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January 18, 2010

BOARD OF SUPERVISORS
JANUARY 19, 2010
PLANNING & DEVELOPMENT
AGENDA ITEM: 11

Via Email

Chair Janet Wolf, and
Members of the Board of Supervisors
County of Santa Barbara
105 East Anapamu Street
Santa Barbara CA 93101

Re: Grassini Single-Family Dwelling Addition; 1775 Fernald Point Lane, Montecito

Dear Chair Wolf and Members of the Board:

I write on behalf of appellants John and Patricia Klink.

I am extremely sorry to have to report to you that settlement that was agreed to by the parties, and that would have obviated the necessity for a Board decision on the merits of the appeal, has failed.

On Wednesday, January 13, 2010, for the first time, I was advised by counsel that the applicant Larry Grassini, has withdrawn his approval of the terms of settlement.

Prior Hearing and Settlement

The appeal was heard and public testimony closed, on June 23, 2009. In deliberations the Board encouraged the parties to endeavor, again, to attempt to reach a mutually-agreeable settlement. Both parties appreciated the recommendation and, with the invaluable assistance of Deputy County Counsel Bill Dillon, Esq., did reach a mutually-agreeable settlement resolving all the issues between them and the issues on appeal. We subsequently jointly asked this Board to continue the hearing to allow time for the documentation to be finalized.

The Klinks remain committed to the terms of settlement, and have devoted considerable time, effort, and expense to finalizing it. We are not aware of any reason the settlement could not be consummated. However, we are now advised that the applicant no longer wishes to pursue settlement finalization. Obviously, the matter cannot be settled absent mutual agreement.



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ATTORNEY AT LAW

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January 19, 2010

I sincerely regret that we have received this information such a short time before the scheduled continued hearing date, because we understand that provides the Board inadequate time to review the record. However, we have received this information about the applicant's change in position only in the last few days.

The Merits of the Appeal

I am attaching a copy of our letter to you dated June 19, 2009, in which we set forth our detailed reasons why we believed the appeal should be granted. In the interim, nothing has changed. We continue to believe the appeal should be granted.

In light of the very late notice you are receiving of the failure of the settlement, the Klinks have no objection whatsoever if you wish to continue this matter to a later Board hearing date, when you will have had adequate time to review the record.

Conclusion

We sincerely regret that this matter has not been resolved by the parties.

I will attend Tuesday's hearing to respond to any questions the Board may have and to discuss the timing of resolution of the appeal.

Sincerely,

Derek A. Westen
Attorney at Law

cc. Bill Dillon Esq.
J. Ritterbeck
John and Pat Klink
Robert F. Egenolf, Esq.
John Parke, Esq.
William E. Winfield, Esq.



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June 19, 2009

BOARD OF SUPERVISORS
JUNE 23, 2009
PLANNING & DEVELOPMENT
AGENDA ITEM: 7

Via Email and Hand Delivery

Chair Joseph Centeno, and
Members of the Board of Supervisors
County of Santa Barbara
105 East Anapamu Street
Santa Barbara CA 93101

Re: Grassini Single-Family Dwelling Addition; 1775 Fernald Point Lane, Montecito

Dear Chair Centeno and Members of the Board:

I write on behalf of appellants John and Patricia Klink, owners of two parcels on Fernald Point Lane. Their home is immediately adjacent to the proposed project.

There are three basic reasons why you should grant this appeal:

1. Conflicted MPC. The MPC was seriously conflicted. It first voted *unanimously* to deny the project, and then, surprisingly, with only a partial Planning Commission, voted to approve the project on a split vote;
2. Neighborhood, Consistency, and Fairness. Approval of the project requires an unjustifiable definition of "neighborhood," not used in the past, and inconsistent with the logical application of Montecito's maximum recommended size guidelines; and
3. Creep. The approval will clearly lead to creeping size increase of homes, contrary to the goals of the Montecito planning guidelines and community desires.

Procedural Context

This appeal arises in an unusual context.



On June 18, 2008, the Montecito Planning Commission (“MPC”) conducted a thorough hearing on the applicant’s project and unanimously agreed that it was inconsistent with Montecito planning guidelines, voted to deny the project, directed staff to preparing findings for denial.

