



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: February 7, 2012
Placement: Set Hearing
Estimated Tme: 30 minutes on 2/21/12
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(s) (805) 568-2085
Contact Info: Alice McCurdy, Deputy Director, Development Review South
(805) 568-2518

SUBJECT: Dent Appeal of Montecito Planning Commission Approval of the Van Vliet Additions Project, Case No. 11APL-00000-00019, 1717 Fernald Point Lane, APN: 007-380-021

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence:

As to form: N/A

Recommended Actions:

Set a hearing for February 21, 2012 to consider an appeal filed by Margaret Dent et al. (11APL-00000-00019) of the Montecito Planning Commission's August 24, 2011 approval of the Van Vliet residential addition, located at 1717 Fernald Point Lane, in the Montecito area, First Supervisorial District.

On February 21, 2012, your Board's action should include the following:

1. Deny the appeal, Case No. 11APL-00000-00019, thereby upholding the Montecito Planning Commission's approval of Case No. 11CDH-00000-00008.
2. Make the required findings for approval of the project, Case No. 11CDH-00000-00008, specified in Attachment-1 of this Board Agenda Letter.

3. Determine that the project is exempt from CEQA pursuant to Section 15301(e) of the State Guidelines for Implementation of the California Environmental Quality Act, (Attachment-2 of this Board Agenda Letter).
4. Grant *de novo* approval the Coastal Development Permit subject to the conditions included as Attachment-3 of this Board Agenda Letter.

Summary Text:

Project and Site Development

The subject property is currently developed with a 3,302 square foot single story residence, an attached garage of approximately 658 square feet and a pool. The project approved by the Montecito Planning Commission (MPC) included construction of a 422 square foot second floor addition, 159 square feet of first floor additions and demolition of 83 square feet on the first floor. The approved project also included demolition and reconstruction of a pool with spa, construction of a new wall and entry gates, installation of new landscape and hardscape materials and approximately 72 cubic yards of cut and 26 cubic yards of fill.

Revised Project

The currently proposed project differs from the project approved by the MPC in that the pool and spa have been shifted slightly and the proposal now includes a 169 square foot carport addition. The proposed revised project continues to be consistent with all applicable policies and findings.

Background

The project was reviewed by the Montecito Board of Architectural Review (MBAR) on March 14, 2011 and April 25, 2011. The MBAR indicated their acceptance of the design in directing that the project could return for joint preliminary and final approval following MPC action on the project. On August 24, 2011 the MPC approved the project. The appellant submitted letters in opposition to the project to the MBAR (dated March 14, 2011) and the MPC (dated August 19, 2011). These same letters were submitted on September 6, 2011 as the basis for this appeal of the MPC's approval of the project. MBAR review was suspended until the appeal is resolved. A facilitation meeting was conducted between the applicant and appellant by County Counsel on October 27, 2011. No resolution of the appeal issues was reached at the facilitation meeting. See Attachment-8, the County Counsel Facilitation Report dated December 6, 2011.

Appeal Issues

Appeal issues are outlined in two letters attached to the appeal application, including a March 14, 2011 letter previously submitted to the MBAR and an August 19, 2011 letter previously submitted to the MPC. Appeal issues are discussed below. See Attachment-4, the Applicant's Appeal Application, received September 6, 2011.

Issue 1-Second Story, Scenic Easement, Privacy

The appellant objects to a second story based on interference with privacy and asserts that the proposed 422 square foot second story addition would block views from the appellants private property to the mountains. The appellant further states that the second story addition would violate an easement for “scenic purposes.”

While the Montecito Community Plan directs decision-makers to consider private views, County visual resource policies explicitly protect public views and not private views. The view that the appellant asserts would be blocked by the proposed second story addition is a private view. As discussed in the project findings included as Attachment-1 of this Board Agenda Letter, the proposed project would be in compliance with applicable visual resource protection policies and would not result in an adverse impact to public views of the beach or mountains. The easement referred to by the appellant is a private easement between the two properties described as being for “scenic purposes.” The County does not enforce private easements or adjudicate private easement disputes; therefore this argument is not relevant as an appeal issue.

Issue 2-Access and Parking

The appellants’ property is accessed via an easement over the applicants’ property. The appellant requests a specific written protocol which guarantees open and uninterrupted access at all times by car and foot along the driveway and in the parking area within the private easement. The appellant also requests a project condition that would ensure the appellant uninterrupted access to their property. Lastly, the appellant asks that no construction parking occur on-site and states that the MBAR had “similar concerns” about parking.

