

Mullen & Henzell L.L.P.

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February 16, 2011



By Hand Delivery

County of Santa Barbara
Board of Supervisors
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**Re: Board of Supervisors Hearing February 21, 2012
Case Number 11APL-00000-00019
Van Vliet Addition
1717 Fernald Point Lane, APN 007-380-021**

Dear Supervisors:

Our office represents Appellants in the above-referenced matter. Appellants own 1711 Fernald Point Lane ("1711"), which is located directly adjacent to the subject property, 1717 Fernald Point Lane ("1717"). This letter constitutes the objections, comments and concerns of our clients.

I. Overview of Properties

1711 and 1717 are contiguous properties between Fernald Point Lane and the Pacific Ocean. A vicinity map is attached as Exhibit A¹. The legal descriptions for the properties are attached as Exhibit B and Exhibit C, respectively.

1717 abuts directly on Fernald Point Lane and is situated between Fernald Point Lane and 1711. 1711 currently enjoys a view of the mountains beyond 1717. The properties share a common driveway roughly 15 feet in width and 225 feet in length for access from Fernald Point Lane, which is the only accessible road. The shared driveway is the only access to and from Fernald Point Lane to 1711. 1711 has an exclusive easement over 1717 for a parking area located at the end of the shared driveway between the two residences.

The owner-occupant of 1711, Mrs. Dent, is 82 years old. She has Parkinson's disease, limited mobility, and other medical issues. She and her round-the-clock caregivers use the driveway and parking area on a daily basis. It is imperative that

¹ Details regarding Exhibits A-E, G, H, J and L-Z are set forth in the attached Declaration of Lindsay G. Shinn, which is incorporated herein by this reference. Details regarding Exhibits F, I and K are set forth in the attached Declaration of Elizabeth M. Seidel, which is incorporated herein by this reference.

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she, her caregivers and other guests, and emergency personnel have continuously open and uninterrupted access and parking, at all times, by car and by foot, along the driveway and in the parking area.

(See sections below for additional information.)

II. Overview of Objections, Comments and Concerns

This section contains a brief statement of the objections, comments and concerns of our clients. Additional details are set forth in Section III.

1. The proposed addition of a second story to 1717 will violate a recorded view easement that has encumbered 1717 since the 1970s, and also will violate Montecito Community Plan guidelines regarding consideration of private views, because a second story will interfere with the scenic view of the mountains from 1711. The second story should not be allowed.
2. The conditions currently placed on the proposed project do not guarantee the 82-year-old owner-occupant of 1711 continuously open and uninterrupted access and parking at all times, by car and foot, along the shared driveway to 1711 or in the exclusive parking area for 1711. This presents practical, logistical problems and violates recorded encumbrances.

Appellants request that the Board adopt Condition No. 3 with the following additions: "Offsite construction parking shall not block, interfere, narrow or restrict in any way the entrance to the driveway from Fernald Point Lane. Onsite construction parking is prohibited in the shared driveway and in the parking area between 1717 and 1711. Access by construction vehicles, even temporarily for deliveries, is prohibited in the shared driveway and in the parking area between 1717 and 1711 Fernald Point Lane."

3. In light of the fact that 1711 and 1717 abut each other, and the fact that they share a common driveway, construction noise and debris are insufficiently addressed in the conditions currently placed on the proposed project. Appellants request that the Board revise certain conditions as follows:

Appellants request that the Board adopt Condition No. 4, with one revision: substituting 8:00 a.m. for 7:00 a.m.

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Appellants request that the Board adopt Condition No. 8 with two revisions. First, consistent with other conditions, by adding at the end of the "Monitoring" subheading the following sentence: "Building inspectors shall spot check and respond to complaints." Second, Appellant also requests that Condition No. 8 be revised by adding "Trash receptacles shall not be placed in the shared driveway or in the parking area between 1717 and 1711 Fernald Point Lane."