Staff did so. The findings¹, which I attach, state:

“The project is not consistent with the Coastal Plan Policies 4-3 and 4-4 because the proposed dwelling would be 48.5% greater than the maximum recommended floor area . . .”, “not compatible with the scale of the surrounding community . . .” and . . . it “cannot be found consistent with the applicable policies of the Comprehensive plan . . .” (emphasis added)

Staff Report August 8, 2008, Proposed Findings

Approval of the proposed findings for denial was promptly set for hearing on the MPC’s Administrative Agenda. In an effort to be cooperative and to fully explore possible settlement, the Klinks agreed to three separate requests by the applicant for extension of the hearing date. But the parties did not reach agreement.

The hearing to approve the proposed findings for denial finally came up in December, a full six months after the MPC had first heard the project and voted unanimously for denial. The hearing should have been routine. The Klinks did not expect the matter to be reheard, did not re-present all the evidence from the first hearing all over again, and in fact were out of the country. One of the five (5) Planning Commissioners who had voted to deny the project (Jack Overall) was not in attendance. Surprisingly, the MPC allowed the applicant to present the entire case anew, as if the first hearing had not occurred. Remarkably, the MPC voted on a split vote of 3-1-0 (Commissioner Gottsdanker dissenting, Commissioner Overall absent) to reverse their June 18, 2008, conclusion.

One has to ask whether the MPC, in its second hearing, receiving limited testimony, adequately remembered and weighed all the evidence and conclusions from the initial, more comprehensive hearing six months before. Indeed, one Commissioner (Michael Phillips) expressed serious concerns about the due process of a change of vote at what was anticipated to be a routine hearing, and with inadequate discussion of a change of standards.

This unusual procedural context justifies an especially careful de novo review of the MPC decision.

We believe the MPC got it right in its first, unanimous vote.

¹ They are mis-titled “Findings for Approval,” but were in fact staff’s proposed findings for denial.



The Project

The Grassini's lot is 1.32 acres in size, is long and narrow, with beach frontage, but also extending across Picay Creek to the railroad. It has a principal residence and a guest house; but it also has a *second residence* across Picay Creek. The second residence is actually built across the property line, encroaching onto the Klinks' property.

It is already extraordinarily rare and aberrational that Mr. Grassini has two residences on one lot—something that virtually no other Montecito resident has—but he now seeks an additional significant expansion. The principal residence is already 122% of the Montecito size guidelines, even without counting the guest house or the second residence. Now he seeks a very large 1,433 sq. ft. addition that would raise his residence to over 155% of the Montecito Guidelines maximum recommended size, and (contrary to Staff's conclusion) way over the average of homes in the neighborhood.

FAR

The Staff Report for this appeal attempts to justify approval by stating that although the proposed project would be 156% of the maximum recommended FAR, it would have a smaller size ratio than the neighboring Klinks' property, and by stating that “the parcel would still be below the average FAR overage of the surrounding parcels in the neighborhood”

There are two serious problems with staff's conclusions: It is completely inappropriate to compare to only one neighbor, and, more seriously, it uses an inappropriate and we think indefensible special definition of “neighborhood.”

Comparison to Appellant's Home. The Staff Report emphasizes that the proposed project would have a smaller FAR than the appellants' (the Klinks') residence. Frankly, that is an inappropriate and prejudicial consideration. It is true that the Klinks' property, built in the 1930's—half a century before the size guidelines—is larger than would be allowed today. However, the applicable and relevant standard is not what *one* neighbor has, but what is appropriate for the *entire* neighborhood.

You should decide this appeal based on the land use issues the project raises for the entire community. It should not matter who filed this appeal, but only whether the project is consistent with the applicable guidelines and the neighboring community. Your decision should be exactly the same regardless of who filed the appeal. It is inappropriate and extremely prejudicial to focus on the size of the applicants' home. The Klinks have a perfect right to object to a home they consider incompatible with the neighborhood and Montecito standards, and their objection should be weighed based on the neighborhood and the applicable standards. It is not a personal issue. It is a land use issue.



Neighborhood Definition. The more serious problem with staff's analysis is that it accepts the applicant's inappropriate definition of "surrounding parcels," and inappropriate standard for "neighborhood."

We believe—as the MPC expressly stated in its June 18, 2008, hearing—that the neighborhood for FAR analysis is *all* of Fernald Point Lane, not just a *part*. Frankly, we think that should be obvious.

