

**SANTA BARBARA COUNTY
BOARD AGENDA LETTER**



Clerk of the Board of Supervisors
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Agenda Number:

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TO: Board of Supervisors

FROM: Rita Bright, Secretary to the Planning Commission

STAFF CONTACT: Jackie Campbell, Supervising Planner
Lisa Surynt, Planner
568-2007

SUBJECT: **Farber Appeal of Rau Accessory Structure**
Case Nos. 01LUP-00000-00864 and 02APL-00000-00008
APN 009-091-006 at 1051 Alston Road in the Montecito Area of
the
First Supervisorial District

Recommendation(s):

That the Board of Supervisors consider the appeal of Susan F. Petrovich, agent for the appellants Herbert and Maria Farber, of the Planning Commission's February 6, 2002 decision to deny the Farbers' appeal and uphold Planning and Development's approval of a Land Use Permit (01LUP-00000-00864) to construct a 640 square foot detached accessory structure with a 490 s.f. deck and associated landscaping. Staff recommends that the Board of Supervisors:

- a. Adopt the required findings for the project specified in the Santa Barbara County Planning Commission Action Letter, dated February 15, 2002.
- b. Deny the above referenced appeal (02APL-00000-00008), thereby upholding the Planning Commission's approval of Land Use Permit 01LUP-00000-00864, and
- c. Grant de novo approval of Land Use Permit 01LUP-00000-00864 included in the Planning Commission Staff Report dated January 25, 2002, subject to the conditions of approval included in the Planning Commission Action Letter dated February 15, 2002.

Alignment with Board Strategic Plan:

The recommendations are primarily aligned with actions required by law or by routine business necessity.

Executive Summary and Discussion:

At the Planning Commission hearing of February 6, 2002, the Planning Commission denied the Farbers' appeal and approved the Land Use Permit for the construction of a 640 square foot detached accessory structure measuring 12.75 feet in height with a 490 square foot deck and associated landscaping in the 2-E-1 Zone District under Article IV. On February 19, 2002, an appeal was filed by Susan Petrovich, agent for the appellants Herbert and Maria Farber, claiming that the proposed accessory structure is not consistent with Montecito Architectural Guidelines on Private View Protection and Neighborhood Compatibility, Montecito Community Plan policies on Cultural Resource Protection, and County Zoning Regulations. The appellants also claim that the project description is inaccurate and misleading. Each of these issues is addressed below. A facilitation meeting with the applicants and appellants was held on March 20, 2002. The parties were unable to come to a compromise on the appeal and hence the item is before your Board for a final decision. County Counsel will provide a memo summarizing the facilitation meeting.

The Planning Commission Staff Report addressed four issues raised in the Land Use Permit Appeal (see Attachment B, Planning Commission Staff Report Section 7.0). The following five issues were raised in the appeal to the Board of Supervisors.

APPELLANT ISSUES

1) Private View Protection

a) The Staff Report prepared for the Planning Commission ("Staff Report") discusses views from public viewing points. Staff did not reference Montecito Architectural Guidelines Section III.C (3) and the impact on the view from the Farber residence, patio, and garden. The project is not compatible with the Farber property because it fails to mitigate any of the impacts on views from the Farber property.

The Staff Report prepared for the Planning Commission ("Staff Report") includes a discussion of public views as the Comprehensive Plan, Montecito Community Plan, and Montecito Zoning Ordinance all include policies that protect public views. There are no policies that protect private views in these documents. The Montecito Architectural Guidelines is the only document that addresses private views. Section 7.0 (Appeals Issues) of the Staff Report evaluates the accessory structure for consistency with all applicable Montecito Guidelines, including the guidelines for private view protection, and finds the structure consistent.

Montecito Architectural Guidelines **Section III.C (1)** is referenced in Section 7.3 of the Staff Report. This section provides the following definition of the "views" that are protected under the Montecito Architectural Guidelines:

"View" shall mean the ability to see the ocean and/or mountains from a particular site, public roadway, public trail, or community area.