4. The new location of the proposed pool equipment presents noise concerns. Appellants request that the Board require the equipment to be moved north, closer to where the existing pool equipment is now.
5. In light of the fact that 1711 and 1717 abut each other, lighting is a concern. Appellants request that the Board adopt Condition No. 7 with the following additions to express and clarify the lighting plan and MBAR submission requirements referenced by Staff in the Agenda Letter: "Prior to Coastal Development Permit issuance the applicant shall prepare a Lighting Plan. The Lighting Plan shall include a site plan that graphically illustrates the location and type of each light, and shall include lighting cut sheets, all in compliance with this condition. The Lighting Plan shall be submitted to the MBAR for preliminary/final approval and review. Appellant shall be given notice of the MBAR hearing and an opportunity to review and comment on the Lighting Plan."
6. The second story addition will interfere with the existing privacy of 1711 – in addition to violating the view easement – and should not be allowed for this reason as well.
7. The County has not made all necessary Comprehensive Plan Consistency Findings and Coastal Development Permit Findings.
8. The County should not permit expanded development of this significantly undersized parcel.
9. Appellants object to mid-project changes that occurred between the last MBAR hearing and the MPC meeting, and between the MPC meeting and this Board meeting.



III. Details Regarding Objections, Comments and Concerns

1. Interference with recorded scenic easement

A recorded easement for scenic purposes burdens 1717 in favor of 1711. (See Exhibit D (Inst. No. 79-24202).) In addition, the Montecito Community Plan and Montecito Architectural Guidelines and Development Standards direct decision makers to consider private views. (See Exhibit E at Action LU-M-1.1.1.d., Goal 4, and Residential Architectural & Landscape Design Guidelines Section C. View and Privacy Protection.) The Guidelines are premised in part on the lack of laws that “ensure a property owner the right to views and privacy”. However, here the consideration that the Board must give to 1711’s view of the mountains is strengthened because the law – as a result of the recorded scenic easement – does in fact ensure 1711 the right to views.

1711 currently enjoys a striking view of the mountains to the north of 1717. (Photographs demonstrating the current view are attached as Exhibit F.) The addition of a second story will interfere with this scenic view and therefore will violate a recorded encumbrance on 1717 as well as Montecito’s commitment to the consideration of private views. The owners of 1711 will enforce their easement in court if necessary.

For these reasons, the owners of 1711 request that the second story addition, and any other alterations that would interfere with the scenic view easement, not be allowed.

2. Interference with access and parking

Appellants are gravely and legitimately concerned about access and parking issues. As described above, the owner-occupant of 1711, Mrs. Dent, is 82. She has Parkinson’s disease, limited mobility, and other medical issues. It is imperative that she, her round-the-clock caregivers, and emergency personnel have continuously open and uninterrupted access and parking, at all times, by car and by foot, along the driveway and in the parking area. (See Declaration of Melinda Rogers ¶ 2.)

It is impractical in the extreme (in addition to violating the recorded encumbrances on 1717) for construction traffic to use the common driveway or the parking area in any way, including, but not limited to, parking or deliveries.

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The shared drive is the only access from Fernald Point Lane to 1711. It is roughly 15 in width and is lined with tall hedges on both sides; only one car can travel on the driveway at a time. The driveway is roughly 225 feet in length. (See Exhibit G (A.L.T.A. Survey), Exhibit D (Inst. No. 79-24202), Exhibit H (Inst. No. 24543), and Exhibit I (Photographs).) If the driveway is blocked, used for parking, or used for deliveries, Mrs. Dent, her caregivers and other guests, and emergency personnel will be prevented from accessing 1711.

1711 has an exclusive easement for parking over 1717 at the end of the shared driveway. The easement covers the entire parking area. The parking area is small and there is little room to turn around. Access by construction vehicles, even temporarily for deliveries, as a practical matter will prevent Mrs. Dent, her caregivers and other guests, and emergency personnel from safe use of the parking area. In addition, use of the parking area for construction traffic violates the terms of the exclusive easement. (See Exhibit J (Instrument No. 90-3709), Exhibit D (Inst. No. 79-24202), and Exhibit K (Photographs).)

The Van Vliets' agent represented at the Montecito Planning Commission hearing on August 24, 2011 that "Construction will not require trucks to be parked in the driveway... We will not park in Mrs. Dent's parking area nor will we block the driveway." (See Declaration of Lindsay G. Shinn ¶ 26.) Applicants' expressed intent should be incorporated into the project conditions so the restrictions on construction vehicles are clear, particularly to the County personnel who later review the required Construction Parking Plan, the construction workers, and the building inspector.