At the first MPC hearing, the applicant argued that the proposed Grassini project should be compared only to the subset of homes past the security gate on Fernald Point Lane between 1767 and 1775. The applicant wants to count only 11 of the 26 homes on Fernald Point Lane. Why? Because it so happens that the subset of homes beyond 1775 Fernald Point Lane, where there is a security gate, are significantly larger than the average of all the homes. Limiting the definition of "neighborhood" to that subset of Fernald Point Lane homes distorts and raises the average FAR. If the applicant (and staff) did not use this statistical method, the applicant's proposed house would obviously be way over the neighborhood average, and very difficult to justify.

We attach, for all 26 homes on Fernald Point Lane, a summary of the lot sizes, actual home size, and maximum recommended size. The lower portion of the table highlights in yellow only the subset of the 11 homes at the east end of Fernald Point Lane, which are the only ones the applicant wants to count. The table is based on the actual data from the County Assessor's records. The average size of all Fernald Point Lane homes is 128% of the maximum recommended Montecito FAR. The applicant's project, at over 155% of the guidelines is way over that average. But the applicant (and staff) only want to count the last 11 homes at the east end of the lane, because they are larger. Using the special definition of "neighborhood," they argue that the average neighborhood home is 158% of the size guidelines, and that the proposed Grassini addition can therefore be justified.

So, what is the correct definition of "neighborhood"? The purpose of the FARs is to protect the larger community, by avoiding crowding and oversized homes, each of which then becomes a precedent for the next applicant. The entire community, not just one or two neighbors, is affected by oversized homes. It seems obvious that all of Fernald Point Lane should be included in any analysis of appropriate community standards.

Two simple points clearly show that it is wrong to use a special, limited definition of "neighborhood." First, the special definition is so arbitrary that it omits the immediate neighbor to the west—at 1767 Fernald Point Lane—a house that is well below the size guidelines (96%). How can one argue that "neighborhood" does not include an immediate, adjacent neighbor?

Second, it is obvious that in the future the "special" definition of "neighborhood" will only be used by the 11 homes at the end of the lane. When some of the other 15 homes on Fernald Point



Lane want to expand, they will certainly look at *all* the homes on Fernald Point Lane, not just a special limited subset of the homes, and there will be no basis to argue with them.

If the appropriate standard for “neighborhood” is used, the proposed project would be significantly over, not under, the neighborhood average—exactly the opposite of staff’s conclusion. The applicant’s proposed project is the 6th largest project on all of Fernald Point Lane, and cannot be justified.

Consistency

It is ironic that the Grassinis are pushing for an oversized home, and it is inconsistent that staff seems willing to support that overage, because both the Grassins and staff took exactly the opposite position just two years ago when the Klinks wanted to develop their vacant lot at 1795 Fernald Point Lane.

The Klinks own two adjacent lots on Fernald Point Lane—1787, their principal residence, and 1795, which now has an approved, but not-yet-built residence. In 2004 the Klinks proposed a home on their vacant lot. The neighbors, including Mr. Grassini, objected vociferously to the development of the new home, objecting to the size, bulk and scale. Mr. Grassini even argued that the Klinks should be required to deduct from their lot size the beach front area as well as the area of their lot north of Picay Creek (which would obviously lower the maximum recommended FAR). The applicant made this argument despite the fact that he himself has a second separate residence across Picay Creek and that this second residence encroaches over the property line on a portion of the Klink property that he argued the Klinks should not even be able to count. OF course, Mr. Grassini now wants to count the area of his own lot along the beach and north of Picay Creek.

Staff repeatedly stated in writing at the time, that the proposed new Klink home at 1795 Fernald Point Lane could only be approved if consistent with the Montecito size guidelines (see staff letters dated December 29, 2004, June 24, 2005, and October 6, 2005, among others).

As a result, the Klinks agreed to limit the size of their new home for 1795 Fernald Point Lane to 2,602 sq. ft., slightly under the maximum recommended size of 2,612.

Even that strict compliance with the governing rules failed to satisfy the neighbors including the applicant, who continued to oppose the Klinks’ project all the way to your Board. The ultimate resolution mandated, in writing, that the Klinks’ home could not exceed the maximum size guidelines. It is indefensible for the Grassinis now to argue that the Klinks had to strictly follow the maximum size guidelines, but that they get to ignore them.

