

# SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors  
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Santa Barbara, CA 93101  
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## Agenda Number:

**Prepared on:** May 6, 2004  
**Department Name:** Planning and Development  
**Department No.:** 053  
**Agenda Date:** May 18, 2004  
**Placement:** Departmental  
**Estimate Time:** 60 minutes  
**Continued Item:** YES  
**If Yes, date from:** March 23, 2004  
**Document File Name:** G:\GROUP\Permitting\Case Files\APL\2000s\03 cases\03apl-00000-00014\May18BOS\the Board Agenda Letter 5.18.04.DOC

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**TO:** Board of Supervisors

**FROM:** Val Alexeeff, Director  
Planning and Development

**STAFF CONTACT:** Steve Goggia, Supervising Planner (x2067)  
Peter Lawson, Planner (x2021)

**SUBJECT:** Rutledge Appeal of Staff's Approval of the Lambert Driveway Improvements & Pergola under case number 03LUP-00000-00130 [Appeal Case No. 03APL-00000-00014]

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## Recommendations:

That the Board of Supervisors:

1. Deny the appeal 03APL-00000-00014.
2. Adopt the required findings for the project specified in Attachment A of this Board Letter.
3. Grant *de novo* approval of the Land Use Permit 03LUP-00000-00130 for the as-built driveway improvements & pergola as revised per this Board Letter and included as Attachment C.

Refer back to staff if the Board of Supervisors takes other than the recommended action for appropriate findings and conditions.

**Alignment with Board Strategic Plan:** The recommendation(s) are primarily aligned with actions required by law or by routine business necessity.

**Discussion:**

On March 23, 2004 the Board heard the Rutledge appeal of the Lambert As-Built Driveway Improvements and Pergola. Following presentations from P&D staff and the appellant, the Board continued the hearing and requested additional information from staff. Per the Board's direction, this letter includes: findings to support the as built Land Use Permit 03LUP-00000-00130, including an analysis of the development's consistency with Comprehensive Plan and Montecito Community Plan Policies and Development Standards (Attachment A), a matrix that compares the three Land Use Permits that have been applied for development of the driveway (Attachment B), and the proposed Land Use Permit 03LUP-00000-00130 for the as-built driveway, motor court, retaining walls, drainage swale and pergola as revised per this Board Letter (Attachment C).

**Background:**

The project site is developed with a single family dwelling, pool, and garage with storage. The project site is served by two driveways. One driveway provides access from Hot Springs Road and is considered the primary access for emergency purposes. The second driveway provides access from Mountain Drive. The location of this second driveway along with drainage improvements and a motor court were approved in 1998 under Land Use Permit number 97-LUS-509 MO. In addition to the above development, the project site includes a pergola and improvements to the second driveway that were constructed without permits. The improvements to the driveway have been the subject of three appeals. This third appeal, case number 03APL-00000-00014, which the Board commenced hearing on March 23, 2004, is the most recent. A detailed history of this project site was provided in previous staff reports to the Board of Supervisors.

A considerable record of material has been generated over the past seven years by all the site development with and without permits, and through revisions, revocations and appeals of permits. The following items summarize the facts upon which Planning and Development's approval of the current as-built Land Use Permit are based:

1. The location of the driveway was originally approved under 97-LUS-509 MO. The original permit allowed a driveway mostly at grade. Due to the natural slope of the site, some minor cutting and filling occurred along most of the driveway. The cut and fill typically was balanced with the cut on the western half of the driveway and the fill on the eastern half of the driveway. A 3 foot high gravity wall was proposed to support a cut on the west side of the middle third of the driveway. The grading for the driveway was inspected periodically by field personnel; however no final inspection was given for the driveway.

Two revisions of 97-LUS-509 MO were approved. The first allowed a 3 foot tall flood wall located along the southern half of the eastern property line, which is now in place.

A second revision to the permit approved on July 7, 1998, allowed for a 6 foot tall retaining wall of approximately 300 feet in length located on the east side of the driveway. This second revision was revoked by Planning and Development because, among other things, the revision did not comply with the provisions of Section 35-482.8 *Minor Changes to Land Use Permits* and Appendix C of Article IV, *Guidelines for Minor Changes to Land Use and Coastal Development Permits*, and the applicant was constructing beyond the scope of the revision. The revocation of this revision was affirmed by the Planning Commission and ultimately the Board of Supervisors on September 17, 2002.

