



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: Set hearing on 05/01/18 for
05/15/18
Placement: Departmental
Estimated Time: 45 minutes on 05/15/18
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Dianne M. Black, Director, Planning and Development (805) 568-2086
Contact Info: Jeff Wilson, Deputy Director, Development Review (805) 568-2518
SUBJECT: MacElhenny Appeal of Montecito Planning Commission's Denial of Appeals and *de novo* approval of the Lighthouse Trust Project (Case Nos. 16BAR-00000-00219 and 17LUP-00000-00035), First Supervisorial District

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence: NA

Recommended Actions:

On 05/01/18, set a hearing for 05/15/18, to consider the appeal (Case No. 18APL-00000-00003) of the Montecito Planning Commission's (MPC) January 3, 2018 denial of the MacElhenny Appeals (Case Nos. 17APL-00000-00013 and 17APL-00000-00014), and *de novo* approval of the Lighthouse Trust Demo/Rebuild Project, Case Nos. 16BAR-00000-00219 and 17LUP-00000-00035.

On 05/15/18, staff recommends that your Board take the following actions:

- a) Deny the MacElhenny Appeal, Case No. 18APL-00000-00003;
- b) Make the required findings for approval of the Lighthouse Trust Demo/Rebuild Project (Case Nos. 16BAR-00000-00219 and 17LUP-00000-00035), including Design Review and CEQA findings included as Attachment 1;
- c) Determine the Lighthouse Trust Demo/Rebuild Project is exempt from CEQA pursuant to CEQA Guideline Section 15303 of CEQA, included as Attachment 3; and
- d) Grant *de novo* approval of the Lighthouse Trust Demo/Rebuild Project (Case Nos. 16BAR-00000-00219 and 17LUP-00000-00035), including the LUP included as Attachment 2.

Alternatively, refer back to staff if your Board takes other than the recommended action for appropriate findings and applicable conditions of approval.

The project site is identified as Assessor Parcel Numbers 007-110-001 and 007-110-002.

Summary Text:

A. Background

The Lighthouse Trust Project includes a voluntary merger, demolition, and new construction. Two existing single family residences with attached garages on two separate parcels would be demolished and the two parcels would be merged (via voluntary merger through the Surveyor's office). The applicant proposes to construct one new residence with attached garage, swimming pool, detached pool cabana, detached guesthouse, and detached guesthouse garage on the merged parcel. (See Project Description in Attachment 6B.) The project was reviewed by the MBAR on five occasions over the course of nine months. On August 24, 2017, the MBAR granted Preliminary Design Approval for Case No. 16BAR-00000-00219. On August 24, 2017, following the MBAR approval, an associated LUP (Case No. 17LUP-0000-00035) was also approved. The Appellant filed timely appeals of both the MBAR Preliminary Design Approval and the LUP approval under one appeal letter to the MPC. The MPC heard the appeal on January 3, 2018 and voted to deny the appeal and grant *de novo* approval of the project. The Appellant is the managing member of Buena Vista 796 LLC, which holds title to property adjacent to the project site. The Appellant and/or representative of the Appellant appeared at the MBAR and MPC hearings stating reasons for opposing the project.

In the current appeal to your Board, the Appellant contends that the MPC abused their discretion by failing to consider the Montecito Architectural Guidelines and Development Standards (Guidelines) and requests made by the Appellant, in writing and in-person over the course of the design review process, to protect views from their property over the project and to the coastal plain and ocean. The Appellant contends that in failing to consider the Guidelines, the MPC could not make the design review findings for approval of the project and that the MPC did not articulate substantiation for their findings upon their action to approve the project design. The Appellant contends that the MPC approved a project that is inconsistent with the required findings for design approval pursuant to MLUDC Section 35.472.070.

As discussed in the MPC appeal staff report dated December 12, 2017, and incorporated herein by reference (Attachment 6), the design review process resulted in project revisions and reductions in roof ridge heights at each of five separate MBAR hearings. The revisions, including lowered roof ridge heights, were incorporated in consideration of the Appellant's concerns about views and privacy (see Attachment 6-I). At the fifth MBAR hearing, the MBAR concluded that the proposed design showed sensitivity to the neighborhood.

As stated under "Purpose" in the Montecito Architectural Guidelines and Development Standards, the Guidelines are not mandatory requirements but rather "serve as a guide for the MBAR, County staff and decision makers in the design review process." MBAR members and County decision-makers are given

the authority to interpret the applicability of each design guideline and to determine if and when a project is or is not consistent with those guidelines.

At their final hearing on the project on August 24, 2017, after having considered all elements of the Guidelines, the MBAR unanimously granted Preliminary Design Approval and made the required design findings pursuant to Subsection 35.472.070.F.1 of the MLUDC. The MPC considered this information, along with all other public comment received, and agreed with the MBAR that the applicable findings could be made to support Preliminary Design Approval of the project. The MPC vote (3:0) included three votes to deny the appeal/approve the project, one member absent and one member abstaining.

