



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: December 4, 2007
Placement: Departmental
Estimated Tme: 1.5 hours
Continued Item: Yes
If Yes, date from: November 6, 2007
Vote Required: Majority

TO: Board of Supervisors

FROM: Department John Baker, 568-2085
Director(s)
Contact Info: Dianne Black, 568-2086

SUBJECT: **Appeal of ZA denial of Bella Vista Ranch Floor Area Ratio Variance Request**

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence: Select_Other

As to form: N/A

Recommended Actions:

Consider an appeal filed by Patrick Nesbitt, the applicant, (Case No. 06APL-00000-00041) of the County Zoning Administrator's October 23, 2006 denial of the request for a Variance to the Floor Area Ratio maximum for a residential dwelling (Case No. 05VAR-00000-00005) in the Summerland area of the First Supervisorial District, as follows:

Either:

- A. Approve the appeal; adopt the required findings for the project, including CEQA findings; and grant de novo approval of the Variance request, subject to the conditions of approval; **or**
- B. Deny the appeal, thereby upholding the Zoning Administrator's decision; and grant a continuance to allow staff to come back with findings to support denial of the Variance.

Staff is providing findings (Attachment A) that would support the Board's approval of the Variance appeal. A CEQA Notice of Exemption and Conditions of Approval (Attachments B and C) have also been provided in the event the Board approves the appeal. If the Board decides to deny the appeal, thereby upholding the denial of the Variance request, denial findings will be provided.

Summary Text:

The subject property, Bella Vista Ranch, is a 19.73 acre agriculturally zoned rural parcel located at the eastern edge of the Summerland Community Plan area. As such, the parcel is subject to the requirements of the Summerland Community Plan Overlay of the Article II Zoning Ordinance. The maximum square footage for any residence within the Summerland Community Plan area, regardless of parcel size, is 8,000 net square feet. The existing single family residence located on the subject parcel, originally approved in 1999, and revised several times since, was permitted at 8,000 net square feet. The project was originally permitted with an uninhabitable understory or crawl space, upon which the single story residence was constructed. The applicant has requested a Variance to the floor area regulations to allow the conversion of the 10,910 square foot crawl space to a habitable basement, which would result in a total floor area for the residence of 18,910 net square feet, exceeding the 8,000 square foot maximum floor area permitted within the Summerland Community Plan area. Conversion of the understory to habitable basement would involve the installation of seven arched doors and seven arched windows in existing arched recesses. The new habitable basement would be used for private recreational activities and would include an art gallery, media room, billiard room, exercise room, lounge, children's play room, wine cellar, and two full bathrooms.

POTENTIAL SETTLEMENT OF RELATED LITIGATION: On September 20, 2000, Plaintiff Carpinteria Valley Farms, Ltd., Plaintiff Yeager Holdings, Inc., Plaintiff Patrick M. Nesbitt and Plaintiff Patrick M. Nesbitt Family Trust -- hereafter "Plaintiffs" -- filed a lawsuit in the United States District Court for the Central District of California entitled *Carpinteria Valley Farms, Ltd., et al. v. County of Santa Barbara, et al.*, Case No. CV 00-10154 CJC (PJWx). Plaintiffs allege in that lawsuit that the County of Santa Barbara, County's employees and/or County's agents violated Plaintiffs' civil rights in connection with Plaintiffs' efforts to develop this property located at 2800 Via Real, Summerland, CA. Defendants filed answers with the District Court, where they denied the allegations asserted by Plaintiffs, asserted various affirmative defenses to Plaintiffs' allegations and contended that they have no liability for any of the claims alleged in the lawsuit. The United States Court of Appeals for the Ninth Circuit filed an opinion on June 23, 2003 that further describes this pending litigation and that was published at 344 F.3d 822.