The accessory structure would not block the ability to see the ocean and/or mountains from the Farber property. The small accessory structure would be set back 20 feet from the Farber property line, separated from the Farber property by an existing stand of mature trees and shrubs, and located approximately 20-30 feet below the elevation of the Farber residence (see Attachment B, Planning Commission Staff Report Attachments E-1 to E-4 and Sections 6.2, 7.2, and 7.4). Although the accessory structure would be visible from some areas of the Farber property, it would not block the ability to see the ocean and/or mountains, nor would it substantially affect the qualities of those views, and therefore, would not conflict with any of the Montecito Guidelines on View Protection.

Additionally, the Montecito Guidelines include the following statement on View Protection in **Section III.C (2)**. Staff included this reference in the presentation to the Planning Commission:

The community of Montecito has a commitment to the protection of public views and the consideration of private views, both from the hillsides to the ocean and from the lower elevations of the community to the hillsides.

The statement indicates that private views are offered a lower level of protection than public views, as the Guidelines indicate that private views should be *considered*, not *protected*. As the accessory structure would not obstruct the Farbers' private view to the ocean, staff finds the accessory structure consistent with all Montecito Guidelines on view protection.

2) Cultural Resource Protection

a) Approval of the Farber appeal supports the County's long standing goal to protect and preserve the historical elements of the Montecito Community. Montecito Community Plan Goal CR-M-1 requires the preservation and protection of properties and structures with historic importance to the Santa Barbara community. Goal CR-M-2 requires that significant historical resources be protected and preserved.

Chapter I of The Nature, Content, and Format of the General Plan states that:

A Goal is a general expression of community values and, therefore, is abstract in nature. Consequently, a goal is generally not quantifiable, time-dependent, or suggestive of specific actions for its achievement . . . Goals by definition should be expressed as ends, conditions, or states and not as actions.

The Montecito Community Plan **Goals CR-M-1** and **CR-M-2** do not *require* specific actions for the preservation of historic resources. Rather, these Goals are *direction-setters* that provide a background for the implementation of subsequent policies.

A policy is a specific statement that guides decision making. It indicates a clear commitment of the local legislative body.

Policies provide clear and specific directives for land use planning. They are applied to current projects consistent with *direction* from the underlying Goals of the Montecito Community Plan.

Policy CR-M-1.1: *The historic adobes of Montecito should be protected to the maximum extent feasible by incorporating their preservation into any plans for development of those parcels.*

Policy CR-M-1.2: *Improvements to the Coral Casino recreation club shall be designed in a manner to protect and enhance the historic use and architectural integrity of the property. Any renovations or new development on this property shall be constructed at heights that do not exceed the height of the existing structures.*

These Policies are applied to land use planning with *direction* from the underlying **Goal CR-M-1:** *Preserve and protect properties and structures with historic importance in the Montecito community to the maximum extent feasible.* The specific statements that guide decision making in these policies are not relevant to the proposed accessory structure, as the policies are specific to the Coral Casino property and properties that contain historic adobes. The other Cultural Resource Protection Policy and Actions also relate to development within properties where historic resources are located and do not mention regulating development on neighboring properties.

The historical report prepared for the appellants by Post/Hazeltine Associates states the "the property at 1051 Alston Road [Rau] no longer retains either its historical or architectural association as part of the former Edwin Gould estate" (see Attachment C, Appeal Request Exhibit B). There is no policy basis in the Montecito Community Plan for extending the jurisdiction of Cultural Resource Protection Policies over neighboring properties that have no historic value. There is also no basis for using

these policies for private view protection. The appellants' desire to affect development on the neighboring Rau property to preserve private views from their own property is outside the scope of current and proposed Cultural Resource Protection policies. This is especially true since the accessory structure would have no physical impacts on the Farber residence and gardens. Staff finds the accessory structure consistent with all Montecito Community Plan policies for cultural resource protection.

b) The proposed project has the potential for creating significant impacts upon the integrity of the historic viewshed of the Farber property.