B. Appellant Appeal Issues and Staff Responses

The Appellant filed a timely appeal of the MPC January 3, 2018 *de novo* denial of the MacElhenny Appeal, upholding the MBAR Preliminary Design Approval of Case No. 16BAR-00000-00219 and the Planning & Development Director approval of Case No. 17LUP-00000-00035 for the Lighthouse Trust Demo/Rebuild Project. The appeal application (Attachment 4) contains the issues raised in the appeal to your Board. The appeal issues are summarized below and are followed by staff's response.

Appeal Issue #1 – The Montecito Planning Commission (MPC) decision to grant *de novo* approval to the project is inconsistent with the Montecito Architectural Guidelines and Development Standards:

The Appellant claims the proposed project is inconsistent with the following Guidelines pertaining to View and Privacy Protection (Page 15, III.C.3):

- 1) The siting of the new structures in relationship to existing structures should take into account the impact upon views from neighboring sites;*
- 2) The height and roof pitch of the structures should take into account their impact upon views from neighboring sites;*
- 3) Variations in roof mass and pitch should be considered to avoid unreasonably impairing views from neighboring sites; and*
- 4) Structures should be located and designed to avoid obstructing views from living areas of adjacent properties.*

The Appellant claims that the proposed project, particularly the master suite portion, contradicts each of these View and Privacy Protection Guidelines, and that the MPC chose to ignore the inconsistencies with the Guidelines in their Preliminary Design Approval of the project.

Staff Response: The MPC considered that the MBAR reviewed the project at five hearings over the course of nine months and considered and responded to the Appellant's concerns at each occasion. The MPC considered that the MBAR members provided comment and feedback to the project architects throughout the design review process to guide development of the project's design in a manner that addressed neighbor concerns regarding protection of private views, privacy concerns and neighborhood compatibility, including with regard to landscape screening. The MPC also considered that the applicants returned to each MBAR review having attempted to respond to the MBAR's comments through design changes to siting, massing and roofline. The MPC took into account that rooflines were lowered through the design review process, the building was shifted further south, and massing was rearranged (including review of Attachment 6-I of this board letter). In addition, the MPC specifically considered the views from the uphill neighbors over the house and to the ocean beyond (see sheet 3 included in Attachment 6-I.)

The project is subject to the Residential Zone Development Standards pursuant to Section 35.423.050 of the MLUDC, which allows for a maximum height of 35 feet above existing grade, not including architectural projections. The maximum height of the proposed residence would be approximately 19' above existing grade (20 feet, 4¾ inches from finished floor), in compliance with the 35-foot height limit. In addition the maximum ridge height of the proposed residence would be approximately 1 foot lower than the maximum ridge height of the existing residence.

There are no adopted County ordinances or policies that mandate protection of private views. The MPC considered the View and Privacy Protection Guidelines as identified in the MPC staff report dated December 12, 2017, as well as minutes, documents and testimony, provided by staff, MBAR, the Appellant and other members of the public. Based on information and testimony provided to the MPC as part of the January 3, 2018 hearing and guidance provided by the Montecito Architectural Guidelines and Development Standards, the MPC concurred with the MBAR that no public views would be impacted by the proposed project. The findings included in Attachment 1 support the project's consistency with the Montecito Architectural Guidelines and Development Standards.

Appeal Issue #2 – findings for de novo approval of the project were made in reliance on a flawed MBAR approval:

The Appellant claims include that the MPC acted arbitrarily and capriciously, abused its discretion, and acted contrary to applicable law in making its findings for *de novo* approval of the project in reliance on a flawed MBAR approval.

Staff Response: The MPC did not abuse its discretion or act arbitrarily or capriciously in finding the project consistent with the Montecito Architectural Guidelines and Development Standards. The MPC considered the MBAR design review process for the project, including the five MBAR meetings, and all of the MPC hearing documents and testimony provided by staff, the Applicant, the Appellant, and members of the public for the January 3, 2018 hearing.

The project received Preliminary Design Approval at the MBAR hearing of August 24, 2017. At that hearing, MBAR members listened to testimony from the applicant's team, the Appellant's team and other neighbors. After closing public comment and deliberation, the MBAR granted Preliminary Design Approval to the project with a 4-0 vote (1 absent, 2 recused). Vice-Chair Watson read through each of the required MBAR findings for approval to affirm that the motion being made and voted upon was clearly recognized to have the full and explicit support of each of the voting members of the MBAR. After the findings had been recited and affirmed, the MBAR approved the project and offered the following comments as well as specific design direction to the applicant to follow prior to their return for final design review:

1. Height of house is in keeping with houses in front and back of the property given the slope.
2. MBAR appreciates lowering of the finished grade.
3. Restudy stone pines and consider other species that are lower growing or moving them to another area of the site.
4. Northwest corner planting's and olives in the lower end are appropriate in terms of height.
5. Consider a 6:12 roof pitch instead of 8:12.
6. Siting is appropriate.
7. Study spacing between eaves and doors.

The MPC considered the entirety of opinions from the applicant, appellant, and members of the public, prior to taking action on the project, including adoption of Design Review Findings (Attachment 6-A).