For the reasons stated above, Appellants request that the Board adopt Condition No. 3 as proposed by Staff with the following additions: "Offsite construction parking shall not block, interfere, narrow or restrict in any way the entrance to the driveway from Fernald Point Lane. Onsite construction parking is prohibited in the shared driveway and in the parking area between 1717 and 1711. Access by construction vehicles, even temporarily for deliveries, is prohibited in the shared driveway and in the parking area between 1717 and 1711 Fernald Point Lane." (See Exhibit L at Attachment 3 (Planning and Development Department Agenda Letter).)

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Construction Noise and Debris

1711 is located in close proximity to 1717 and the two properties share a common driveway. In addition, 1711's parking area is located adjacent to the area where Applicant proposes to add a second story. Substantial noise and debris is anticipated.

The Planning Commission conditioned issuance of a Coastal Development Permit on Condition No. 4, which contains, among other things, limitations on hours of work. (See Exhibit L at Attachment 3 (Planning and Development Department Agenda Letter).) For the reasons stated above, and because the owner-occupant of 1711 is 82 years old (and not an early riser), the owners of 1711 request that the Board adopt Condition No. 4 with one revision: substituting 7:00 a.m. for 8:00 a.m.

The Planning Commission conditioned issuance of a Coastal Development Permit on Condition No. 8, which contains requirements for waste disposal. (See Exhibit L at Attachment 3 (Planning and Development Department Agenda Letter).) Appellants request that the Board adopt Condition No. 8 with two revisions. First, consistent with other conditions, by adding at the end of the "Monitoring" subheading the following sentence: "Building inspectors shall spot check and respond to complaints." Second, Appellant also requests that Condition No. 8 be revised by adding "Trash receptacles shall not be placed in the shared driveway or in the parking area between 1717 and 1711 Fernald Point Lane."

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 the existing pool equipment is now.

Lighting

The owners of 1711 express their concern about the addition of lighting and the effect it will have on 1711. The Planning Commission conditioned issuance of a Coastal Development Permit on Condition No. 7, which contains lighting requirements. (See Exhibit L at Attachment 3 (Planning and Development Department Agenda Letter).) Staff states that because of this condition, a lighting plan is required and will be submitted to MBAR and Planning & Development for review before issuance of a

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Coastal Development Permit. (See Exhibit L at page 5, Issue 5.) However, a lighting plan and submission to the MBAR are not expressly addressed in Condition No. 7.

Therefore, Appellants request that the Board adopt Condition No. 7 with the following additions: "Prior to Coastal Development Permit issuance the applicant shall prepare a Lighting Plan. The Lighting Plan shall include a site plan that graphically illustrates the location and type of each light, and shall include lighting cut sheets, all in compliance with this condition. The Lighting Plan shall be submitted to the MBAR for preliminary/final approval and review. Appellant shall be given notice of the MBAR hearing and an opportunity to review and comment on the Lighting Plan."

Privacy

A second story will interfere with the existing privacy of 1711 and, therefore, is objected to. The Montecito Community Plan and Montecito Architectural Guidelines and Development Standards direct decision makers to consider impacts to neighbor's privacy and to ensure that architecture respects the privacy of immediate neighbors. (See Exhibit E at Action LU-M-1.1.1.e., Goal 5, and Residential Architectural & Landscape Design Guidelines Section C. View and Privacy Protection.)

Findings

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.

Undersized Parcel

The County should not permit expanded 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 + square foot home.

In response to the Planning & Development Department Agenda Letter, Appellants acknowledge that the property – as now developed – is legally nonconforming. The proposed second story addition exacerbates an existing nonconforming condition and should not be permitted.

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Project Changes

The project changed between the last MBAR review and the MPC review, and changed again between the MPC review and this Board meeting.

According to Staff, the square footage of the proposed second story addition was increased. Any increase is likely to have a further negative impact on 1711's view and privacy. 1711 is without sufficient information further to address this concern because story poles have not been replaced to show the change.

A carport also has been added to an area that currently is not used for parking. This will increase the traffic on the common driveway and in 1711's exclusive parking area (the only way to enter the carport will be to pull into the parking area and to maneuver into the small carport space). Appellants have not had a fair opportunity to review and comment on this change.

For these reasons, objection is made to these mid-project changes.