The appellants claim that landscape architect Lockwood de Forest intended to keep the view over the Rau property unobstructed, and therefore, the view should be maintained in a pristine state. The de Forest gardens located on the Farber property are not in a pristine state. The current owners maintain the original hardscape, but the original plantings have not been maintained. Additionally, the appellants' contention in this regard is illogical: gardens are organic and dynamic in nature. Plant materials mature and decline over time, and landscape architects do not have control over the development of the surrounding environment. This dynamic nature is one of the major aesthetic challenges of designing a garden, and certainly would have been of key interest to a landscape architect of de Forest's stature.

The surrounding Montecito hillsides have changed since the time when the gardens were constructed. An aerial photograph from 1938 shows the Farber property on Alston Road with sparse development surrounding it. The de Forest gardens were designed at installation to incorporate views of the open hillsides that dominated Montecito's landscape at that time. An aerial photograph from 2000 shows the current environment, which is a developed residential neighborhood. This neighborhood is characterized by large houses (3,000 to 6,000 s.f.) and accessory structures on lots of approximately one to two acres. The proposed accessory structure would be fully compatible with the residential development that now surrounds the Farber property (see Attachment B, Planning Commission Staff Report Sections 6.2, 7.2, and 7.4). In addition, the two-story dwelling located on the adjacent Rau property is already visible from the Farber property, and views from the Farber property have been changed by the increased planting of tall trees (i.e. eucalyptus) on surrounding estates.

The Farber property has undergone a recent Lot Line Adjustment (97-LA-027) that interrupts the integrity of the de Forest gardens. Prior to the Lot Line Adjustment, the Farber property consisted of two lots: Lot A was 0.38 acres located at the north end of parcel, while Lot B was 4.96 acres located at the south end of the parcel. Under this configuration, Lot A was small, non-conforming, and highly prohibitive to development due to its location within the front yard of the existing residence. Lot B was conducive to historic resource protection by consolidating the residence and de Forest gardens within one legal lot (see Attachment G, Site Plan for Farber LLA).

Under 97-LA-027, the Farbers shifted the property line to the south, resulting in two legal lots that meet the minimum size of 2.0 acres required in the 2-E-1 zone district. Lot A encompasses the Farber residence and the northern part of the de Forest gardens. Lot B encompasses the southern remainder of the de Forest gardens. An access easement has been recorded across the gardens of Lot A to provide a future driveway along the east property line to reach Lot B. A 27,950 s.f. development envelope has been established within the gardens of Lot B that would accommodate future development of a single family dwelling and possible accessory structures within the garden itself. The Farbers claim that they have no intention of developing Lot B. However, the Lot Line Adjustment has increased the development potential of the Farber property, and created a favorable lot configuration for current and future owners to develop lot B (see Attachment G, Site Plan for Farber LLA).

In light of these changes, the appellants' claim that the view over the Rau property should be maintained in a pristine state cannot be supported. View protection is not a valid basis for appeal because there are no laws that protect private views. Additionally, Cultural Resource Protection Policies do not protect views, and only regulate development on properties that have historical importance. Also, the creation of a building envelope on Lot B, a legal lot, indicates that this lot will likely be developed in the future, further changing the character of the area and the remaining de Forest garden setting.

3) Neighborhood Compatibility

a) Another example of neighborhood accommodation and county restrictions arose when the property owners immediately west of the Farber property proposed a new residence on their property . . . in 1990 (when the Farbers did not yet own their property), the County required that the Brauns move their house as far as possible from the Farber residence to *protect and maintain the historic significance of the Farber estate.*

The appellants claim that the Braun house adjacent to the Farber property to the west was moved to *protect and maintain the historic significance of the Farber estate.* However, David Braun's letter (see Attachment C, Appeal Request Exhibits C and D) states that "the bedroom on the easterly side of our new house might partially block or impede the view of the mountains behind our [house]" and therefore, the BAR ruled that the house should be moved eight feet to the west. The decision to move the house was a legitimate matter of private view protection, as the original design of the Braun house would impede views of the mountains, although Montecito Architectural Guidelines **Section III.C (2)** was not in place at the time.

