



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: Planning &
Development
Department No.: 053
For Agenda Of: October 15, 2024
Placement: Departmental
Estimated Time: 60 min on October 15,
2024
Continued Item: Yes
If Yes, date from: September 10, 2024
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Lisa Plowman, Director, Planning and Development,
Director(s) (805) 568-2086
Contact Info: Travis Seawards, Deputy Director, Planning and Development,
(805) 568-2518

SUBJECT: Report on Case No. 24APL-00007: Noyes/Woodall Appeal of Law New Single-Family Residence, Mission Canyon Community Plan Area, First Supervisorial District

County Counsel Concurrence

As to form: Yes

Other Concurrence: N/A

As to form: N/A

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

On October 15, 2024, staff recommends that your Board take the following actions:

- a) Deny the appeal, Case No. 24APL-00007;
- b) Make the required findings for approval of the project, Case No. 21LUP-00000-00401, specified in Attachment 1 to this Board Letter, including CEQA findings;
- c) Determine the project is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15303, as set forth in the attached Notice of Exemption, included as Attachment 3 to this Board Letter; and,
- d) Grant *de novo* approval of the project, Case No. 21LUP-00000-00401 subject to the conditions of approval included as Attachment 2 to this Board Letter.

Summary Text:

The project being heard consists of an appeal of the County Planning Commission's approval of a Land Use Permit (LUP) for construction of a new 2,541 square foot single-family residence, 402-square-foot garage, and associated site improvements on a vacant parcel in the Mission Canyon area. The appeal was filed by Ian and Mindy Noyes and Sena Woodall, appellant, and includes the following issues/assertions: property line dispute, record of survey dispute, neighbor encroachment dispute, and lack of fair and impartial hearing, lack of communication, fire access concerns, parcel legality dispute, and soils report validity dispute.

Staff recommends denial of the appeal and approval of the LUP because the appeal issues are without merit, and the project is consistent with all applicable ordinance and policy requirements including those for adequate services, aesthetics, geology, cultural resources, hillside and watershed protection, noise, and with the purpose and intent, setbacks, parking, and height limit requirements of the R-1 Zone District, as outlined below.

Background:

On August 4, 2021, the applicant filed an application for a Land Use Permit (LUP), Case No. 21LUP-00000-00401, for construction of a single-family residence and attached garage.

On December 20, 2023, the Director of Planning and Development (Director) approved the project, application, Case No. 21LUP-00000-00401, finding the project consistent with applicable policy and ordinance requirements of the Land Use and Development Code and the Comprehensive Plan, including the Mission Canyon Community Plan. The project received preliminary South Board of Architectural Review (SBAR) approval on August 11, 2023, and final SBAR approval on December 15, 2023. No appeals of the SBAR approvals were filed.

On January 2, 2024, timely appeals of the Director's approval of the LUP were filed by Walid and Tamara Afifi (Case No. 24APL-00001) and separately by Mindy and Ian Noyes and Sena Woodall (Case No. 24APL-00002).

On March 6, 2024, the appeals, Case Nos. 24APL-00001 and 24APL-00002, were presented to the Planning Commission at a *de novo* hearing. The Planning Commission considered all evidence set forth in the record including the statements given by the appellants and the applicant, and took action to deny both appeals and approve the project. The Planning Commission staff report for the Afifi Appeal and Noyes/Woodall Appeal of the Law New Residence, dated February 27, 2024 is included as Attachment 4.

On March 15, 2024, Mindy and Ian Noyes and Sena Woodall, appellant, filed a timely appeal, Case No. 24APL-00007 (Attachment 8), of the Planning Commission's decision to approve the project, Case No. 21LUP-00000-00401. The other appellant before the Planning Commission, Walid and Tamara Afifi, did not appeal the Planning Commission's decision. Although not filed with the timely appeal application, the appellant (Noyes/Woodall) submitted a general public comment letter regarding this appeal, dated June 13, 2024, for the Board of Supervisors hearing on June 18, 2024. That public comment letter is included as Attachment 9. Staff responses to the issues raised in the appellant's general public comment letter are discussed under Appeal Issues 10 through 13, below.

¹ The PC Procedures Manual is available at: <https://content.civicplus.com/api/assets/2358ee05-b225-45e5-b9a3-f66d15d3f78f> (last visited Jan 12, 2024) and available in hard copy at the Planning and Development Department offices located at 123 E. Anapamu Street, Santa Barbara, CA 93101.