The attached Nonbinding Memorandum of Understanding, Attachment D, describes the conditional agreement through which, without any admission of liability or wrongdoing, the parties to that litigation would resolve that pending lawsuit. The conditional agreement does not contract County of Santa Barbara's police power or County's legislative authority, since the Board of Supervisors in acting on this appeal will retain the final authority to:

- Approve, modify or reject staff's draft Findings;
- Approve or deny the Variance; and
- Impose any conditions on the Variance that, in the Board's discretion, are appropriate, including, without limitation, incorporating standard indemnification language.

If the Board of Supervisors votes to approve the Variance, Plaintiffs will dismiss their lawsuit; if the Board of Supervisors votes to deny the Variance, Plaintiffs may resume their pending lawsuit.

Dismissal of Plaintiffs' lawsuit would also involve Plaintiffs and Defendants executing a Settlement Agreement and Mutual Release.

Background:

The existing single family dwelling (SFD) and associated residential accessory structures on the property were permitted in 1999. The residential structures have since undergone several minor revisions, but remain similar to their originally permitted size and configuration. In addition to the SFD, other permitted development on the property includes an attached garage of 750 square feet, pool house of 800 square feet, guesthouse of 800 square feet, accessory building of 1,000 square feet and horse stables of 13,487 square feet (including two agricultural employee dwellings).

Performance Measure:

N/A

Fiscal and Facilities Impacts:

Budgeted: Yes

Fiscal Analysis:

The fee for processing an appeal is \$443 per the current Planning and Development Department fee schedule adopted by the Board of Supervisors, effective January 9, 2006. The remaining cost of processing this appeal is budgeted in the Permitting and Compliance program of the Development Review South Division on page D-286 of the Fiscal Year 2007/8 adopted budget. Estimated staff time to process this appeal is approximately 32 hours, for a projected cost of \$4,128.

Staffing Impacts:

Legal Positions:

N/A

FTEs:

N/A

Special Instructions:

The Clerk of the Board shall publish a legal notice at least 10 days prior to the hearing on December 4, 2007. The notice shall appear in the Santa Barbara News Press. A minute order of the hearing and copy of the notice and proof of publication shall be returned to Planning and Development, attention David Villalobos.

Attachments:

Attachment A: Findings

Attachment B: Notice of Exemption

Attachment C: Conditions of Approval

Attachment D: Nonbinding Memorandum of Understanding

ATTACHMENT A: FINDINGS

1.0 CEQA FINDINGS

Pursuant to Section 15301 of the State Guidelines for the Implementation of CEQA, the project is categorically exempt from environmental review under the California Environmental Quality Act. See Attachment B, as referenced herein, for further discussion of this exemption.

2.0 ADMINISTRATIVE FINDINGS

2.1 Variance Findings

Pursuant to Section 35-173.6, a Variance shall only be approved if all of the following findings are made:

2.1.1 *Because of special circumstances applicable to the property, including but not limited to size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.*

The subject parcel is zoned AG-I-20 and is located in the Summerland Community Plan area. The property adjoins the Toro Canyon Plan boundaries where numerous agriculturally zoned properties are located. Residences within the Summerland Community Plan are limited to a maximum of 8,000 square feet. The parcel is located in close proximity to other agriculturally zoned parcels in the Toro Canyon Community Plan area that are not subject to the same floor area restrictions. Of ten agriculturally zoned properties within 2,000 feet of the subject parcel, nine are located within the Toro Canyon Plan boundaries and are not subject to floor area restrictions. Thus, due to its location and surroundings within the Summerland Community Plan but abutting the Toro Canyon Plan, the property is denied the privilege of unrestricted residential development enjoyed by many other agriculturally zoned properties in the vicinity.

2.1.2 *The granting of the Variance shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.*

As discussed above, there are nine other agriculturally zoned properties in the vicinity of the subject parcel that are not subject to limitations on residential floor areas. Thus, the granting of the variance to allow the understory conversion would not constitute a special privilege inconsistent with the limitations upon other similarly zoned properties in the vicinity.