The Braun property is developed with a 6,000 s.f. single family dwelling, a pool, patio, and extensive landscaping (see Attachment F, Color Aerial Photos). The development is located within 30 feet of the Farber residence, and screened from the Farber property *only* by a row of foliage. The appellants cite the Braun property as a good example of development that is compatible with the Farber residence and gardens. By the same standards, the Rau accessory structure would also be compatible. The 640 s.f. accessory structure would be much smaller than the Braun development, located farther away, located at a lower elevation, and screened from the Farber residence by more extensive foliage.

b) Simply put, the Farber appeal requests modification of the Project to reflect sensitivity toward, and to require compatibility with, the historic nature of the Farber property, as well as current neighborhood conditions.

The appellants claim that the accessory structure is not compatible with the Farber property. However, the proposed accessory structure would not block any views from the Farber property that are protected under the Montecito Guidelines for View Protection, and the accessory structure would not conflict with any Cultural Resource Protection policies of the Montecito Community Plan. Additionally, the Staff Report prepared for the Planning Commission includes a discussion of the Montecito Guidelines for Neighborhood Compatibility and finds the structure compatible with the surrounding residentially developed neighborhood (see Attachment B, Planning Commission Staff Report Sections 6.2, 7.2, and 7.4). Additionally, many properties in the neighborhood are developed with accessory structures similar to that proposed by the Raus. Therefore, neighborhood compatibility is not a valid basis for appeal of the accessory structure.

4) County Zoning Regulations

a) The project does not "conform to the applicable policies and provisions" of the zoning ordinance.

The proposed accessory structure is consistent with all requirements of the Article IV Zoning Ordinance. Staff provided a complete evaluation of Ordinance Compliance in Section 6.3 of the Planning Commission Staff Report.

5) The Project Description is Inaccurate and Misleading

a) Moreover, the project description is inaccurate and misleading and fails to identify the proposed Rau structure as what it appears to be- a guesthouse on a lot that isn't zoned for a guesthouse.

The accessory structure is consistent with all restrictions on accessory structures in Section 35-450 of the Montecito Zoning Ordinance. The accessory structure does not contain any counters, wetbars, cupboards, cooking facilities, or full bathrooms, which would allow misuse as a guesthouse. The amenities that the accessory structure does contain are fully permitted under the Zoning Ordinance and appropriate for accessory structures. The Raus' proposed use of the accessory structure is as a library. The amenities within the building would include bookshelves, a closet, a water heater, and a half bath containing a toilet and sink. The accessory structure is also below the sixteen foot height limit and 800 s.f. maximum floor area permitted under the Montecito Zoning Ordinance. Any possibilities of the accessory structure being used as a guesthouse were remedied at the Planning Commission by the addition of two conditions to the original Land Use Permit. The Planning Commission required removal of the closet located adjacent to the bathroom, and required that the owners record a Notice to Property Owner (NTPO) to ensure that the accessory structure would not be used for any unpermitted uses, such as a guesthouse (see Attachment A, Planning Commission Action Letter).

The appellants claim that the Planning Commission's final action required removal of the bathroom (see Attachment D, Appellant Letter on Planning Commission Motion). However, the Action Letter and minutes of the hearing approved by the Planning Commission require removal of the closet located adjacent to the bathroom, not removal of the bathroom. Staff transcribed the final deliberations and motion of the Planning Commission and concludes that the Planning Commission required removal of the closet next to the bathroom, not the bathroom itself (see Attachment E, Partial Transcript of Planning Commission Hearing).

b) Apparently, County Staff was told the original site plan (including topographic lines) was wrong and was not created by a professional.

