



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: May 4, 2010
Placement: Departmental
Estimated Time: May 18, 2010
(60 min: 10 min. staff presentation)
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Glenn Russell, Ph.D., Director, 568-2085
Director(s):
Contact Info: Dave Ward, Deputy Director, 568-2520
SUBJECT: Set Hearing for the Decker Appeal

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:

Set a hearing for May 18, 2010 to consider Case No. 09APL-00000-00032, the Decker appeal of the Montecito Planning Commission's October 28, 2009 denial of Case No. 09APL-00000-00020, located at 670 Stonehouse Lane (APN 155-060-030), in the Montecito area of the First Supervisorial District. On May 18, 2010, your Board's action should include the following:

1. Deny the appeal, Case No. 09APL-00000-00032 thereby upholding the MPC's denial of the Decker appeal, case number 09APL-00000-00020, which upheld the June 29, 2009 MBAR's denial of case number 08BAR-00000-00145;
2. Make the required findings for denial of 08BAR-00000-00145, as shown in the November 4, 2009 MPC Action Letter, included as Attachment 1 to this Board Letter; and
3. Determine the project is exempt from environmental review, pursuant to CEQA Guidelines Section 15270, included as Attachment 2 to this Board Letter.

Summary Text:

The appellant, Mr. Steve Decker, is appealing the Montecito Planning Commission's (MPC) de novo decision to deny Case No. 09APL-00000-00020, the appellant's appeal of the Montecito Board of Architectural Review's (MBAR) June 29, 2009 decision to deny Case No. 08BAR-00000-00145. Design Review of 08BAR-00000-0145 included review of a new single-family dwelling (SFD) of approximately 6,107 sq. ft. with an attached garage of approximately 1,472 sq. ft. and a guesthouse of approximately 800 sq. ft.

Appellant Issue and Staff Response:

The appellant, Mr. Steve Decker, submitted a letter (included as Attachment 3) along with his application appealing the October 28, 2009 MPC denial of case number 09APL-00000-00020 and included a number of specific responses to the Findings for Denial by the MPC as reasons for his appeal. This appeal letter is nearly identical to the original letter submitted by Mr. Decker to the MPC in opposition to the MBAR denial. Refer to Attachment B of the MPC Staff Report, included as Attachment 4 to this Board Letter) for the appeal letter.

The appellant's original appeal issues analyzed within the MPC Staff Report can be summarized as two key points:

1. **The MBAR's findings [for denial] are not supported by the evidence.** The appellant contends that the proposed development is similar to development on neighboring parcels of similar size and is compatible with the surrounding neighborhood. . The applicant further contends that the County's database of floor area information for Montecito is not accurate.

Response: The proposed residence is 7.4% above the recommended maximum floor area for the lot. In the surrounding neighborhood, the median home size is 1.6% *below* the recommended maximum floor area. The County's database of floor area information is the best information available on comparable square footages of development. This database is used as one source of information to assess neighborhood compatibility, but is not the only measure considered by decision-makers. The MBAR considered many design criteria other than FAR calculations when it reviewed the proposed project for neighborhood compatibility and made findings for project denial. Other residences in the neighborhood feature lower-pitched roofs with varied rooflines and heights and dispersed massing. The proposed residence features a long, unbroken roofline and high pitched roof, and appears wide and bulky. MBAR's findings are informed by the Board-adopted Montecito Architectural Guidelines and Development Standards, dated May 16, 1995, pursuant to Montecito LUDC Section 35.472.070.F.1.j.

2. **The MBAR abused its discretion.** The applicant contends that the MBAR abused its discretion by inappropriately applying various development standards to the proposed project.

Response: The MBAR is required by the Montecito LUDC to apply the adopted Montecito Architectural Guidelines and Development Standards ("Guidelines") to all development in the Montecito area. Application of the Guidelines is necessary in order to make the required findings. MBAR's review of the project's design compatibility with the existing neighborhood per the Guidelines was an appropriate application of its discretion.

Your Board is referred to Section 6.2 of the attached MPC Staff Report for 09APL-00000-00020 for P&D staff's full response to these first two appeal issues.

The appellant's new appeal letter raises a new third issue relating specifically to the MPC denial of the project. This issue is related to the "de novo review". Specifically, the appellant states that the MPC hearing was neither fair, impartial, nor "de novo", and had he (the appellant) been given adequate time to present his revised project, which had reduced the calculated NET square footage¹ to below the maximum recommended FAR, he would have been able to show the absence of evidence to support the MPC's decision to deny the project.

¹ The applicant's revised project eliminated the habitable space on the second floor by proposing it as unconditioned attic space. While reducing the NET floor area, the GROSS area remained unchanged.

Staff Response: Both the MPC and the MBAR denied the proposed development based upon the project's incompatibility with the existing neighborhood. In denying the project preliminary approval, MBAR gave examples (later recited by the MPC) of a number of specific design issues that were determined flawed, including: 1) "the proposed residence is too high, too wide, and too bulky and is not consistent with the style that inspired the design", 2) there was "too much development against the topographic grade" and 3) that the "scale and height of the building are not compatible with the style of the house." The MBAR is given design review authority to review all applicable project proposals pursuant to Section 35.490.060 of the Montecito LUDC. As such, MBAR acted within its authority when denying the project.

The MPC held a hearing on October 28, 2009, where the appeal case was presented by staff to the Commission. The public hearing included 30 minutes of presentation time dedicated specifically to Mr. Decker. The MPC acted within their discretionary "de novo" review when unanimously denying the project after hearing sufficient testimony from both the applicant and opposing neighbors, due to its inconsistency with the Montecito Architectural Guidelines and Development Standards.