Appeal Issue #3 – The MPC abused its discretion when it failed and refused to study the height of the master bedroom suite and explore reasonable adjustments to the Project plans that easily could have resolved Mr. MacElhenny's viewshed concerns without seriously compromising the Project:

The Appellant claims that he raised concerns about the height, design and location of the proposed residence, and impacts on his views to the MPC as well as throughout the design review process. The MPC and MBAR did not require a second set of story poles or a site visit when the master bedroom suite portion was added to the plans after the original story poles had been installed.

At the August 24, 2017 MBAR hearing, the Appellant requested two adjustments to the plans, stating he would be willing to support the project if the height of the master bedroom suite were lowered an additional three feet and if the project was conditioned to restrict the height of landscaping to protect views from his property and other properties to the north. The Appellant claims the MPC had the authority to consider and require the requests but failed to consider either proposition seriously, thereby abusing its discretion.

Staff Response: The master bedroom suite on the east wing of the proposed residence was added prior to the May 11, 2017 MBAR hearing and after the project's MBAR site visit with story poles on April 6, 2017. At the May 11, 2017 hearing, the MBAR directed the applicant to restudy the eastern wing and lower the ridge height. The applicant's architect team subsequently lowered the master suite ridge height by approximately 1 foot in response to MBAR's comments. At the June 22, 2017 hearing, MBAR discussed the eastern wing of the residence, including the master bedroom suite's impact upon the Appellant's views and privacy and the Appellant's request to provide new story poles to reflect the revised master bedroom suite. The MBAR was split on whether new story poles should be installed, but ultimately decided that new story poles were not necessary given their knowledge of the site, their experiences of seeing views from neighboring properties, and their understanding of the design proposal. MBAR noted, during their deliberation on June 22, 2017, that the main ridge height of the residence had been lowered by approximately 2' since the April story pole site visit. Roof ridge heights did not change between the June 22, 2017 MBAR hearing and the design that was presented and given Preliminary Design Approval on August 24, 2017, with the comment to restudy fenestration and landscaping. As noted earlier, the maximum ridge height of the proposed residence, including the master bedroom suite, is 19 feet above existing grade and 20 feet, 4 ¾ inches above finished grade. This roof height is below the applicable 35-foot height limit and is also lower than the finished floor elevation of the appellant's deck, thereby protecting neighboring private views over the roof to the ocean beyond.

The MPC considered the MBAR's decision regarding the need to provide revised story poles as part of the documents and testimony provided for the January 3, 2018 and determined that new story poles were not needed in order to make findings to deny the appeal and approve the project.

In summary, the Guidelines are not explicit requirements, but are used by staff, MBAR and County decision-makers to "assist" and "guide" them in making the required findings for approval of the designs of projects within Montecito. The MBAR members and County decision-makers are given the authority to interpret the applicability of each design guideline and to determine whether a project is or is not consistent with those guidelines. On January 3, 2018, the MPC considered the totality of the record and determined that the project design, as revised through five MBAR meetings, is consistent with the Guidelines.

CONCLUSION: As identified in the MPC action letter for the hearing held on January 3, 2018, staff recommends that the Board of Supervisors deny the appeal and approve the project. The project is in conformance with the Comprehensive Plan and the Montecito Land Use and Development Code zoning requirements, as identified in the MPC staff report, and all necessary findings for approval can be made as identified in Attachment 1 (Findings).

Performance Measure: N/A

Fiscal and Facilities Impacts:

Budgeted: Yes

Narrative: An appeal fee of \$659.92 was paid by the Appellant. Work to process the appeal is funded in the Planning and Development Permitting Budget Program, as shown on page D-289 of the adopted 2016-2018 FY budget. Total costs for processing the appeal are approximately \$4,520.00 (20 hours).

Special Instructions:

The Clerk of the Board shall fulfill all noticing requirements. The notice shall appear in the Santa Barbara News-Press (labels attached). A minute order of the hearing and copy of the notice and proof of publication shall be returned to Planning and Development, Hearing Support, Attention: David Villalobos. A second minute order of the hearing shall be forwarded to the Planning and Development Department, Development Review, Attention: Anne Almy.

Attachments:

1. Board of Supervisors Findings
2. Land Use Permit with Conditions of Approval
3. CEQA Exemption
4. Appeal Application to the Board of Supervisors, dated January 12, 2018
5. Montecito Planning Commission Action Letter, dated January 5, 2018
6. Montecito Planning Commission Staff Report, dated December 12, 2016
 - A. Draft Planning Commission Findings
 - B. Draft (de novo) Land Use Permit with Conditions of Approval
 - C. Environmental Document – Notice of Exemption
 - D. Appeal Application
 - E. Approved MBAR Minutes
 - F. Intent to Serve Letters
 - G. Project Plans
 - H. Floor Area Studies
 - I. Ridgeline Diagram
 - J. Material Board
7. Montecito Planning Commission Memo, dated December 14, 2017
8. Montecito Planning Commission hearing comment letters
9. Plans

Authored by:

Anne Almy, Planner, Planning & Development, Development Review Division, (805) 568-2053