2. Numerous changes to the driveway without, or beyond permit approvals occurred over a period of approximately five years subsequent to the approval of 97-LUS-509 MO. There are no clear records of most of these activities. The changes included, but are not limited to, constructing a fire truck turnout and then removing it, constructing a 6 foot tall retaining wall of 340 feet in length and then reducing its height to 5 feet and length to approximately 180 feet. These changes were shown in various stages of construction through pictures and testimony on record at several hearings. The matrix of past permits (Attachment C) attempts to provide an analysis of the most relevant permits including the current application (03LUP-00000-00130), which represents an as-built permit for development reduced in scope from the plans that were presented to the Board on September 17, 2002.
3. The location and finished floor elevation of the detached garage and motor court has not substantially changed from the originally approved plans. The motor court area elevation was established under Land Use Permit 98-LUS-067, which was approved and issued for a three car garage, at an elevation of approximately 628 feet. The most recent survey of the site after the garage was constructed shows a finished floor elevation of 629.9 feet and the southern portion of the motor court area in front of the garage at 628.8 feet. The additional 1.9 feet includes a concrete pad of approximately 8 inches and a higher finished grade under the garage to allow drainage away from the structure. The finished pad elevation was signed off by Planning and Development Building and Safety personnel.
4. The current proposal differs from the proposed development that the Board of Supervisors reviewed in the past. The current permit (03LUP-00000-00130) includes a retaining wall supporting the fill under the driveway ranging in height from 0 to approximately 5 feet, approximately 150 feet in length, no fire department turnout, and additional drainage improvements to reduce the amount of runoff from the property. Further, the motor court retaining walls were reduced in size from 10 feet to 6 feet. The overall size of the motor court was increased from 4,000 square feet to 5,000 square feet as a consequence of the applicant eliminating the proposal for a guest house that would have been located adjacent to the motor court. This increase to the size of the motorcourt did not result in additional grading.

The Board of Supervisors now has two permitting options meriting a finding of consistency with the Article IV Zoning Ordinance and applicable Policies and Development Standards of the Comprehensive Plan and Montecito Community Plan:

1. The first option is to approve the project as it is currently configured in the field and on the attached site plan and as described in the project description in proposed Land Use Permit (03LUP-00000-00130) Attachment C; this is presented in this Board Agenda Letter as Planning and Development's recommended option. In making the required findings and policy consistency analysis for this current as-built driveway, staff took into consideration the approval of 97-LUS-509 MO, which permitted vegetation removal, ground disturbance (including a 3 foot high garden/retaining wall approximately 240 feet in length on the west side of the driveway), and associated drainage improvements in essentially the same location as the driveway currently exists.

Staff also notes that pursuant to Section 35-482.2.1.b. of Article IV, fences and walls of six (6) feet or less are exempt from the requirement of a Land Use Permit and so the original freestanding garden wall was exempt from permit requirements. At issue here is the placement of the fill material that raised the driveway approximately 5 feet above the previous approved plan in some locations, essentially turning a freestanding garden wall into a retaining wall.

The attached Findings (Attachment A) support this option.

2. Alternatively, the Board could find that the fill material which raised the elevation of a portion of the driveway up to as much as 6 feet above the natural grade, is not consistent with the Montecito Community Plan policies which mandate that grading be kept to a minimum. Staff notes that the fill under the driveway allows for a gradual climb (approximately 12%) from the entrance at Mountain Drive to the motor court. However, it would be possible to connect the driveway from the entrance at Mountain Drive to the existing garage following the natural grade as it previously existed for a longer portion of the driveway. Under this situation the driveway would rise at a steeper angle of approximately 16% as it approaches the entrance to the motor court over a shorter distance rather than the gradual climb of 12% over the length of the driveway as it exists today. Should the Board of Supervisors choose this alternative, staff would have to return with appropriate findings.

**Mandates and Service Levels:** Pursuant to Section 35-489.2.1.b of Article IV of Chapter 35 of the County Zoning Ordinances, the decisions of the Planning and Development Department may be appealed to the Planning Commission within ten days of the date of the posting date for the notice of Land Use Permit approval. In this case the project was sent directly to the Board of Supervisors due to direction give to the applicant and staff at a previous Board hearing.

**Fiscal and Facilities Impacts:** A fixed fee is collected for a third party appeal. This covers a small portion of staff time devoted to the processing of the appeal. However, the County is funding additional costs associated with the processing of these appeals.

**Special Instructions:** Clerk of the Board shall forward a copy of the Minute Order to P&D, Hearing Support Section, Attn: Cintia Mendoza.