Staff visited the Rau property to determine if the proposed accessory structure was sited in an appropriate location. Staff observed that the eastern area of the rear yard is prone to hillside runoff and erosion, and characterized by the steepest slopes on the property (see Attachment B, Planning Commission Staff Report Section 6.2 and Attachment E-5). Also, a drainage swale had been constructed in this area to help control erosion. Staff determined that the accessory structure was sited in an appropriate location as it avoided the hazards in the eastern area of the rear yard. However, the drainage swale and steep slopes of the eastern area were not depicted clearly on the site plan. Staff requested a new site plan and topographic map that included this information to support the finding that the accessory structure was sited in an appropriate location, and should not be moved any closer to the eastern area of the rear yard as previously suggested by the Farbers. This revised site plan confirmed the observations made by staff in the field.

c) Impacts to the Farber property because of the redirected waters will subject the Raus to liability for damages and should have been analyzed as part of the project impacts.

A portion of the Farber property is located downhill from the Rau property, and water has always drained downhill from the northern Rau property to the southern portion of the Farber property. Landscape improvements on the Rau property include a swale to help mitigate erosion caused by this hillside runoff. These improvements were not included in the LUP for the accessory structure and were not approved as part of the current project description, as the improvements are minor in nature and exempt from permits. The LUP cannot be appealed on the basis of the landscape improvements, as the improvements are not part of the current project. The additional runoff created by the accessory structure would be negligible and would not result in significant impacts to the Farber property (see Attachment H, Calvin Design Response).

d) A local architect retained by the Farbers states that the project will require double the cut indicated.

The application submitted for the accessory structure states that the project would require 50 cubic yards (cy) of cut and 50 cy of fill. The appellants claim that the project would require 100 cy of cut. However, this alleged miscalculation of grading would not create significant environmental impacts, and would not be inconsistent with County policies. Although the amount of grading may have been underestimated by 50 cy, the project is still situated in an area of the rear yard that is not as steep as other areas. This site is favorable for minimizing the need for grading and retaining walls in relation to other areas of the property (see Attachment B, Planning Commission Staff Report Section 6.2, and Attachments E-4 and E-5). Staff Geologist Brian Baca agrees that an additional 50 cy of grading would not have a significant environmental impact.

e) Also, the actual project ridgeline height . . . is over 16 ft, not the 12.75 feet presented to the Planning Commission by County Staff.

The County evaluates the height of structures by calculating the mean roof height. Staff measured the mean roof height of the accessory structure at 12.75 feet, and presented this information to the Planning Commission. Staff's calculation was in line with County procedures. The highest ridge of the structure is 16 feet, but it does not exceed 16 feet as the appellants claim (see Attachment B, Planning Commission Staff Report Attachments D-4 to D-6). The accessory structure is consistent with all height requirements of the Montecito Zoning Ordinance (see Attachment B, Planning Commission Staff Report Section 6.3), including the height restriction of 16 feet (mean height) for accessory structures.

Mandates and Service Levels:

Pursuant to Government Code Section 65091, mailed notice required to property owners within 300 feet of the project, including the real property owners, project applicant and local agencies expected to provide essential services, shall be done at least 10 days prior to the hearing.

Fiscal and Facilities Impacts:

A filing fee of \$435 for processing the appeal has been paid by the appellant. Additional costs are funded through P&D's general fund allocation.

Special Instructions:

Clerk of the Board shall complete noticing for the project in the Santa Barbara News-Press and shall complete mailed notice for the project (mailing labels previously provided).

Clerk of the Board shall forward a copy of the Minute Order to Planning & Development, attn: Hearing Support Staff.

Planning and Development will prepare all final action letters and notify all interested parties of the Board of Supervisors' final action.

ATTACHMENTS:

- A) Planning Commission Action Letter dated February 15, 2002
- B) Staff Report dated January 25, 2002
- C) Appeal Request dated February 19, 2002
- D) Appellant Letter on PC Final Motion dated March 8, 2002
- E) Partial Transcription of PC Hearing on February 6, 2002
- F) Color Aerial Photographs
- G) Site Plan from Farber Lot Line Adjustment
- H) Calvin Design Response to Appeal Letter dated April 2, 2002

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