The appeal issues cited in the timely appeal to the Board of Supervisors are discussed under Appeal Issues No. 1 through 9, below. Staff reviewed each of the appeal issues and finds they are without merit.

Appeal Issues and Staff Responses

Appeal Issue 1: The appellant asserts that there was an error in the decision made by the Planning Commission and that they relied on misinformation regarding the site survey. The appellant claims that the existing 1929 record of survey is “inoperative” and states that it has no practical value to physically mark the boundary lines.

Issue 1 Staff Response: The project plans depict accurate boundary lines based on a valid, recorded survey, as well as additional site survey work conducted by a professional licensed surveyor, and the Planning Commission relied on accurate information in their approval of the project. The plans submitted for the proposed project include a site survey (Sheet A1.1 of Attachment 1) delineating the parcel boundaries. The site plan for the project (Sheet A1.0 of Attachment 1), prepared by a licensed architect, shows all proposed development within the parcel boundaries. Contrary to the appellant’s claims, the project architect was able to determine boundary lines with the information submitted in the proposed project application, including, but not limited to, a Certificate of Compliance dated May 26, 1989, a recorded survey of Mission Canyon Heights prepared by Geo. D. Morrison, filed August 12, 1929, and a topographic site survey prepared by Davis Land Surveying. The appellant has not provided a conflicting survey or evidence that the survey information is “inoperative.” In addition to the existing, recorded 1929 survey, Davis Land Surveying completed a new site survey on a voluntary basis. That survey reconfirms the parcel boundaries shown on the approved LUP project plans. The survey (Record of Survey #7311) was filed for examination with the County Surveyor on May 17, 2024, and is currently in the process of being recorded. The County does not otherwise adjudicate boundary disputes between neighbors through the permitting process. Therefore, this issue is without merit.

Appeal Issue 2: The appellant claims an error was made when the Land Use Permit was approved by the Director based on plans that rely on a document labeled Survey and Site Photo Key and not on an actual operational survey.

Issue 2 Staff Response: As discussed in detail above for Appeal Issue 1, the Land Use Permit plans approved by the Director and by the Planning Commission are based on a valid recorded survey, and an updated site survey by a professional licensed surveyor confirming the parcel boundaries has been filed with County Surveyor’s office. The 1929 survey of Mission Canyon Heights, prepared by licensed surveyor Geo D. Morrison, filed August 12, 1929, is a valid record of survey and is publicly available for use by licensed professionals in the preparation of project plans. Although not required by any applicable Land Use Permit requirement, the applicant also hired a licensed surveyor, Davis Land Surveying, to prepare a 2024 Record of Survey and it has been submitted to the County Surveyor for review and recordation.

Appeal Issue 3: The appellant asserts that new monuments had not been placed and that a record of survey had not been submitted or filed with the Santa Barbara County Surveyor’s Office as of March 11, 2024.

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The appellant also references letters they submitted from surveyor Marshall Fargen that describe the process for placing monuments and filing a record of survey.

Issue 3 Staff Response: It is not a requirement of Land Use Permit approval for new survey monuments to be placed or for a new record of survey to be filed, when development is proposed on an existing legal lot with an existing record of survey. However, as of the date of this report, new survey monuments have been placed at the subject property and a 2024 Record of Survey has been filed with the County Surveyor on a voluntary basis by the applicant (See Attachment 7 Letter from Davis Land Surveying). The letters provided by the appellant from professional surveyor, Marshall Fargen, describe the process of producing and recording a Record of Survey. The process described by Mr. Fargen is the same process that has been undertaken by Davis Land Surveying on behalf of the applicant. In addition, the letters from Mr. Fargen acknowledge that the subject property is shown on an existing record of survey, stating, “2632 Montrose Place (APN 023-112-030) is shown on a map as Lot 561, a Record of Survey from 1929 by Geo D. Morrison, recorded in Book 20, Page 35 to 42 of Maps, in Santa Barbara County. This survey is used as the basis when trying to determine property lines on the ground.” Therefore, the process of producing a record of survey is not disputed and Davis Land Surveying has in fact followed the process requested by the appellant.

Appeal Issue 4: The appellant asserts that planning staff failed to address issues raised in the Noyes/Woodall amended Planning Commission appeal documents. In those documents, the appellant claims that permits exist for stairs, a retaining wall, and a “fire deck” that place the property line in the appellant’s preferred location. The appellant also argues that staff did not address issues raised via email by another appellant to the Planning Commission (Walid Afifi) pertaining to the property survey.

