

ATTACHMENT TO SIPPLE APPEAL OF
MONTECITO PLANNING COMMISSION
DENIAL OF SIPPLE APPEAL FROM
LAND USE PERMIT ISSUANCE FOR
STONE REVISED LANDSCAPE PLAN

The Sipple Appeal of the issuance of Land Use Permit 09LUP-00000-00166 was based upon the same grounds as stated for their appeal of the Montecito Board of Architectural Review's approval of the Stones' revised landscape plan because the Land Use Permit simply implements the MBAR approval. The Montecito Planning Commission denied the Sipple appeal but imposed new and additional conditions upon the Land Use Permit. In so doing, the Montecito Planning Commission improved the screening requirements but the conditions, as stated, do not provide immediate restoration of the screening wrongfully removed by the Stones. The Sipples' appeal is on the following grounds:

1. Without additional conditions that provide for immediate restoration of the landscape screening that the Stones removed in violation of their Land Use Permit and the conditions imposed upon the subdivision map, the Stone project is inconsistent with the Montecito Community Plan policies and development standards.

Policy BIO-M-1.15 states: To the maximum extent feasible, specimen trees shall be preserved. Specimen trees are defined for the purposes of this policy as mature trees that are healthy and structurally sound and have grown into the natural stature particular to the species. Native or non-native trees that have unusual scenic or aesthetic quality, have important historical value, or are unique due to species type or location shall be preserved to the maximum extent feasible.

Development Standard BIO-M-1.15.1 states: All existing specimen trees shall be protected from damage or removal by development to the maximum extent feasible.

2. The approval is not consistent with the Montecito Architectural Guidelines and Development Standards.

Section I.D. Good Neighbor Policies states: 1. Consider proposed house design within the context of the neighborhood. 3. Consider mutual neighborhood privacy in all aspects of the house design and site layout, including noise and lighting. 4. Consider your neighbors' views and privacy in the placement and architectural appearance of your house or addition.

*Section I.E. **Required Findings** states that prior to approving any BAR application, the BAR shall make the following findings: 5. There shall be a harmonious relationship with existing developments in the surrounding neighborhood. 7. Adequate landscaping shall be provided in proportion to the project and the site with regard to preservation of specimen and landmark trees, existing vegetation, selection of planting which will be appropriate to the project, and adequate provision for maintenance of all planting. 10. The proposed development is consistent with any additional design standards as expressly adopted by the Board of*

Supervisors for a specific local community, area, or district. [NOTE: These also are required findings under County Zoning Ordinance Article II, Section 2-33.15.]

Section III.A.1 defines "neighborhood compatibility" as the relationship between surrounding structures and their settings so that the effect of all structures taken together is aesthetically pleasing, keeping the neighborhood in harmony and balance.

Section III.A.2 states that the applicant should consider design methods that minimize the visual impacts of development from adjoining properties by providing landscaping to screen development.

Section III.C.1 states that "Privacy" is defined as the enjoyment of an individual property where visual intrusion has been minimized.

Section III.C.2 states that "Residential privacy is a key ingredient in the quality of life in Montecito."

Section III.C.3 states: (a) "The siting of new structures in relationship to existing structures should take into account the impact upon views from neighboring sites." (g) Structures should be located and designed to avoid placement of windows, decks and balconies which look directly onto private areas of adjacent properties."

Section III.D.3 states: (b) "Residential projects should be designed to preserve significant and unique vegetation groupings which contribute to the character of the site and the neighborhood. Site plans should demonstrate a diligent effort to retain as many 'significant trees' as possible." "Significant Tree" means any tree which is in good health and is more than 12 inches in diameter as measured 4 feet 6 inches above the root crown. Any tree of the Quercus (oak) genus which is in good health and is more than 6 inches in diameter as measured 4 feet 6 inches above the root crown is considered a "significant tree."

Section III.H. states: 2. "To maintain the semi-rural character of Montecito, the natural landscape must continue to be the dominant feature of the community." 3.e. "Landscape planting designs should reinforce the dominant vegetative patterns that define the natural oak woodland and ornamental urban forest that is characteristic of Montecito." 3.f. "Plantings should be compatible with the character of the site, the project, and surrounding properties." 3.i. "Significant trees are important aesthetic and ecological resources that contribute to Montecito's distinctive character. Site development plans should demonstrate diligent effort to retain as many significant trees as possible."

2. The approval is inconsistent with the Montecito Board of Architectural Review Bylaws and Guidelines.

~~Section 7.1 states: "The purpose of these guidelines is to assist the property owner, homeowner, architect, developer, and builder in designing projects that will be harmonious with the existing character of Montecito. The goal is to ensure that new development will carefully consider the community context in which it takes place and have a compatible relationship to neighboring~~

properties and the community design goals.”