**Concurrence:** County Counsel

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# Memorandum



**Date:** May 13, 2004  
**To:** Board of Supervisors  
**From:** Alan L. Seltzer, Chief Assistant County Counsel  
**Re:** Rutledge Appeal of Lambert Land Use Permit – Procedural Issues

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On March 23, 2004, your Board requested County Counsel to provide in writing a response to claims made in the letter from appellants’ attorneys, dated March 19, 2004, that the Board’s decision to take directly this appeal of the decision of Planning & Development violates the County Code and appellants’ rights to procedural due process.

First, appellants are wrong in contending that your Board set this hearing in closed session. Rather, the decision whether to take direct appeal of this land use permit decision without first requiring hearing by the Montecito Planning Commission was made in full compliance with the Brown Act, and after notice and the opportunity to be heard at the Board’s November 25, 2003 meeting. Second, the Board’s decision to take a direct appeal is consistent with County’s past practice, where, on numerous occasions, the Board of Supervisors has expedited the administrative review process by taking direct review of permits in order to settle, moot or limit disputes in pending litigation.

Staff has identified the following factors justifying expedited appeal in this case. The Board of Supervisors has already made decisions on two previous appeals of this driveway-related project based on extensive administrative records after substantial public hearings. The recently formed Montecito Planning Commission has never considered this dispute.

The two prior land use permit denials by the Board are currently the subject of consolidated litigation. However, the trial court stayed the litigation of these complaints, SBSC Case Nos. 01002001 and 1110416, to allow completion of administrative proceedings on this third permit appeal, recognizing that final Board action on the instant appeal could moot, narrow or alter the pending claims. Because these complaints have been pending in the trial court since 2000, the trial court has stated its desire that the County’s proceedings be completed, or the pending litigation proceed.

The Board may control its appeal process and expedite the hearing of appeals to accommodate litigation requirements. Here, in the second appeal hearing in December 2002, the Board approved an action item expressly inviting the applicant to work with staff and reapply for an approvable land use permit. Chapter 35, Article IV, Section 35-490 provides that “no application shall be accepted nor acted upon if within the past one year, substantially the same application has been made and denied ...” In the instant case, P&D accepted the new application based on the Board’s direction, after

determining that changes in the new application on appeal constituted new evidence material to a revised decision.

Section 35-489 provides that "...decisions of the Planning and Development Department on the approval, denial, or revocation of a land use permit **may** be appealed to the Planning Commission ..." [emphasis added]. As stated above, nothing in Section 35-489 prohibits the Board from taking jurisdiction directly from the decision of the Planning and Development Department. The Board, like courts, may expedite review consistent with the requirements of due process. The appeal proceedings before your Board provide both the applicant and appellant notice and the opportunity to be heard by a fair and impartial decision maker. In arguing that appellants' due process rights have been substantially reduced and violated by this direct appeal, appellants misplace reliance on *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4<sup>th</sup> 547. As explained below, the present appeal bears no resemblance to *Cohan*.

In *Cohan*, the applicants spent 15 years attempting to develop 47 acres into a subdivision involving 26 single-family residences, 144 condominiums and a shopping center. After six separate applications were denied, the planning commission approved the project with 500 conditions. In response, the Thousand Oaks city council appealed the planning commission's decision to itself in violation of its own rules requiring a written appeal. The appeal hearing in *Cohan* was improperly set by the city council through an ex-agenda item at the last moment before expiration of the appeal period. Furthermore, the city council did not specify the grounds for appeal and the actions it wanted itself to take as decision-maker in violation of the local requirement that the written appeal set forth the grounds for appeal. The court found that the failure to do so allowed the hearing to become a "free-for-all with concerns voiced whether *any* commercial development should be allowed." (*Cohan, supra*, at 557, emphasis in original.)

Here, in contrast, the applicant's neighbors, not your Board, filed a written appeal that specified the grounds for appeal. Moreover, your Board set the appeal hearing after providing proper notice of the November 25, 2003 Board hearing at which it was to consider the issue whether to take direct appeal, and only after full opportunity to be heard on the process issue was afforded both the applicant and the appellant.

In *Cohan*, the court found the cumulative errors of the city council reflected that decision-maker's zeal to ensure that the planning commission's decision did not stand unchallenged. Here, in contrast, the Board has remained an impartial decision-maker; it has not tampered with appellants' right to appeal. No decision was made in closed session regarding whether to directly hear this appeal, much less its merits. Indeed, appellants have been afforded the full opportunity to be heard on the substance of its appeal before your Board, which has disagreed with staff decisions in the past. Because the Board is proceeding consistent with its rules and procedures for hearing appeals, affording appellants and applicant the full opportunity to be heard on the merits of the appeal, it is our opinion that no violation of appellants' due process rights has occurred.