Issue 4 Staff Response: For the Planning Commission appeal, Planning staff responded to both appellants’ claims and directly addressed issues regarding permits for site improvements referenced in the Noyes/Woodall appeal. Staff’s responses were provided in the Planning Commission staff report dated February 27, 2024, and/or verbally on the record in the staff presentation at the March 6, 2024, Planning Commission hearing, and within this Board Letter. Staff conducted a thorough review of records on file, and records do not document approval of a deck, retaining wall, or stairs on the applicant’s property in favor of the appellant. The applicant has not produced any documentation of a permit approving these items. Existing landscape improvements include a rock-stack wall and earthen stairs that are proposed to remain as shown on updated project plans dated September 5, 2024 (Attachment 5). In addition, as discussed in Appeal Issues No. 1 through 3, above, plans for the proposed project are based on a valid survey and the proximity of existing site improvements to the property line are accurately shown on project plans.

Lastly, in this Appeal Issue, the appellant refers to email correspondence from another party, not named in this appeal, Mr. Afifi, and states staff did not address Mr. Afifi’s concerns at the Planning Commission hearing. As discussed above, staff responded to all appeal claims in the Planning Commission staff report and at the Planning Commission hearing. Mr. Afifi did not appeal the Planning Commission’s approval of the project.

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Appeal Issue 5: The appellant asserts there was not a fair and impartial hearing due to comments made by Commissioner Parke regarding personal knowledge of, or relationships to, the applicant's architect and surveyor.

Issue 5 Staff Response: The hearing before the Board is *de novo* and therefore any claims asserting an unfair or impartial hearing at the Planning Commission do not impact the Board's discretion to consider the appeal anew. Regardless, the Planning Commission on March 6, 2024 conducted a fair and impartial hearing that complied with the Brown Act and the County Planning Commission Procedures Manual¹.

The Board of Supervisors holds the authority to impartially consider and act as the *de novo* decision-maker on the project. The Planning Commission voted unanimously, 5-0, to deny the Noyes/Woodall appeal and to approve the project, and the appellant was provided the ability to present their case to the Planning Commission, and to rebut the applicant and staff presentations. Commissioner Parke's anecdotes concerning his personal familiarity with the families of the applicant's surveyor and architect, as well as his statement concerning the credibility of the surveyor, did not render the hearing before the Planning Commission unfair or impartial. The Commission's decision was based on careful deliberation and consideration of evidence in support of the Directors' approval of the Land Use Permit and lack of evidence in support of the appellant's claims.

Appeal Issue 6: The appellant asserts the applicant misled the Planning Commission regarding communication between the applicant and neighbors.

Issue 6 Staff Response: As described in the previous appeal issue, the public hearing conducted by the Planning Commission on March 6, 2024, complied with the Brown Act and the County Planning Commission Procedures Manual, and the Planning Commission's decision was based on evidence and testimony presented at the hearing. Further, the Planning Commission's decision included a 5-0 vote to make the findings for approval of the project based on the project's compliance with applicable ordinance and policy requirements, and due to the lack of merit of the appeal issues.

In terms of applicant communication with neighbors, the County does not regulate or arbitrate neighborhood disputes. While encouraged, the applicant is not required to communicate with the appellant or other neighbors, and is not required to communicate in a specific manner. As noted in the letter from the architect for the applicant, Jeff Shelton, the applicant team did, in fact, communicate with the appellant on multiple occasions (see letter from Jeff Shelton, Attachment 6). In addition, the appellant did not provide evidence to support the claim that the applicant misled the Planning Commission regarding communication with neighbors. Instead, the appellant cites instances in which the appellants did not receive a specific form of communication that they desired from the applicant. Specifically, the applicant is not required to hold phone conferences with neighbors or personally notify neighbors of architectural review hearings.

In communications with staff, the appellant claims that they were not notified of certain hearings, such as BAR hearings. However, agendas for Board of Architectural Review (BAR) hearings are publicly posted in a timely manner on the County website, and staff communicated information on where to find the BAR agendas to all individuals who requested to be listed as interested parties, including the appellant. Furthermore, a mailed notice of the Land Use Permit application and of the first BAR meeting was sent

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to property owners within 300-ft of the project site, including to the Noyes/Woodall residence. A notice placard was posted for at least two years at the project site with project descriptions and contact information for the assigned planner. Sena Woodall did not reach out to planning staff as an interested party. Finally, on two separate occasions, County planning staff met with the appellant Ian Noyes and Mindy Noyes at the project site, and Sena Woodall did not reach out to staff at either time to attend the meeting or for information on the project, nor did the Noyes express that Ms. Woodall was an interested party.