IV. Procedural History; Additional Exhibits

Also attached for reference are the following exhibits:

- Exhibit M: Montecito Board of Architectural Review Agenda 3/14/11
- Exhibit N: Mullen & Henzell letter to the Montecito Board of Architectural Review dated 3/14/11
- Exhibit O: Montecito Board of Architectural Review Minutes 3/14/11
- Exhibit P: Montecito Board of Architectural Review Agenda 4/25/11
- Exhibit Q: Mullen & Henzell letter to the Montecito Board of Architectural Review dated 4/25/11
- Exhibit R: Montecito Board of Architectural Review Minutes 4/25/11
- Exhibit S: Montecito Planning Commission Notice of Public Hearing

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- Exhibit T: Montecito Planning Commission Marked Agenda 8/24/11
- Exhibit U: Staff Report to Montecito Planning Commission 8/5/11
- Exhibit V: Mullen & Henzell letter to the Montecito Planning Commission dated 8/19/11
- Exhibit W: Staff Memorandum to Montecito Planning Commission 8/23/11
- Exhibit X: Montecito Planning Commission action letter 8/26/11
- Exhibit Y: DVD containing (1) audio recording from Montecito Board of Architectural Review hearing on 3/14/11; (2) audio recording from Montecito Board of Architectural Review hearing on 4/25/11; and (3) video recording from Montecito Planning Commission hearing on 8/24/11
- Exhibit Z: Appellants' Appeal Form submitted September 6, 2011

V. Conclusion

For the reasons explained above, in the attached documentation, and at the hearing, Appellants respectfully request that the Board remove the proposed second story addition from this project and modify certain conditions in the ways suggested above. Thank you for your consideration.

Very truly yours,



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

Index of Exhibits

The logo consists of the lowercase letters 'mh' in a white, sans-serif font, centered within a solid black square.

- Exhibit A: Vicinity Map
- Exhibit B: Legal Description for 1711 Fernald Point Lane
- Exhibit C: Legal Description for 1717 Fernald Point Lane
- Exhibit D: Instrument No. 79-24202 recorded in Official Records May 31, 1979
- Exhibit E: Montecito Community Plan Policy LU-M-1.1 and Action LU-M-1.1.1 and related excerpts from Montecito Architectural Guidelines and Development Standards
- Exhibit F: Photographs of scenic view from 1711 to the north
- Exhibit G: A.L.T.A. Survey prepared by Waters Land Surveying Inc., dated February 2010, updated April 2011
- Exhibit H: Instrument No. 24543 recorded in Official Records July 17, 1975
- Exhibit I: Photographs of driveway
- Exhibit J: Instrument No. 90-3709 recorded in Official Records January 18, 1990
- Exhibit K: Photographs of parking area
- Exhibit L: Planning and Development Department Agenda Letter to the Board of Supervisors
- Exhibit M: Montecito Board of Architectural Review Agenda for Meeting on March 14, 2011
- Exhibit N: Mullen & Henzell letter to the Montecito Board of Architectural Review dated March 14, 2011
- Exhibit O: Montecito Board of Architectural Review Approved Minutes from Meeting of March 14, 2011
- Exhibit P: Montecito Board of Architectural Review Agenda for Meeting on April 25, 2011
- Exhibit Q: Mullen & Henzell letter to the Montecito Board of Architectural Review dated April 25, 2011



Exhibit R: Montecito Board of Architectural Review Approved Minutes from Meeting of April 25, 2011

Exhibit S: Montecito Planning Commission Notice of Public Hearing

Exhibit T: Montecito Planning Commission Marked Agenda from Special Hearing of August 24, 2011

Exhibit U: Staff Report to Montecito Planning Commission dated August 5, 2011

Exhibit V: Mullen & Henzell letter to the Montecito Planning Commission dated August 19, 2011

Exhibit W: Staff Memorandum to Montecito Planning Commission dated August 23, 2011

Exhibit X: Montecito Planning Commission action letter to Jennifer Foster dated August 26, 2011

Exhibit Y: DVD containing (1) audio recording from Montecito Board of Architectural Review hearing on March 14, 2011; (2) audio recording from Montecito Board of Architectural Review hearing on April 25, 2011; and (3) video recording from Montecito Planning Commission hearing on August 24, 2011

Exhibit Z: Appellants' Appeal Form submitted September 6, 2011