

**PLANNING COMMISSION DECISION  
 APPEALED TO THE BOARD OF SUPERVISORS  
 March 31, 2016**

<b>Case Number:</b> 14CDH-00000-00014  <b>APN:</b> 009-352-019  <b>Area:</b> Montecito  <b>District:</b> First	<b>Title:</b> Olsten Trust Single-Family Dwelling Demo-Rebuild, Detached Garage & Pool  <b>Applicant:</b> Olsten Montecito Trust  <b>Appealed by:</b> Derek A. Westen  <b>Date appealed:</b> March 30, 2016; 3:12 P.M.  <b>Planner:</b> J. Ritterbeck, x3509  <b>Supervising Planner:</b> Alex Tuttle, ext. 6844		
<b>Planning Commission</b>		<b>Board of Supervisors</b>	
<b>Hearing Dates:</b>	March 23, 2016	Denied the project	
<b>Fee Paid:</b>			\$0.00
<b>APPELLANTS REASON FOR APPEAL:</b> See attached appeal letter			
<b>FACILITATION:</b> N/A			
<b>OUTCOME OF BOS HEARING:</b>			

- cc: Glenn Russell, Director  
 Dianne M. Black, Assistant Director  
 Alex Tuttle, Supervising Planner  
 J. Ritterbeck, Planner  
 Records Management  
 Elisa Moser, Accounting  
 Petra Leyva, Building & Safety  
 David Villalobos, Hearing Support



COUNTY OF SANTA BARBARA

Planning and Development

2016 MAR 30 PM 3:12  
COUNTY OF SANTA BARBARA  
CLERK OF THE  
BOARD OF SUPERVISORS  
www.sbcountyplanning.org

# Appeal to the Board of Supervisors or Planning Commission (County or Montecito)

**APPEAL TO THE BOARD OF SUPERVISORS OR PLANNING COMMISSION (APL) on the issuance, revocation, or modification of :**

- All Discretionary projects heard by one of the Planning Commissions
- Board of Architectural Review decisions
- Coastal Development Permit decisions
- Land Use Permit decisions
- Planning & Development Director's decisions
- Zoning Administrator's decisions

## THIS PACKAGE CONTAINS \_\_\_\_\_

- ✓ APPLICATION FORM
- ✓ SUBMITTAL REQUIREMENTS

## AND, IF ✓'D, ALSO CONTAINS \_\_\_\_\_

<b>South County Office</b> 123 E. Anapamu Street Santa Barbara, CA 93101 Phone: (805) 568-2000 Fax: (805) 568-2030	<b>Energy Division</b> 123 E. Anapamu Street Santa Barbara, CA 93101 Phone: (805) 568-2000 Fax: (805) 568-2030	<b>North County Office</b> 624 W. Foster Road, Suite C Santa Maria, CA 93455 Phone: (805) 934-6250 Fax: (805) 934-6258	<b>Clerk of the Board</b> 105 E. Anapamu Street Santa Barbara, CA 93101 Phone: (805) 568-2240 Fax: (805) 568-2249
Website: <a href="http://www.sbcountyplanning.org">www.sbcountyplanning.org</a>			

## SUBMITTAL REQUIREMENTS

\_\_\_\_\_ 8 Copies of the attached application.


\_\_\_\_\_ 8 Copies of a written explanation of the appeal including:

- If you are not the applicant, an explanation of how you are an "aggrieved party" ("Any person who in person, or through a representative, appeared at a public hearing in connection with the decision or action appealed, or who, by the other nature of his concerns or who for good cause was unable to do either.");
- A clear, complete and concise statement of the **reasons or grounds for appeal**:
  - Why the decision or determination is consistent with the provisions and purposes of the County's Zoning Ordinances or other applicable law; or
  - There was error or abuse of discretion;
  - The decision is not supported by the evidence presented for consideration;
  - There was a lack of a fair and impartial hearing; or
  - There is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.

\_\_\_\_\_ 1 Check payable to County of Santa Barbara.