Appeal Issue 7: The appellant asserts that the decision to approve the project was not supported by evidence presented at the hearing, that the applicant's agent made false statements, and argues that staff should have presented evidence to prove that a deck on the appellant's property and a set of stairs near the contested property line were not for fire protection purposes.

Issue 7 Staff Response: As discussed in detail in previous appeal issues, the Planning Commission's public hearing was appropriately conducted, and their decision was well documented and based on evidence in the record, including the staff report dated February 27, 2024, incorporated herein by reference, and in staff comments and a staff presentation at the Planning Commission hearing on March 6, 2024. As discussed in Appeal Issue 4, above, staff conducted a thorough review of records on file, and records do not document permits for approval of a deck, rock stack wall, or stairs on the applicant's property in favor of the appellant. There are existing landscape improvements, including earthen stairs and rock stack walls on the applicant's property, which are not proposed for removal. In addition, there is no proposed removal of a deck, and Santa Barbara County Fire Department has reviewed and approved the plans for the applicant's proposed project. Further, the appellant did not provide information on what claims they assert were falsely made by the applicant.

Appeal Issue 8: The appellant asserts that there is new evidence relevant to the decision, which could not have been presented at the time the decision was made, stating they have proof that the new survey has not been submitted to the County Surveyor, and states that the Planning Commission did not understand the difference between the 1929 survey and the new survey by Davis Land Surveying.

Issue 8 Staff Response: As discussed in staff response to Appeal Issue 3, above, a new Record of Survey is not required for approval of a Land Use Permit on a legal lot, and the initial project plans were based on an existing Record of Survey (the 1929 survey). Regardless, as of the date of this report, new survey monuments have been placed at the subject property and a new 2024 Record of Survey has been filed with the County Surveyor on a voluntary basis by the applicant. The new Record of Survey reconfirms the lot lines used for preparation of the project plans. Finally, the County Surveyor's office received the new Record of Survey for review and recordation as of the date of this report.

Appeal Issue 9: The appellant asserts that the project would remove approved lot lines and intrude on current built property, and would remove rock stack walls, stairs and landscaping that were permitted and built, thereby eliminating access to the appellant's basement, 3rd floor bedroom exits, and fire access.

Issue 9 Staff Response: The proposed project does not remove lot lines. The project is located on a legal lot identified as 2632 Montrose. As discussed in the staff report dated February 27, 2024, "The approved project plans do not show the proposed development encroaching onto the neighboring [appellant's]

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property. Plans submitted for the proposed project include a site survey (Sheet A1.1 of Attachment I) delineating the parcel boundaries. The site plan for the project (Sheet A1.0 of Attachment I), prepared by a licensed architect, shows all proposed development within the parcel boundaries and in compliance with applicable setback requirements.

There are existing landscape improvements, including earthen stairs and rock stack walls on the applicant's property. These improvements are not proposed for removal as shown on updated project plans dated September 5, 2024 (Attachment 5). The proposed project does not remove fire access to the appellant's property, which takes primary access via an existing driveway at Montrose Place, an existing paved public road. Lastly, any dispute between adjacent property owners regarding the use of existing improvements on the applicant's property is a private matter.

Appeal Issue 10: The appellant asserts the property should not receive a building permit because they claim the Certificate of Compliance for the subject property and the site survey provided by Davis Surveying rely on an assessor's map, which the appellant claim is for tax purposes only and does not indicate parcel legality.

Issue 10 Staff Response: Contrary to the appellant's claim, the subject property is a legal lot as evidenced by the recorded Certificate of Compliance for Assessor's Parcel No. 23-112-22 (Lot 561) dated May 26, 1989. The Certificate of Compliance describes the property and the land division that created it, complies with the applicable provisions of the State Subdivision Map Act and County Ordinances, and is therefore a legal lot. The lot lines for this parcel were originally represented on the Record of Survey prepared by licensed surveyor, Geo D. Morrison, officially filed for record on August 12, 1929. The updated 2024 site survey prepared by Davis Land Surveying relies on the methods and practice of a licensed surveyor and not on an Assessor's map. Assessor's maps cross-reference recorded maps for informational purposes, but nonetheless, a Record of Survey and an additional updated site survey were used to confirm the location of the lot lines.