When the Klinks’ project was being reviewed, staff (and the Grassinis) used all of Fernald Point Lane as the “neighborhood.” Even though the average home for the lane is 128% of the maximum size, the Klinks were not allowed to exceed the guidelines at all. The size of their approved home is



therefore 96% of the maximum size guideline. It is completely inconsistent for staff to now not follow the guidelines and even to use a special definition of “neighborhood” to justify a house way over the average of all homes on Fernald Point Lane.

There is another aspect that shows how inconsistent staff’s current analysis is. On this appeal staff notes that the Klink home itself is over the size guidelines, arguing that that somehow justifies Mr. Grassini’s overage. But that was not staff’s position when the Klinks’ new homes was proposed. One of the neighbors who strongly objected to the Klink’s home was the neighbor at 1801 Fernald Point Lane, whose own home is 244% (!) over the current maximum recommended FAR. But staff did not argue that the owner of the adjacent structure should be precluded from opposing exceptions to the size guidelines, and continued to press the Klinks to stay within the maximum recommended FAR. The County’s position should remain consistent.

Neighbors such as the applicant, who in the recent past vociferously opposed development above the size guidelines and who successfully insisted that the Klinks strictly follow the size guidelines, should not be heard, now, to argue that their project, which is over 155% of the maximum recommended size, should be allowed. It is simply unfair and inherently wrong to apply completely different standards to two projects in the same neighborhood just a few years apart.

Size Creep

It is a major concern within the Montecito community that the size of homes is steadily creeping up. In fact, that’s why the maximum size guidelines were adopted, and why so much work went into their creation. Over recent years the community has become increasingly concerned whenever it appears that they guidelines were being ignored and home sizes were creeping up again.

The applicant’s arguments in this case, which I’m afraid staff supports, are the perfect illustration of how creep happens. An applicant will argue—as this one does—that he should be able to go over the guidelines because landscaping will screen the house, or because the visual impact is not bad, or by using a special definition of “neighborhood,” or by emphasizing just one neighbor (and ignoring others). But when the next project comes along, all that is reviewed are the overall neighborhood statistics. There is no “Why column” on the FAR table, stating the rationale for exceeding the size guidelines.

The next project uses the prior oversized homes to justify further increases, uses the precedent of a special definition of “neighborhood” if it helps or the standard definition if works better. The result is a “soft” standard, with no real teeth, and the size of each home steadily ratchets up.

The maximum recommended size guidelines do not use special definitions of “neighborhood,” and do not make exceptions for landscaping, visual impact, or one neighbor’s house. The policy is simple and clear. The applicant’s proposed project is incompatible with the guidelines and applicable



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June 19, 2009

policy and cannot be justified. If it were to be approved, it would simply become a clear precedent for further bending of the rules.

Conclusion

With all respect, we believe the MPC got it right the first time.

We attach a copy of the findings for denial that staff prepared following the first MPC hearing. They accurately state the grounds for denial of the project and granting of the appeal. We urge you to adopt the findings and to grant the appeal.

We look forward to discussing this project with you at Tuesday's hearing.

Sincerely,

Derek A. Westen
Attorney at Law

cc. John and Pat Klink
Robert F. Egenolf, Esq.

ATTACHMENT A: FINDINGS OF APPROVAL

2.0 ADMINISTRATIVE FINDINGS

Pursuant to Section 35-169.5, a Coastal Development Permit shall only be issued if all of the following findings are made:

2.1 Those findings specified in Section 35-169.6.1.

2.1.1 That the proposed development conforms to 1) the applicable policies of the Comprehensive Plan, including the Coastal Land Use Plan, and 2) with the applicable provisions of this Article and/or the project falls within the limited exception allowed under Section 35-161.7.

The project is not consistent with Coastal Plan Policies 4-3 and 4-4. The proposed project involves a second story addition that would make the dwelling 48.5%¹ greater than the maximum recommended floor area of 4,844 square feet and therefore would exceed the Montecito Architectural Guidelines and Development Standards FAR guidelines. The MPC heard the project on June 18, 2008 and determined that it is not compatible with the scale and character of the surrounding community. The project cannot be found consistent with the applicable policies of the Comprehensive Plan, including the Coastal Land Use Plan and the Montecito Community Plan, and with the applicable provisions of Article II Zoning Ordinance. **Therefore, this finding cannot be made.**