As proposed, no part of the project would interfere with the access easement between the two properties, including the driveway and parking area. The April 25, 2011 MBAR minutes state, “[Regarding land use] architect and owner confirmed that parking during construction will not burden the easement to the neighbor,” further confirming that there is no proposal or intention to block parking or access. The parking condition (Condition No. 3) approved by the Montecito Planning Commission states:

“The Construction Parking Plan shall include a construction timeline that indicates each phase of work to be completed, the location or construction parking during each phase of construction, the number of vehicles required for each construction phase and the estimated timeframe for each phase of construction. The timeline shall be accompanied by a site plan that graphically illustrates the location of each parking area. Construction parking shall occur on-site to the maximum extent feasible. If construction parking cannot be accommodated during any phase of construction, the parking plan shall note the location of the proposed offsite parking. Offsite parking locations shall be reviewed and approved by P&D staff. Offsite parking shall not impede the flow of traffic along Fernald Point Lane. Traffic flaggers may be required if determined necessary by P&D staff upon review of the Parking Plan.”

For purposes of clarification of the intent of Condition No. 3, staff recommends that the following language be added, “*Designated construction parking areas shall occur outside of the access easement to the adjacent property at 1711 Fernald Point Lane.*”

Because Fernald Point Lane is a narrow road and parking of construction vehicles along the road has the potential to impede road traffic and create safety hazards, the condition requires on-site parking to the maximum extent feasible. The condition also requires that the location of proposed on-site and off-site parking be graphically illustrated, allowing County staff to review the parking location and ensure that it does not interfere with access to the appellants’ property or parking area. As revised, the proposed condition will adequately address access to the appellants’ property.

Issue 3-Construction Noise and Debris

The appellant requests a specific written protocol and a specific project condition for noise and debris control and requests that construction hours be limited to 8:00 a.m. to 4:30 p.m. rather than the hours required by the existing condition, 7:00 a.m. and 4:30 p.m.

Condition No. 8 applied to the project as a part of the MPC approval includes a requirements that the site remain trash free throughout and after construction, that adequate trash receptacles be provided, that receptacles be picked up a minimum of once per week, that a specific contact person be designated that is responsible for site clean-up and that Building and Safety staff inspect the site periodically to confirm that the site is free of all trash and debris. This waste management condition is, itself, a specific and enforceable written protocol for debris control (as requested by the appellant) and therefore an additional separate protocol is not necessary.

Condition No. 4 limits noise generating construction to the hours between 7:00 a.m. and 4:30 p.m. and disallows noise generating construction on weekends and State holidays based upon Montecito Community Plan Development Standard N-M-1.1.1 (which specifically calls out 7:00 a.m. and 4:30 p.m. as the allowable construction time period). Staff recommends maintaining Condition No. 4 as written, as it would implement the applicable development standard identified in the Montecito Community Plan.

Condition No. 4, itself, represents a specific and enforceable written protocol (as requested by the appellant) and therefore an additional separate protocol is not necessary. The full language of all project conditions is included as Attachment-3 of this Board Agenda Letter.

Issue 4-Pool Equipment (Noise)

The appellant requests that the pool equipment be moved north, closer to the existing pool equipment on-site.

The proposed project includes demolition and reconstruction of a swimming pool and pool equipment. According to the Noise Element of the County Comprehensive Plan, 65 decibels is regarded as the maximum exterior noise exposure compatible with noise-sensitive uses (residential use is considered

noise-sensitive). Therefore noise emitted by pool equipment is limited to 65 decibels at the property line. The proposed project includes “quiet design” pool equipment which would be located 56 feet from the appellants’ property. Specifications for the proposed pool equipment show that, at 10 feet away, the equipment would emit 58.3 decibels and would already be below the County threshold. At its location 56 feet away from the appellants’ property line, the pool equipment would result in noise levels of approximately 34.3 decibels. For comparison, a soft whisper heard from 5 feet away is 30 decibels, the noise inside an average residence is 40 decibels and ordinary conversation is 60 decibels. Additionally, the equipment would also be enclosed, further attenuating noise. Therefore, noise emitted by the pool equipment would be well below the 65 decibel threshold established by the Noise Element and would be no greater than noise inside the average home. Because the existing location of the pool equipment meets and exceeds County noise protection policies, movement of the pool equipment further north does not appear necessary.

Issue 5-Lighting

The appellant requests submittal of a lighting plan prior to project approval.

In compliance with Montecito Community Plan Policy LU-M-2.2 (which requires that lighting be minimized to protect the semi-rural, residential character of the community) a lighting condition (Condition No. 7) applied to the project requires submittal of a lighting plan that requires that exterior night lighting be low intensity, low glare design, minimum height, and hooded to direct light downward onto the subject lot and prevent spill-over onto adjacent lots. The condition also requires that lights are dimmed after 10 p.m. The lighting plan would be included in the submittal to the MBAR for preliminary/final approval and review. Planning and Development staff would also review the lighting plan for conformance with the lighting condition prior to issuance of the Coastal Development Permit. Compliance with the required lighting condition ensures compliance with applicable lighting policies and therefore submittal of a lighting plan prior to project approval does not appear to be necessary.