Appeal Issue 11: The appellant asserts that removal or damage to Oak trees on the property have potential to damage the road and inhibit access for the residents on Montrose Place.

Issue 11 Staff Response: The project does not propose Oak tree removal, and per the Oak Tree Assessment and Protection Plan (Bill Spiewak, Arborist, and dated May 12, 2022), the project will not damage the three existing Oak trees on the subject property. The appellant did not provide any evidence that the project has potential to damage the road or inhibit access for the residents on Montrose Place. The project was reviewed by a licensed arborist who prepared an Oak Tree Assessment and Protection Plan (Sheet L0.1 of Attachment 5), and the assessment concluded that the proposed construction will not significantly impact any of the Oak trees provided the recommended tree protection measures are followed. The project is conditioned to comply with the Tree Protection Plan noted in the approved project plans. Furthermore, access to the proposed project will be provided via Montrose Place, an existing paved public road.

Appeal Issue 12: The appellant asserts that the slope depicted on the project plans is represented to be less inclined than it is in reality.

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Issue 12 Staff Response: Contrary to the appellant’s claim, the applicant provided topographical maps prepared by licensed professionals and depicts the accurate topography of the subject parcel at the time the plans were prepared. The project plans also include preliminary grading plans and building elevations, which further demonstrate the existing and proposed topography and elevations.

Appeal Issue 13: The appellant asserts the property should not receive a building permit because they claim the soils report prepared for the project may be invalid due to being prepared prior to the 2022 and 2023 atmospheric rainstorms.

Issue 13 Staff Response: The soils engineering report for the project was prepared by GeoSolutions, Inc., dated January 28, 2021. The on-site soils types and associated recommendations will not change, and any updated recommendations based on current site conditions will be addressed as a part of the grading and building permit process. As part of the grading and building permit process, the applicant is required to obtain an updated letter to the soils report, prepared by licensed soil engineers. The updated letter to the soils report will be required prior to grading and building permit approval and is in progress at the time of this staff report. In addition, the project is conditioned to demonstrate that the submitted plans conform to the soils engineering report requirements, and conditions further require that grading and building inspectors ensure compliance in the field (Condition No. 8 of Attachment 2).

Conclusion:

Staff recommends denial of the appeal and approval of the LUP because the project is consistent with all applicable ordinance and policy requirements including those for adequate services, aesthetics, geology, cultural resources, hillside and watershed protection, noise, and with the purpose and intent, setbacks, parking, and height limit requirements of the R-1 Zone District, as outlined based on the evidence presented in the Planning Commission staff report dated February 27, 2024 (Attachment 4) and the staff presentation at the March 6, 2024 Planning Commission Hearing.

The project was reviewed by the County Fire Department, County Public Works, Environmental Health and Safety, County Surveyor and Building and Safety, and the project meets all applicable County regulations for a new single-family residence and garage.

Fiscal and Facilities Impacts:

Budgeted: Yes

Fiscal Analysis:

Total costs for processing the appeal are approximately \$15,510 (55 hours of staff time). The costs for processing appeals are partially offset by a General Fund subsidy in Planning and Development’s adopted budget. Funding for processing this appeal is budgeted in the Planning and Development Department’s Permitting Budget Program, as shown on Page 317 of the County of Santa Barbara Fiscal Year (FY) 2024-2025 Adopted Budget.

Special Instructions:

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The Clerk of the Board shall publish a legal notice in the Santa Barbara Independent at least 10 days prior to the hearing on October 15, 2024. The Clerk of the Board shall also fulfill mailed noticing requirements. The Clerk of the Board shall forward the minute order of the hearing as well as a copy of the notice and proof of publication to the Planning and Development Department, Hearing Support, Attention: David Villalobos.

Attachments:

- Attachment 1: Findings
- Attachment 2: Conditions of Approval
- Attachment 3: CEQA Exemption Notice
- Attachment 4: Planning Commission Staff Report
- Attachment 5: Site Plans
- Attachment 6: Letter from Applicant
- Attachment 7: Letter from Davis Land Surveying
- Attachment 8. BOS Appeal Application and Letter
- Attachment 9. Noyes-Woodall General Public Comment
- Attachment 10. Facilitation Report

Authored by:

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