✓  
✓ Note: There are additional requirements for certain appeals including:

- a. **Appeals regarding a previously approved discretionary permit** – If the approval of a Land use permit required by a previously approved discretionary permit is appealed, the applicant shall identify: 1) How the Land Use Permit is inconsistent with the previously approved discretionary permit; 2) How the discretionary permit's conditions of approval that are required to be completed prior to the approval of a Land Use Permit have not been completed; 3) How the approval is inconsistent with Section 35.106 (Noticing).
- b. **Appeals regarding Residential Second Units (RSUs)** – The grounds for an appeal of the approval of a Land Use Permit for a RSU in compliance with Section 35.42.230 (Residential Second Units) shall be limited to whether the approved project is in compliance with development standards for RSUs provided in Section 35.42.230.F (Development Standards).

	<b>PLANNING &amp; DEVELOPMENT APPEAL FORM</b>	2016 MAR 30 PM 3:11 COUNTY OF SANTA BARBARA CLERK OF THE BOARD OF SUPERVISORS
SITE ADDRESS: <u>1154 Channel Drive</u>		
ASSESSOR PARCEL NUMBER: <u>009-352-019</u>		
Are there previous permits/applications? <input type="checkbox"/> no <input checked="" type="checkbox"/> yes numbers: <u>14CDH-00000-00014</u> (include permit# & lot # if tract)		
Are there previous environmental (CEQA) documents? <input checked="" type="checkbox"/> no <input type="checkbox"/> yes numbers: _____		
<b>1. Appellant:</b> <u>Derek A. Westen, Esq.</u> Phone: <u>(805) 963-7130</u> FAX: <u>(805) 456-0409</u> Mailing Address: <u>1800 Jelinda Dr., Santa Barbara, CA 93108</u> E-mail: <u>derek@westenlaw.com</u> Street City State Zip		
<b>2. Owner:</b> <u>Olsten Montecito Trust</u> Phone: <u>(215) 579-6005</u> FAX: _____ Mailing Address: <u>6520 Meetinghouse Rd., New Hope, PA 18938</u> E-mail: _____ Street City State Zip		
<b>3. Agent:</b> <u>Thiep Cung, AIA, The Warner Group</u> Phone: <u>(805) 969-5074</u> FAX: <u>(805) 565-3797</u> <u>Architects, Inc.</u> Mailing Address: <u>1250 Coast Village Rd. Suite J, Santa Barbara, CA 93108</u> E-mail: <u>thiep@wgarch.com</u> Street City State Zip		
<b>4. Attorney:</b> <u>Derek A. Westen, Esq.</u> Phone: <u>(805) 963-7130</u> FAX: <u>(805) 456-0409</u> Mailing Address: <u>1800 Jelinda Dr., Santa Barbara, CA 93108</u> E-mail: <u>derek@westenlaw.com</u> Street City State Zip		

**COUNTY USE ONLY**

Case Number: _____	Companion Case Number: _____
Superiserial District: _____	Submittal Date: _____
Applicable Zoning Ordinance: _____	Receipt Number: _____
Project Planner: _____	Accepted for Processing: _____
Zoning Designation: _____	Comp. Plan Designation: _____

**COUNTY OF SANTA BARBARA APPEAL TO THE:**

**BOARD OF SUPERVISORS**

**PLANNING COMMISSION:**  **COUNTY**  **MONTECITO**

RE: Project Title Olsten Trust Single-Family Demo/Rebuild, Detached Garage, Cabana, and Pool

Case No. 14CDH-00000-00014

Date of Action March 23, 2016

I hereby appeal the  approval  approval w/conditions  denial of the:

Board of Architectural Review – Which Board? \_\_\_\_\_

Coastal Development Permit decision

Land Use Permit decision

Planning Commission decision – Which Commission? Montecito

Planning & Development Director decision

Zoning Administrator decision

**Is the appellant the applicant or an aggrieved party?**

Applicant

Aggrieved party – if you are not the applicant, provide an explanation of how you are and “aggrieved party” as defined on page two of this appeal form:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Reason of grounds for the appeal – Write the reason for the appeal below or submit 8 copies of your appeal letter that addresses the appeal requirements listed on page two of this appeal form:

- A clear, complete and concise statement of the reasons why the decision or determination is inconsistent with the provisions and purposes of the County’s Zoning Ordinances or other applicable law; and
- Grounds shall be specifically stated if it is claimed that there was error or abuse of discretion, or lack of a fair and impartial hearing, or that the decision is not supported by the evidence presented for consideration, or that there is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.

See attached Statement of Grounds for Appeal

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**Specific conditions imposed which I wish to appeal are (if applicable):**

- a. 

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- b. 

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- c. 

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- d. 



