

# Mullen & Henzell L.L.P.

ATTORNEYS AT LAW

e-mail: lshinn@mullenlaw.com

August 19, 2011



***By Hand Delivery***

Montecito Planning Commission  
123 East Anapamu Street  
Santa Barbara, CA 93101

RECEIVED

AUG 19 2011

S.B. COUNTY  
PLANNING & DEVELOPMENT

J. ROBERT ANDREWS  
JAY L. BECKERMAN  
JOSEPH F. GREEN  
MACK S. STATON  
GREGORY F. FAULKNER  
WILLIAM E. DEGEN  
CHRISTINE P. ROBERTS  
MICHAEL E. CAGE  
LORI A. LEWIS  
PAUL K. WILCOX  
JARED M. KATZ  
DEBORAH K. BOSWELL  
RAMÓN R. GUPTA  
GRAHAM M. LYONS  
RAFAEL GONZALEZ  
JANA S. JOHNSTON  
LINDSAY G. SHINN  
ROBERT D. DOMINGUEZ  
JENNIFER S. ADKINS  
JARED A. GREEN

**Re: Montecito Planning Commission Hearing August 24, 2011  
Case Number 11CDH-00000-00008  
Van Vliet Addition  
1717 Fernald Point Lane**

Dear Commission Members:

This letter constitutes the objections, comments and concerns of our clients, the Trustees who own the property at 1711 Fernald Point Lane ("1711"), just south of 1717 Fernald Point Lane ("1717").

1. *Interference with recorded scenic easement.* A recorded easement for scenic purposes burdens 1717 in favor of 1711.<sup>1</sup> Because the addition of a second story will interfere with the scenic view of the mountains from 1711 and therefore violates a recorded encumbrance on 1717, the owners of 1711 request that the second story addition, and any other alterations that would interfere with the scenic easement, not be allowed.
2. *Interference with access and parking.* 1717 abuts directly on Fernald Point Lane and is situated between Fernald Point Lane and 1711. The two properties share a common driveway roughly 15 feet in width and 225 feet in length for access off of Fernald Point Lane. The shared drive is the only access from the road to 1711. Parking for 1711 is at the end of the shared drive, adjacent to 1711. The driveway and parking arrangements are pursuant to recorded easements burdening 1717 in favor of 1711.<sup>2</sup>

For the reasons stated above, and because the owner-occupant of 1711 is 81 years old and has limited mobility, the owners of 1711 request that a specific written protocol guaranteeing 1711 open and uninterrupted access and parking – at all times, by car and foot, along the driveway and in the parking area – be

<sup>1</sup> See Instrument No. 79-24202 recorded in Official Records May 31, 1979.

<sup>2</sup> See Instrument No. 24543 recorded in Official Records July 17, 1975; Instrument No. 79-24202 recorded in Official Records May 31, 1979; and Instrument No. 90-3709 recorded in Official Records January 18, 1990.

DENNIS W. REILLY  
CHARLES S. BARGIEL  
KIRK R. WILSON  
OF COUNSEL

THOMAS M. MULLEN  
1915-1991

ARTHUR A. HENZELL  
RETIRED



a specific condition of approval for any project that ultimately may be approved.

In addition, we note that the Staff Report recommends that the Commission condition issuance of a Coastal Development Permit on the preparation of a Construction Parking Plan.<sup>3</sup> The proposed condition requires construction parking to occur on-site to the maximum extent feasible. For the reasons stated above, and because of the limited size of the driveway and parking area, the owners of 1711 respectfully request that parking occur off-site.

We also note that the Montecito BAR had similar concerns about parking during construction as noted in the minutes of its April meeting. A specific condition of approval should be adopted to ensure the construction does not interfere with the rights of the 1711 owners freely to access their property at all times.

3. *Construction Noise and Debris.* Because 1711 is located immediately to the south of 1717, the two properties share a common driveway, and the 1711 residence is in close proximity to proposed construction areas, the owners of 1711 request that a specific written protocol that controls construction noise and debris be a specific condition of approval for any project that ultimately may be approved.

The Staff Report recommends that the Commission condition issuance of a Coastal Development Permit on Condition 4, which contains, among other things, limitations on hours of work. For the reasons stated above, and because the owner-occupant of 1711 is 81 years old (and not an early riser), the owners of 1711 request that the Commission adopt the condition with one change: that construction activity be limited to the hours between 8:00 a.m. and 4:30 p.m., Monday through Friday.

4. *Pool Equipment.* The project proposes that the pool equipment be relocated much closer to 1711 than currently situated. Because of noise concerns, the owners of 1711 request that the pool equipment be moved north, closer to where it is now.
5. *Lighting.* The owners of 1711 express their concern about the addition of lighting and the affect it will have on 1711. Prior to any approval, a specific lighting plan should be submitted for review by the County and the general public.

---

<sup>3</sup> See Staff Report Attachment B, Condition 3.



6. *Privacy.* A second story will interfere with the existing privacy of 1711 and, therefore, is objected to.
  
7. *Other Considerations.*
  - a. The County has not analyzed the possible impacts to public views from the beach to the mountains. Without a determination by the County that the second-story addition is not visible from the beach, the County cannot make Finding 2.4, cannot make the necessary findings of Comprehensive Plan compatibility, and cannot rely on a CEQA categorical exemption.
  - b. The County has not made all necessary Comprehensive Plan Consistency Findings and Coastal Development Permit Findings. Many of the applicable policies have not been addressed or identified in the proposed Findings.
  - c. The County should not permit additional development of this significantly undersized parcel. The parcel is zoned 1-E-1 (1 acre minimum) but is only 0.42 acres, less than half the required size. The parcel already is developed with a 3,000 + sq.ft. home, and several outbuildings.
  - d. The project has changed since last reviewed by the MBAR. Attachment D provides minutes from the last MBAR hearing, in which the project described is smaller than the project before the MPC. It is unclear what changes have been made to the project since the last MBAR hearing and whether those changes affect the MBAR's conclusions regarding the project.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Lindsay G. Shimm'.

Lindsay G. Shimm of  
Mullen & Henzell L.L.P.