Issue 6-Policy Analysis and Findings

The appellant states that the County has not addressed all required project findings/policy analysis and has not analyzed views of the project from the beach toward the mountains.

Visual resources analysis was provided in the original staff report to the Montecito Planning Commission (Attachment-6). Additional clarification and discussion of the project’s consistency with applicable policies and findings was provided at the August 24, 2011 MPC hearing. Please refer to the MPC Action Letter (Attachment-5) and P&D’s Memo to the Montecito Planning Commission, dated August 23, 2011 (Attachment-7) for this additional discussion. Specifically, the policy analysis and findings provide detailed view impact analysis and a conclusion that the proposed development would not significantly obstruct views from any public viewing area to the coast or mountains. The staff report and staff memo address all required findings for approval of the project and provide an extensive discussion of applicable policies under multiple issue areas.

Issue 7-Non-conforming Parcel Size

The appellant asserts that the County should not permit additional development of the parcel because, at .42 acres, it does not meet the existing minimum parcel size of 1.0-acre. The appellant also states that development should not be approved because the property contains a residence and “several out buildings.”

At .42-acres in size, the property is legal nonconforming as to parcel size. Minimum parcel size is established in order to guide the creation of new lots and is not intended to prevent reasonable development of existing properties. Numerous properties within Santa Barbara County are nonconforming as to size. These properties are routinely issued permits for development. To deny development on the subject property because it is nonconforming as to size would potentially limit reasonable development of the property and would be inconsistent with the treatment of other nonconforming properties within Santa Barbara County. The property contains no outbuildings. Total additions proposed include a 422 square foot second floor addition, 159 square feet of first floor additions and a 169 square foot carport addition. An 83 square foot storage area attached to the residence would be demolished. As discussed in the staff report and the memo to the MPC dated August 23, 2011, the proposed project is consistent with all applicable requirements of the Article II Coastal Zoning Ordinance and the Comprehensive Plan. Therefore, staff continues to recommend approval of the proposed additions.

Issue 8-Change from MBAR Review

The appellant states that changes were made to the project between MBAR and MPC review that increased the project size and that it is unclear if those changes would affect the MBAR’s conclusion regarding the project.

The project was reviewed by the MBAR on March 14, 2011 and April 25, 2011. The project discussed at those meetings included construction of a 396 square foot second story addition, 139 square feet of first floor additions and no demolition for a total of 535 square feet. The project approved by the MPC included demolition of an 83 square foot first floor storage area, construction of a 422 square foot second floor addition and construction of 159 square feet of first floor additions, for a total of 518 square feet. Therefore, while the location of additions/demolition changed slightly, the overall square footage actually decreased between review at the MBAR and approval by the MPC. Additionally, the MBAR will have the opportunity to review minor project changes at the preliminary and final review stage that follows Coastal Development Permit approval.

Minor project changes commonly occur between conceptual architectural review and review/approval by the MPC. The concern on the part of the appellants regarding square footage changes was presented to and considered by the MPC, who did not request that the project be remanded back to the MBAR for further comment prior to their decision to approve the project.

Summary and Recommendations

Appeal issues raised by the appellant are either outside the purview of the County (i.e. enforcement of easements between private parties) and/or have been adequately addressed through existing project conditions, findings and consistency analysis. Based upon the analysis presented in the “Appeal Issues” section above, staff recommends de novo approval of the proposed project in its revised form.

Performance Measure:

N/A

Fiscal and Facilities Impacts:

Budgeted: Yes

Fiscal Analysis:

No appeal fees are required for appeals of projects in the appeals jurisdiction of the Coastal Zone. The estimated staff cost to process the appeal is approximately \$4,600 (25 planner hours). Permit revenues are budgeted in the Permitting and Compliance Division of the Development Review South Division, on page D-314 of the adopted 2011-2012 fiscal year budget.

Staffing Impacts:

None

Special Instructions:

The Clerk of the Board shall publish a legal notice at least 10 days prior to the hearing on February 21, 2012. The notice shall appear in the Santa Barbara Daily Sound. The Clerk of the Board shall fulfill the noticing requirements. Mailing labels for the mailed notice are attached. The Clerk of the Board shall provide a copy of the notice, proof of publication and minute order to P&D, attention David Villalobos.

Attachments:

- Attachment 1: Findings
- Attachment 2: CEQA Exemption
- Attachment 3: Conditions of Approval
- Attachment 4: Applicant’s Appeal Application, received September 6, 2011
- Attachment 5: Montecito Planning Commission’s Action Letter (including Findings and Conditions), dated August 26, 2011
- Attachment 6: P&D’s Staff Report to the Montecito Planning Commission (including CEQA Exemption) dated August 5, 2011

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Attachment 7: P&D's Memo to the Montecito Planning Commission, dated August 23, 2011

Attachment 8: County Counsel Facilitation Report, dated December 6, 2011

Authored by:

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