Section 7.2 states: “These Architectural Guidelines and Development Standards also serve as a guide for the Montecito Board of Architectural Review, County staff and the decision makers in the design review process.”

3. The approval is inconsistent with the Tentative Map and Land Use Permit requirements applicable to the Stone property.

*The Negative Declaration for the Cross Creek Ranch II project (the Stone Parcel is Lot 1 of that project), 99-ND-05, addressed the sensitivity of oak trees and the need to prevent ground disturbance within 6 feet of their driplines. 99-ND-05 states: “Direct impacts to onsite biological resources would occur as a result of additional grading and construction associated with further development of the proposed lots, primarily related to the loss of existing coast live oaks. “ “Such impacts include both oak tree removal and **ground disturbance within six (6) feet of the dripline of individual trees.**” “The most appropriate approach to limiting biological impacts associated with oak removal is probably to delineate development envelopes for each proposed lot. . . . Such envelopes would define the possible scope of site disturbance activities.”*

*The Mitigation Measures for approval of the tentative map include #9, which requires that building envelopes be established for the proposed lots and that “**No ground disturbance activities outside these envelopes shall be allowed** with exception for drainage improvements required by the Santa Barbara County Flood Control & Water Conservation District within approved drainage easements, landscaping, and fencing consistent with any future drainage plan proposed for the lots in question.”*

Land Use Permit 06LUP-00000-00617 for the revised main house and residential second unit received MBAR and County staff approval based upon a landscape plan that showed that the then-existing solid screen of avocado trees located outside the building envelope would remain. Condition #31 states: “Landscaping shall be maintained for the life of the project.” Condition #32 states: “The project landscaping shall consist primarily of drought-tolerant and/or Mediterranean type species that adequately screen the project from surrounding land uses. Landscaping shall be compatible with the character of the surroundings and the architectural style of the structure.”

4. This approval is inconsistent with the MBAR’s comments at their February 23, 2008, July 28, 2008, and August 25, 2008 hearings wherein the lost screening was a major issue.

MBAR Comments on 2/23/08:

2. MBAR does not believe the development envelope should be changed.
3. Replanted avocados should be located as close as possible to the original location in rows.
4. The site needs additional screening and privacy from the property to the west (e.g., supplement the hedge, Pittosporum, landscaping reminiscent of an old rural orchard, additional plantings on the other side of the property line).

MBAR Comments on 7/28/08.

Screening should be restored to original conditions.

The avocado trees should be staggered, possibly in two rows, or offset the new ones inward.

An avocado "hedge" treatment is not acceptable.

Provide an arborist's report on the affected oak and show oak on the plans; avoid root structure of the oak with any new plantings.

MBAR Comments on 8/25/08.

MBAR does not support the property line wall or Pittosporum hedge.

MBAR prefers a double row of staggered avocados for screening.

Mr. and Mrs. Sipple did not oppose the Stone project, despite its bulk and scale, particularly at its southwest corner, for one reason – the Stones left the two rows of mature avocado trees in place until they had obtained County approval and had erected their home. The residential second unit has a large window that, were it not for the screening, looked right into the Stones' bedroom, living area, and outdoor living area. With the screening in place, the Sipples didn't object. When the Stones removed the avocado tree screening, in violation of the conditions on their LUP and contrary to the representations made to the MBAR that these trees would remain, the full visual impact of the Stones' house became evident. The Sipples lost all privacy. This one act – removing mature screening – has placed the entire Stone project in violation of all of the policies, development standards, required findings, mitigation measures, and conditions set forth above.

No one can dispute that the design of the Stone residence violates the policies, development standards, and design guidelines, as well as the LUP and Cross Creek Ranch map conditions cited above, as it now looms over the Sipple property with a large window looking directly into the private areas of their home, including their bedroom. The inappropriate design cannot be remedied, but the lack of adequate screening can be remedied without further delay.

In an effort to restore what it considered to be reasonable screening, the MBAR approved a landscape plan that relied heavily on a pittosporum hedge, planted in a Flood Control District flood swale. The MBAR also has relied on the mistaken belief that the proposed young avocado trees, together with the pittosporum hedge, will adequately replace the former screening and restore the Sipples' privacy within two (2) years. The belief is mistaken for several reasons. First, the Stone house has been elevated to place it above the flood plain. According to the landscape plan, the pad for the finish floor for the Stone house is over 311.5 feet above sea level at its closest proximity to the west (Sipple) property line. The proposed landscaping is at Elevation 304. The Montecito Planning Commission required podocarpus trees of no less than 16-17 feet high. Without assurance that the new plantings, at a height of 16 feet tall at the north end and at least 17 feet tall at the south end, will be at least 6 feet wide of dense vegetation and planted without spaces between the tips of the vegetation, the Sipples' privacy will not be restored for years, if at all. All the Stones have to do is not irrigate the trees and they will cease to grow, leaving huge gaps in the screen.

