shown to the north of Railroad Avenue on the western portion of the map, crossing Railroad Avenue to continue along the southern boundary of East End Park on the eastern portion of the map. The road along the southern boundary of East End Park is not labeled by name, but based on the context of the map and the 1885 subdivision map, this road was known as Wallace Avenue.

On August 8, 1888, H.L. Williams offered to dedicate to the County the parks, streets, squares, avenues, places, lanes, and alleys in the 1888 Rack Map through the deed of trust included as Attachment-8.

In that deed of trust, H.L. Williams also conveyed a portion of land to a trust for the creation of a "spiritual temple". The description on page 3, that begins with "Commencing at the southwest corner of Block No. 14...", when this description is read in reference to the 1888 Rack Map, it is clear that the only property conveyed to the trust was the parcel located on Block 14 and identified in Attachment-9 on the 1888 Rack Map as "Dedicated for a TEMPLE".

On September 25, 1890, by Ordinance 125, the County accepted and received the dedication and ordained the highways, roads, streets, alleys, lanes, places and parks of the town of Summerland to be public, including all of Wallace Avenue as shown in Attachment-10.

On January 9, 1901, in response to a petition from Southern Pacific Railroad Company for a right of way in Summerland, the County adopted an Ordinance included in Attachment-11 that ordained "a right of way for said new and relocated line of said railroad and for the construction, maintenance and operation thereof along, over upon and across said three strips of tracts of land and

all and ever of them is hereby remised, released and quitclaimed to said Southern Pacific Railroad Company, its successors and assigns forever.” The Ordinance included three property descriptions and the one related to Wallace Avenue identified the conveyance to include “the whole of the street, roads or avenue running in an easterly and westerly direction through Block No. 39 of said Townsite of Summerland”. In reference to the 1888 Rack Map, which is specifically referenced in the Ordinance, this description of property is not ambiguous and clearly refers to Wallace Avenue at its location in Block 39 of the Rack Map as identified in Attachment-12.

The undated Right of Way and Track Map for the Southern Pacific Railroad Company Main Line, included as Attachment-13 identifies portions of property in the area of the relocated railroad through Summerland and identifies in a Schedule of Property on the map how the Railroad acquired interest in the sections. The document shows “County Road” leading up to the northwest corner of the Applicant’s lot. The portion of Wallace/Finney immediately to the north of the Applicant’s lot is identified as “No. 15”. The Schedule of Property on the document identifies related to No. 15 the County’s January 9, 1901 action, which as discussed above, conveyed the County’s interest to the Railroad in this portion of Wallace Avenue. A close up of this map is shown in Audit S716740 related to the Railroad’s lease of property to the Applicant, Attachment-14. As seen on this map, No. 15, the portion of Wallace/Finney conveyed by the County to the Railroad in 1901, is the portion to the north of the Applicant’s property and does not include the portion of Wallace Avenue to the west of the Applicant’s property.

The Applicant made attempts to purchase property from the Railroad, which the Railroad “respectfully declined” due to “proximity to our adjacent track and the potential for increased usage of our track” as shown in Attachment-15.

The Applicant has presented a number of deeds included in Attachment-16 that the Applicant claims to support legal access. Based on the description of the property conveyed in these documents, the property conveyed relates to nearby property, but not the portion of Wallace Avenue immediately to the north of the Applicant’s property. These documents, in addition to those included in Attachment-17 are identified in the undated Right of Way and Track Map for the Southern Pacific Railroad Company Main Line related to the property identified as No. 6 as shown in Attachment-18. As described above, the property identified as No. 15 on that map, immediately to the north of the Applicant’s property was conveyed by the County to the Railroad in 1901.

Based on the above information and documents, no legal access to the Applicant’s parcel currently exists.

County Planning Commission Recommendation

On August 12, 2015, the County Planning Commission recommended that your Board deny Case No’s. 08CDH-00000-00040 and 12VAR-00000-00012, and adopted a Resolution recommending that your Board deny Case No’s 08GPA-00000-00007 and 08RZN-00000-00006. The action letter for the August 12, 2015 County Planning Commission hearing is included as Attachment-4 and the County Planning Commission Resolution is included as Attachment-5.

The recommendation for denial is based upon the inability to make the required findings for project approval as outlined in Attachment-1 to this Board letter, and based upon the reasons outlined in the

County Planning Commission Resolution (Attachment-5). The Resolution provides the following reasons for not changing the land use designation or amending the zoning of the property:

1. *No legal access or ability to extend sewer services to the property exists. It would not be in the interest of community welfare to convert a property from recreational to residential land use and zoning designations when no current legal means of accessing or providing sewer service to the residential development exists.*
2. *The proposed project is inconsistent with a number of applicable policies of the County Comprehensive Plan, including the Coastal Land Use Plan and Summerland Community Plan in respect to inadequate services and protection of visual resources, as discussed in the staff report dated July 23, 2015, incorporated herein by reference, and with requirements of the Article II Coastal Zoning Ordinance.*
3. *No legal access or ability to extend sewer services to the property exists. It would not be consistent with good zoning and planning practices to convert a property from recreational to residential zoning and land use designation when no current legal means of accessing or providing sewer service to the residential development exists.*

Therefore, denial of the proposed project is recommended.

Fiscal and Facilities Impacts:

Budgeted: Yes

The costs to process the project were borne by the applicant through the payment of processing fees. These fees are budgeted in the permitting program of the Department, as shown on page D-289 of the adopted 2015/17 fiscal year budget.

Special Instructions:

The Clerk of the Board shall publish a legal notice at least 10 days prior to the hearing on November 3, 2015 hearing (using the enclosed labels). The notice shall appear in the Santa Barbara News-Press. The Clerk of the Board shall fulfill noticing requirements using the attached labels. A minute order of the hearing and copy of the notice and proof of publication shall be returned to Planning and Development, attention David Villalobos. A second minute order of the hearing shall be returned to Planning and Development, attention Nicole Lieu.

Attachments:

1. Findings for Denial
2. CEQA Exemption
3. Staff Report, dated July 23, 2015
4. County Planning Commission Action Letter, dated August 12, 2015
5. Resolution of the County Planning Commission
6. Map of the Subdivision of Ortega Rancho by H.L. Williams, December 1885
7. Rack Map marked "City of Summerland, Santa Barbara, CO, California 1888" (highlighting Railroad Ave. and Wallace Ave.)
8. Deed of Trust, August 8, 1888, H.L. Williams

9. Deed of Trust (1888) with attached City of Summerland Map with portion of Block 14 marked “Dedicated for a Temple”
10. Ordinance 125 including Map of Summerland Showing Wallace Ave, September 25, 1890
11. Ordinance 247, January 9, 1901
12. Rack Map marked “City of Summerland, Santa Barbara, CO, California 1888” (highlighting Block 39 and Wallace Ave.)
13. Right of Way and Track Map for the Southern Pacific Railroad Company Main Line
14. Map from Audit S716740 (related to the Railroad’s lease of property to the Applicant)
15. July 31, 2013 Letter from Railroad to Applicant
16. Deeds Provided by Applicant
17. Documents Provided by Applicant
18. Right of Way and Track Map for the Southern Pacific Railroad Company Main Line (highlighting portions pertaining to Attachments 16 and 17)

Authored by:

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