2.1.3 *That the granting of the Variance will not be in conflict with the intent and purpose of Article II or the adopted Santa Barbara County Coastal Land Use Plan.*

The purpose and intent of Article II, as identified in Section 35-50 of the ordinance, is to:

1. Protect, maintain, and where feasible, enhance and restore the overall quality of the Coastal Zone environment and its natural and manmade resources;
2. Assure orderly, balanced utilization and conservation of Coastal Zone resources taking into account the social and economic needs of the people of this County and of the State;

3. Maximize public access to and along the coast and maximize public recreational opportunities in the Coastal Zone consistent with sound resource conservation principles and constitutionally protected rights of private property owners;
4. Assure priority for coastal-dependent and coastal-related development over other development on the coast;
5. Provide a definite plan for development so as to guide the future growth of the County within the Coastal Zone;
6. Protect the character and stability (social and economic) of agricultural, residential, commercial, and industrial areas.

The purpose of the Coastal Land Use Plan is articulated on page 8 of the Plan, which states: “The purpose of the land use plan is to protect coastal resources, provide greater access and recreational opportunities for the public’s enjoyment, while allowing for orderly and well-planned urban development and the siting of coastal-dependent and coastal-related industry.” The proposed project would not result in a change in use on the property or result in any substantial changes to the exterior of the residence, including changes to its size, bulk and scale. The Variance would authorize the conversion of an existing understory to habitable basement space, thus would not result in new impacts that would be in conflict with the purposes/intents of Article II or the Coastal Land Use Plan as articulated above.

The residence already exists and was built according to plans approved by the Board of Architectural Review; the proposed changes will not change the existing character of the residence.

As all of the proposed changes are contained within the walls of the existing structure; the height of the residence will not change.

2.1.4 The applicant agrees in writing to comply with all conditions imposed by the County.

A standard condition of indemnification has been imposed by the County for this project. Additionally, standard conditions related to construction (construction hours, vehicle and equipment parking, etc.) will be applied to the follow-up Coastal Development Permit to reduce temporary construction impacts. The applicant has agreed to comply with all conditions imposed by the County.

2.2 Summerland Overlay Findings

2.2.1 In addition to the findings that are required for approval of a development project (as development is defined in the Santa Barbara County Coastal Plan), as identified in each section of Division 11 - Permit Procedures of Article II, a finding shall also be made that the project meets all the applicable development standards included in the Summerland Community Plan of the Coastal Land Use Plan.

The proposed project would not alter the property’s adherence to development standards included in the Summerland Community Plan or Coastal Land Use Plan. Therefore, this finding can be made.

ATTACHMENT B: NOTICE OF EXEMPTION

TO: Santa Barbara County Clerk of the Board of Supervisors

FROM: Alex Tuttle, Planning & Development

The project or activity identified below is determined to be exempt from further environmental review requirements of the California Environmental Quality Act (CEQA) of 1970, as defined in the State and County Guidelines for the implementation of CEQA.

APN(s): 005-210-056 Case No.: 05VAR-00000-00005

Location: 2800 Via Real (north of Highway 101 and east of Lambert Road), Santa Barbara, CA 93067

Project Title: Bella Vista Ranch Floor Area Ratio Variance

Project Description: The proposed project is for approval of a Variance from Section 35-191.5 (Floor Area Ratios) of Article II to allow the conversion of 10,910 square feet of existing interior uninhabitable understory area of a single family dwelling to a daylighted habitable basement with seven arched doors and seven arched windowed transoms. The existing net area of the single family dwelling is 8,000 square feet (the maximum floor area allowed under the Floor Area Ratios for the Summerland Community Plan Overlay). The new habitable basement area would be used for private recreational activities and would include a media room, billiard room, exercise room, lounge, children’s play room, wine cellar, one full bathroom and three half bathrooms. The resulting net floor area of the single family dwelling would be 18,910 square feet.