Second, according to a local avocado orchard operator and arborist Bill Spiewak, the avocado trees that the Stones have planted, ranging from 8 feet in height to 11 feet, will suffer transplant shock for the first year so their growth will slow. Thereafter, they will grow at an annual rate of approximately 6-12 inches. They will fill out very gradually as they grow, but will take well 8-10 years to reach the height and fullness required to provide meaningful screening for a house of this size, bulk and scale. Avocado trees (which originate in Mexico or Central/South America) require good drainage and will die if over-watered. A local landscaper and nurseryman who has landscaped most of the major estates in Montecito and Hope Ranch advises that the pittosporum undulatum proposed by the Stones (a shrub that is from Australia and is not Mediterranean as required by LUP Condition #32) grows at an approximate rate of 12-16" per year but is highly sensitive to over-watering and requires excellent drainage.

Third, as described above, neither the avocado nor the pittosporum is suitable for this drainage swale area and will die if inundated with flood water. The proposed podocarpus theoretically could provide adequate screening, but only if they meet the specifications stated above and are properly maintained.

The MBAR's decision also relies upon the continued health of oak trees located on the Sipple property or on the shared property line. One of these trees is thriving. The other has been declining steadily and alarmingly ever since the Stones removed the avocado tree screening. The decline is unfortunate but not surprising, given the way that the avocados were removed. Heavy equipment was brought in, the operator ran the equipment back and forth over the Critical Root Zone of the oak, slamming into the avocado trees with the blade from various angles to loosen them, then dug down and ripped the intact trees from the ground. Because many of the avocado trees were located under and adjacent to the oak tree canopy, the oak tree roots were heavily impacted. The oak now has dead limbs showing and has not re-leafed this Spring as other oaks in the area have done. It appears to be dying and cannot be relied upon to provide any future screening.

In short, the landscape plan proposed by the Stones may be an inexpensive approach to replacing mature trees, but it does nothing to restore immediately the privacy and visual screening that the Sipples enjoyed prior to the unpermitted tree removal. With the plan proposed by the Stones, it will take 8-10 years to restore privacy lost almost one year ago. With the plan approved by the Montecito Planning Commission, there is no guaranty that the trees will provide adequate screening. There are gaps between the trees and the canopy width at 16 feet and 17 feet, respectively, is unspecified. The widest part of the vegetation on the trees could be at the 6-foot level, providing absolutely no effective screening. A few lacy or wispy limbs that reach the 16-foot and 17-foot heights will provide no meaningful screening.

The Sipples ask that your Board require that mature oak trees be added to this plan to mitigate for the oak tree on the shared property line that is declining and could die as a result of the earth disturbance within its critical root zone. The Sipples request that the proposed podocarpus, designated to be no less than 16 feet and 17 feet in height be more clearly specified to ensure that a continuous landscape privacy screen is maintained at all times between the Stone house and the Sipple property line, sufficient to screen out the view of the Stone house from the Sipple house and yard. Consistent with Montecito Guidelines Section III.H. (which states: 2. "To maintain the semi-rural character of Montecito, the natural landscape must continue to be

the dominant feature of the community.” 3.e. “Landscape planting designs should reinforce the dominant vegetative patterns that define the natural oak woodland and ornamental urban forest that is characteristic of Montecito.” 3.f. “Plantings should be compatible with the character of the site, the project, and surrounding properties.”), the Stone site should be planted with mitigation oaks and the podocarpus should be required to be of sufficient height and width at the 16-foot and 17-foot heights to establish and maintain such a continuous privacy screen between the Stone house and the Sipple property line.

Because their damaged oak tree is meant to provide some of the screening, the Sipples ask that an additional condition be added to the Stone project: If, within five (5) years after the MPC approval, a qualified arborist determines that the existing oak tree damaged by the Stones’ improper earth disturbance and tree removal is dead or dying, the Stones shall remove and replace that tree in the same location with one of comparable size and in good health and condition.

Issuance of the Land Use Permit for the Stone Revised Landscape Plan was intended to resolve an outstanding zoning violation related to the Stones’ improper removal of the avocado tree screen that was over 20 feet tall and the improper earth disturbance within the restricted zone outside their building envelope. The Land Use Permit, even as revised by the Montecito Planning Commission, fails to restore to the Sipples, who are the only ones suffering from the impact of the zoning violation, their privacy and their view. To ask the Sipples to continue to wait for an unknown period of time for trees to grow, and submitting them to the risk that the trees and shrubs will be killed by flood waters (or simply by the Stones’ failure to water them) and their screening snatched away again, is unreasonable and unfair. Their quality of life and their property values have been severely damaged. They need immediate relief.