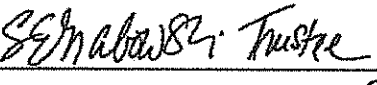

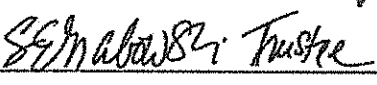
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Please include any other information you feel is relevant to this application.

**CERTIFICATION OF ACCURACY AND COMPLETENESS** Signatures must be completed for each line. If one or more of the parties are the same, please re-sign the applicable line.

Applicant's signature authorizes County staff to enter the property described above for the purposes of inspection.

I hereby declare under penalty of perjury that the information contained in this application and all attached materials are correct, true and complete. I acknowledge and agree that the County of Santa Barbara is relying on the accuracy of this information and my representations in order to process this application and that any permits issued by the County may be rescinded if it is determined that the information and materials submitted are not true and correct. I further acknowledge that I may be liable for any costs associated with rescission of such permits.

Thiep Cung, AIA, The Warner Group Architects, Inc.		3/30/2016
Print name and sign - Firm (Architect)		Date
Derek A. Westen, Esq., Appellant and Attorney for Applicant		3/30/2016
Print name and sign - Preparer of this form		Date
Olsten Montecito Trust		3/30/2016
Print name and sign - Applicant		Date
Thiep Cung, AIA, The Warner Group Architects, Inc.		3/30/2016
Print name and sign - Agent		Date
Olsten Montecito Trust		3/30/2016
Print name and sign - Landowner		Date

## STATEMENT OF GROUNDS FOR APPEAL

### OLSTEN MONTECITO TRUST SINGLE FAMILY HOME

14CDH-00000-00014

1. The evidence in the record does not support Finding for Denial 2.1-1) that “[t]he amount of glazing from the proposed windows would conflict with development policy LU-M-2.2”, because:

- a. The amount of glazing on the second floor is *reduced* from the amount of glazing that is on the existing residence;
- b. the proposed privacy wall along Channel Drive will substantially screen the entire first floor of the proposed residence, with the result, the visible glazing of the *proposed* residence will be 50% less than the visible glazing of the *current* residence;
- c. the glazing of the proposed residence will be solar gray in color, minimizing light emission;
- d. interior lighting will be designed to minimize light emission;
- e. the proposed residence will not have the bright exterior lights on the existing residence;
- f. even without the foregoing design aspects that reduce light impacts, the amount of glazing for an ocean-facing residence is reasonable, and not only compatible with the existing developed neighborhood, but *less* impactful than glazing and lighting from adjacent and nearby residences and from the existing residence; and
- g. the evidence in the record supports the finding that the proposed residence will not only *preserve*, but *enhance* the existing semi-rural, residential character of the community.

2. The evidence in the record does not support Findings for Denial 2.1-1) that “the increased size, bulk, scale, and orientation of the proposed second story as compared to the current residence would increase the visibility of the residence from Channel Drive in conflict with Policy LUM-2.1 of the Montecito Community Plan, which states that new structures shall be designed to minimize their visibility from public roads” and the that “the impacts to public views of the Santa Ynez mountain range from the increased size, bulk, scale and orientation of the proposed second story of the new dwelling would conflict with development policy VIS-M-1.3 which states that development of property should minimize impacts to open space views as seen from public roads and viewpoints”, because:

- (a) The massing of the proposed second story has been carefully designed and stepped down in height to minimize any potential impacts on views from public roads;
- (b) the design of the proposed residence, as compared to the current residence, is substantially lower in height, has a lower ridgeline, and eliminates existing chimneys that currently obstruct views;
- (c) the proposed residence, as compared to the current existing residence, has a *beneficial*, not *negative* impact on public views;
- (d) in contrast to the contrast residence, which is fully visible from Channel Drive, the privacy wall on Channel Drive will substantially screen all views of the first story of the proposed residence;



(e) no credible evidence in the record establishes that there will be any appreciable impact upon public views of the Santa Ynez mountains or of any open space.

3. For the reasons set forth in paragraph 2, above, the evidence in the record does not support Finding for Denial 2.2 that “[t]he increased size and configuration of the proposed 1,252 square foot second story will significantly obstruct public views of the Santa Ynez Mountains as seen from Channel Drive, a public road.”