2.2 That the development is compatible with the established physical scale of the area.

The existing SFD of 5,639 net square feet is currently approximately 16% above maximum recommended FAR. The proposed SFD addition of 1,556 net square feet would make the SFD approximately 48.5% over maximum allowed FAR for the lot. The size of the additional development would not be of a scale or character compatible with the surrounding neighborhood. The MPC heard the project on June 18, 2008 and determined that it is not compatible with the scale and character of the surrounding community. **Therefore, this finding cannot be made.**

¹ The recommended maximum floor area has been corrected to be 4,844 square and not 5,100 square feet as noted in the original staff report dated May 30, 2008. The formula used to determine the previous number was incorrect. The proposed addition would be 2,351 square feet or 48.5% over maximum recommended FAR and not 2,095 square feet or 41% as previously discussed. The correction results in a larger gap between proposed project and the maximum allowable FAR.

FAR Comparison for Properties on Fernald Point Lane

| | Address | Lot size in Acres | Lot Size in Square Feet | Existing House Size (s.f.) | Recommended Home Size (s.f.) | Size Above or Below Guidelines | Percent of Guidelines |
|--|---------|-------------------|-------------------------|----------------------------|------------------------------|--------------------------------|-----------------------|
| All Fernald Point Lane Homes | 1639 | 0.5 | 21,780 | 4,043 | 3,050 | 993 | 133% |
| | 1649 | 0.5 | 21,780 | 3,637 | 3,050 | 587 | 119% |
| | 1651 | 0.7 | 30,492 | 2,140 | 3,550 | (1,410) | 60% |
| | 1655 | 1.09 | 47,480 | 6,000 | 4,453 | 1,547 | 135% |
| | 1661 | 0.4 | 17,424 | 3,438 | 2,800 | 638 | 123% |
| | 1665 | 1 | 43,560 | 5,088 | 4,300 | 788 | 118% |
| | 1685 | 3.05 | 132,858 | 7,309 | 6,918 | 391 | 106% |
| | 1695 | 1.78 | 77,537 | 4,077 | 5,626 | (1,549) | 72% |
| | 1705 | 0.57 | 24,829 | 2,724 | 3,225 | (501) | 84% |
| | 1703 | 1.07 | 46,609 | 3,590 | 4,419 | (829) | 81% |
| | 1711 | 1.45 | 63,162 | 5,772 | 5,065 | 707 | 114% |
| | 1717 | 0.43 | 18,731 | 3,203 | 2,875 | 328 | 111% |
| | 1745 | 0.76 | 33,106 | 3,312 | 3,700 | (388) | 90% |
| | 1755 | 2.3 | 100,188 | 9,954 | 6,510 | 3,444 | 153% |
| | 1767 | 1 | 43,560 | 4,122 | 4,300 | (178) | 96% |
| | G* 1775 | 1.32 | 57,499 | 5,908 | 4,844 | 1,064 | 122% |
| | 1787 | 0.74 | 32,087 | 6,724 | 3,642 | 3,112 | 185% |
| | 1795 | 0.32 | 14,241 | 2,602 | 2,612 | (10) | 100% |
| | 1801 | 0.65 | 28,314 | 8,371 | 3,425 | 4,946 | 244% |
| | 1803 | 0.61 | 26,572 | 6,865 | 3,325 | 3,540 | 206% |
| 1807 | 0.53 | 23,087 | 6,576 | 3,125 | 3,451 | 210% | |
| 1809 | 0.21 | 9,148 | 3,447 | 2,325 | 1,122 | 148% | |
| 1811 | 0.19 | 8,276 | 2,860 | 2,275 | 585 | 126% | |
| 1813 | 0.17 | 7,405 | 2,771 | 2,225 | 546 | 125% | |
| 1815 | 0.3 | 13,068 | 4,743 | 2,550 | 2,193 | 186% | |
| 1821 | 0.28 | 12,197 | 3,140 | 3,700 | (560) | 85% | |
| 1849 | 0.14 | 6,098 | No Data | No Data | No Data | No Data | |
| Average of all Fernald Point Lane | | | | | | | 128.17% |
| Average only of subset of homes inside gate | | | | | | | 157.90% |

Grassini After Proposed Addition

| | | | | | | | |
|-----|------|------|--------|-------|-------|----------|---------|
| G** | 1775 | 1.32 | 57,499 | 7,527 | 4,844 | 1,064.00 | 155.39% |
|-----|------|------|--------|-------|-------|----------|---------|

G* Existing Grassini home

G** Proposed Grassini after addition