Name of Public Agency Approving Project: County of Santa Barbara

Name of Person or Agency Carrying Out Project: Patrick Nesbitt, owner and applicant

- Exempt Status:** (Check one)
- Ministerial
 - Statutory Exemption
 - Categorical Exemption
 - Emergency Project
 - Declared Emergency

Cite specific CEQA and/or CEQA Guideline Section: Section 15301 Existing Facilities

Reasons to support exemption findings (attach additional material, if necessary):

The proposed project involves the conversion of an existing, uninhabitable understory to a habitable basement, with only minor alterations to the interior and exterior of the understory to make it habitable and provide access into and out of the basement. CEQA Section 15301 exempts from environmental review the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures involving negligible expansion of use. The proposed project conforms to this exemption as the project involves permitting and minor alteration to an existing structure without significantly changing the use of the structure as a private residence.

Lead Agency Contact Person: Alex Tuttle Phone #: (805) 884-6844

Department/Division Representative: _____ Date: _____

Acceptance Date: _____

Note: A copy of this form must be posted at P&D 6 days prior to a decision on the project. Upon project approval, this form must be filed with the County Clerk of the Board and posted by the Clerk of the Board for a period of 30 days to begin a 35 day statute of limitations on legal challenges.

distribution: Hearing Support Staff
 Project file (when P&D permit is required)

Date Filed by County Clerk

ATTACHMENT C: CONDITIONS OF APPROVAL

Case #: 05VAR-00000-00005

Project Name: Bella Vista Ranch Floor Area Ratio Variance

Project Address: 2800 Via Real, Summerland

APN: 005-210-056

1. This Variance is based upon and limited to compliance with the project description, the exhibits, and conditions of approval set forth below. Any deviations from the project description, exhibits or conditions must be reviewed and approved by the County for conformity with this approval. Deviations may require approved changes to the permit and/or further environmental review. Deviations without the above described approval will constitute a violation of permit approval.

The project description is as follows:

Approval of a Variance from Section 35-191.5 (Floor Area Ratios) of Article II to allow the conversion of 10,910 net square feet of existing interior uninhabitable understory area of a single family dwelling to a daylighted habitable basement with seven arched doors and seven arched windows. The existing net area of the single family dwelling is 8,000 net square feet (the maximum floor area allowed under the Floor Area Ratios for the Summerland Community Plan Overlay). The new habitable basement area will be used for private recreational activities and will include an art gallery, media room, billiard room, exercise room, lounge, children's play room, wine cellar, and two full bathrooms. The resulting net floor area of the single family dwelling will be 18,910 net square feet.

The grading, development, use, and maintenance of the property, the size, shape, arrangement, and location of structures, parking areas and landscape areas, and the protection and preservation of resources shall conform to the project description above, the referenced exhibits, and conditions of approval below. The property and any portions thereof shall be sold, leased or financed in compliance with this project description and the approved exhibits and conditions of approval hereto. All plans (such as Landscape and Tree Protection Plans) shall be implemented as approved by the County.

2. The conversion of the understory to habitable space is not authorized until a Coastal Development Permit for the development and/or use has been obtained. Prior to the approval of the Coastal Development Permit, all of the conditions listed in this Variance that are required to be satisfied prior to approval of the Coastal Development Permit must be satisfied. The effective date of this approval shall be the date of expiration of the appeal period, or if appealed, the date of action by the Board of Supervisors.
3. **Indemnity and Separation Clauses:** Developer shall defend, indemnify and hold harmless the County or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees, to attack, set aside, void, or annul, in whole or in part, the County's approval of the Variance. In the event that the County fails promptly to notify the applicant of any such claim, action or proceeding, or that the County fails to cooperate fully in the defense of said claim, this condition shall thereafter be of no further force or effect.

4. **Legal Challenge:** In the event that any condition imposing a fee, exaction, dedication or other mitigation measure is challenged by the project sponsors in an action filed in a court of law or threatened to be filed therein which action is brought within the time period provided for by law, this approval shall be suspended pending dismissal of such action, the expiration of the limitation period applicable to such action, or final resolution of such action. If any condition is invalidated by a court of law, the entire project shall be reviewed by the County and substitute conditions may be imposed.