Background:

The following is a review of the current permitting background on the Decker's lot:

- **08LUP-00000-00471:** On August 4, 2008, P&D received a Land Use Permit application for the construction of a new 6,552 sq. ft. SFD with a 1,409 sq. ft. attached garage and a new 800 sq. ft. guesthouse. Proposed grading included 100 c.y. of cut and 400 c.y. of fill. Also proposed was the removal of two (2) protected oak trees and one (1) black acacia tree.

Current Status: Active case, awaiting outcome of design review appeal process.

- **08BAR-00000-00145:** On June 10, 2008, P&D received an application for conceptual review by the Montecito Board of Architectural Review for the construction of a new 6,552 sq. ft. SFD with a 1,347 sq. ft. attached garage. The main dwelling proposed a finish floor elevation of 297.3 feet above sea level and the structure would have a maximum overall height of 30.5 feet. Also proposed was a guesthouse of approximately 800 sq. ft., grading of 100 cy. of cut and 400 cy. of fill, site and retaining walls up to seven feet high, and a new entry gate. The project received initial conceptual review on July 14, 2008, returned to the MBAR for further conceptual/preliminary review on March 9, 2009, at which point the MBAR requested story poles. Story poles were erected and a site visit conducted on May 4, 2009. Later that same day, the project received further conceptual/preliminary review where the MBAR made comments and requested several additional changes to the project, in addition to those that had already been made (i.e., reduction of proposed SFD to 6,107 sq. ft.). On June 29, 2009, the project returned to the MBAR for preliminary approval, at which time MBAR denied the project.

Current Status: The MBAR denial was appealed on July 8, 2009 by the applicant, Mr. Decker. All MBAR minutes from review of this project are included under "Section 6.5, Design Review" of the attached MPC Staff Report, dated August 17, 2009, included as Attachment 4 of this Board Letter.

- **09APL-00000-00020:** On July 8, 2009, P&D received an appeal application of the June 29, 2009 MBAR denial. The appeal was taken before the MPC on August 26, 2009, where the project description was changed to a proposal for construction of a new 5,857 sq. ft. SFD with attached 1,409 sq. ft. garage,

with a maximum height of 30.5 feet, an 800 sq. ft. guesthouse. At the August hearing, the project was continued to the October 28, 2009 MPC hearing where the project was unanimously denied 5-0.

Current Status: The MPC denial was appealed on November 9, 2009 by the applicant, Mr. Decker. The action letter from the MPC hearing is included as Attachment 1 of this Board Letter.

- **09APL-00000-00032:** On November 9, 2009, P&D received an appeal application of the October 28, 2009 MPC denial. Accompanying the appeal application was a revised project description that further reduces the overall square footage of the SFD to a new 5,157 sq. ft. SFD with attached 1,472 sq. ft. garage, a finish floor elevation of 296.5 feet and with a maximum height of 30.5 feet. The applicant's revised project eliminated the habitable space on the second floor by proposing it as unconditioned attic space. While reducing the NET floor area, the GROSS area remained unchanged. Also proposed were an 800 sq. ft. guesthouse, site and retaining walls up to seven feet in height, and a new 6-foot entry gate and site wall.

Current Status: Currently before the Board of Supervisors on appeal after the applicant and neighbors could not reach a mutually agreeable solution from the February 9, 2010 facilitation meeting.

Conclusion:

The project currently before the Board on appeal was originally reviewed and denied by the Montecito Board of Architectural Review. The Montecito Planning Commission denied the applicant's appeal, thus upholding the MBAR denial, stating that the proposed project, as revised and presented, did not adequately address the issues raised by the MBAR. During the appeal process from MBAR to MPC to Board, the project has been redesigned to reduce the calculated NET floor area of the residence, but the gross square footage has not changed, and the fundamental design concerns of the project remain. Therefore, based on all the evidence in the record, the current project cannot be found compliant with all applicable development requirements of the Montecito LUDC, nor with all applicable policies within the County Comprehensive Plan, including the Montecito Community Plan.

Fiscal and Facilities Impacts:

Budgeted: Yes

Fiscal Analysis:

The costs for processing appeals are typically provided through a fixed appeal fee and funds in P&D's adopted budget. In regards to this appeal, the appellant paid an appeal fee of \$640.00 (\$500.00 of which goes to P&D for planning staff work). P&D will absorb the costs beyond that filing fee, estimated at 55 planner hours, or approximately \$10,000.00. These funds are budgeted in the Permitting and Compliance Program of the Development Review South Division, as shown on page D-308 of the adopted 2009/2010 fiscal year budget.

Special Instructions:

The Clerk of the Board shall publish a legal notice at least 10 days prior to the hearing on April 20, 2010. The notice shall appear in a paper of general circulation such as the Santa Barbara Daily Sound. The Clerk of the Board shall fulfill noticing requirements. Mailing labels for the mailed notice are attached. A

Minute Order of the hearing and copy of the notice and proof of publication shall be returned to P&D, Attention: David Villalobos, Hearing Support.

Hearing Support and Planning & Development will prepare all final action letters and notify all interested parties of the Board of Supervisors final action.

Attachments:

1. MPC Action Letter, dated November 4, 2009.
2. Environmental Document: Notice of Exemption.
3. Appellant Letter, titled Reasons for Appeal to Board of Supervisors, included in the Appeal application, dated November 12, 2009.
4. MPC Staff Report, dated August 17, 2009.

Prepared by:

J. Ritterbeck, Planner II (805) 568-3509

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