4. The evidence in the record does not support the Findings for Denial 2.3 that “[t]he amount of glazing from the proposed windows would conflict with development policy LU-M-2.2, which states that lighting of structures, roads and properties shall be minimized to protect privacy, and to maintain the semi-rural, residential character of the community... [and] the increased size, bulk, scale, and orientation of the proposed second story as compared to the current residence would increase the visibility of the residence from Channel Drive in conflict with Policy LU-M-2.1 of the Montecito Community Plan, which states that new structures shall be designed to minimize their visibility from public roads... [and that] the impacts to public views of the Santa Ynez mountain range from the increased size, bulk, scale and orientation of the proposed second story of the new dwelling would conflict with development policy VIS-M-1.3, which states that development of property should minimize impacts to open space views as seen from public roads and viewpoints” because:

(a) The project does not include any “lighting of structures, roads and properties” that will impact privacy; and

(b) *see* detailed statement of reasons set forth in paragraphs 2 and 3 above.

5. Not only are the Findings for Denial not supported by evidence in the record, the Findings for Denial are not even supported by the conclusions of a majority of the members of the Montecito Planning Commission. As documented by the official transcript of the hearing, three of the five members of the Commission stated their conclusion that the proposed residence will *not* have a significant impact on public views of the mountains, and a fourth member stated that she was not really concerned [for the purposes of the issue before the Commission] with the issue of the potential impact of the proposed home on public views of the Santa Ynez mountains. Thus, the Montecito Planning Commission adopted Findings for Denial stating that the proposed project would have a substantial adverse impact on public views of the mountains despite the fact that four of the five Commissioners stated that the evidence did not establish such impacts or that any such impacts were not a factor for denial.

6. Statements of the Commissioners who voted to adopt the draft Findings for Denial establish that the actual motivation for denial was not potential impact on public views, as stated in the Findings for Denial, but the conclusion that no two-second story residences should be allowed on Channel Drive, or that existing second stories cannot be expanded. In fact, however: (i) two-story residences are allowed by applicable zoning; (ii) the majority of existing homes on Channel Drive (6 out of 11) are already two-story residences; (iii) as recently as July 2015 (just 8 months ago) the Montecito Planning Commission itself approved a nearby two-story residence on Channel Drive; (iv) in 2015 the Montecito Planning Commission approved replacing a one-story home on Channel Drive with a new two-story home; (v) in 2013 the Montecito Planning Commission approved replacing a one-story home on Channel Drive with a new two-story home; and in 2005 the Commission approved a new two-story home on a vacant parcel on Channel Drive. Application, to

a proposed new residence, of a non-existent “no two-story residence” rule that does not currently exist in applicable ordinances and is contrary to the zoning ordinance and the existing, established neighborhood, is improper and unlawful.

7. The proposed new residence, even without proposed shutters on a portion of the windows, and even without removal of a balcony on the north-facing second story, fully complies with all applicable zoning ordinances and Community Plan policies and would be a substantial addition to and improvement of the existing developed neighborhood, should be approved even if proposed on a vacant lot, and certainly should be approved as a substantial improvement over the current, existing residence.

8. The Montecito Board of Architectural Review, Montecito’s professional design review board, carefully reviewed the proposed project and gave it conceptual approval. When the Applicant presented the proposed project to the Montecito Planning Commission on January 20, 2016, County Planning Staff recommended approval and provided: (i) detailed 3-page Findings for Approval; (ii) a proposed Coastal Development Permit With Conditions of Approval; and (iii) Notice of Exemption. When the Montecito Planning Commission finally considered the proposed project on March 23, 2016, Staff again presented the foregoing three documents which would have supported project approval, but also, in response to the Commission’s direct instruction, drafted alternate Findings for Denial. In drafting those Findings for Denial, Staff *only* redrafted those Findings for Approval that Staff thought the Commission disfavored, thereby implicitly stating that all remaining Findings for Approval were supported by evidence in the record. Because the Findings for Denial are not supported by evidence in the record, it follows that all Findings for Approval as presented by County Staff to the Montecito Planning Commission on January 20 and March 23, 2016, should be made.

9. Statements of a majority of the Commissioners establish that the proposed residence would represent an improvement over the impacts of the existing residence; the record establishes that the Montecito Planning Commission adopted the Findings for Denial not because the evidence supported the findings, but because they disfavored the project for reasons not stated in the Findings for Denial—reasons that are not supported by law.

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