



PLANNING & DEVELOPMENT APPEAL FORM

SITE ADDRESS: 1948 and 1952 Tollis Avenue, Montecito, CA 93108

ASSESSOR PARCEL NUMBER: 007-110-001 and 007-110-002

Are there previous permits/applications? ☒ no ☐ yes numbers: _____
(include permit# & lot # if tract)

Are there previous environmental (CEQA) documents? ☒ no ☐ yes numbers: _____

1. Appellant: Michael MacElhenny Phone: contact attorney FAX: _____

Mailing Address: 796 Buena Vista, Santa Barbara, CA 93108

Street City State Zip

2. Owner: N/A Phone: _____ FAX: _____

Mailing Address: _____ E-mail: _____

Street City State Zip

3. Agent: Christopher Price Phone: (805) 962-0011 FAX: (805) 965-3978

Mailing Address: Price, Postel & Parma LLP, 200 E. Carrillo S., 4th Fl., Santa Barbara, CA 93101

Street City State Zip

E-mail: cp@ppplaw.com

4. Attorney: Susan M. Basham Phone: (805) 962-0011 FAX: (805) 965-3978

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17APL-00000-00013

LIGHTHOUSE TRUST DEMO/REBUILD APPEAL

Case N
Superv
1948 TOLLIS AVE

9/5/17

Project SANTA BARBARA

007-110-002

Zoning Designation: _____

COUNTY USE ONLY

Companion Case Number: _____

Submittal Date: _____

Receipt Number: _____

Accepted for Processing _____

Comp. Plan Designation _____

COUNTY OF SANTA BARBARA APPEAL TO THE:____ **BOARD OF SUPERVISORS**☒ **PLANNING COMMISSION:** ____ **COUNTY** ☒ **MONTECITO**RE: Project Title: Lighthouse Trust Demo/New Single Family DwellingCase No.: 17LUP-00000-00035Date of Action: August 24, 2017I hereby appeal the ____ approval ☒ approval w/conditions ____ denial of the:____ Board of Architectural Review – Which Board? Montecito

____ Coastal Development Permit decision

☒ Land Use Permit decision

____ Planning Commission decision – Which Commission? _____

____ 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:

Appellant is an aggrieved party because he owns real property adjacent to the project site and he appeared in person or through a representative at the MBAR's several hearings on this project, repeatedly stating his reasons for opposing the project. Several letters from or on behalf of Mr. MacElhenny are in the record.

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 letter.

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

- a. _____
- b. _____
- c. _____
- d. _____

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.

<u>SUSAN BASHAM</u>	<u>Susan M. Basham</u>	<u>9/5/17</u>
Print name and sign - Firm		Date
<u>SUSAN BASHAM</u>	<u>Susan M. Basham</u>	<u>9/5/17</u>
Print name and sign - Preparer of this form		Date
<u>Christopher Price</u>	<u>Christopher Price</u>	<u>9/5/17</u>
Print name and sign - Applicant		Date
<u>Christopher Price</u>	<u>Christopher Price</u>	<u>9/5/17</u>
Print name and sign - Agent		Date
<u>Michael MacElhenny</u>	<u>MPM</u>	<u>9/5/17</u>
Print name and sign - Landowner		Date

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Our File Number: 23539-1

September 5, 2017

VIA HAND DELIVERY

Chair Susan Keller
and Members of Montecito Planning Commission
County of Santa Barbara
123 East Anapamu Street
Santa Barbara, CA 93101

Re: Appeal of 16BAR-00000-00219 and 17LUP-00000-00035
Lighthouse Trust Demolition and New Single Family Dwelling
1948 and 1952 Tollis Avenue

Dear Chair Keller and Members:

We represent Michael MacElhenny, who is appealing two actions related to the Lighthouse Trust project (the "Project"), both of which occurred on August 24, 2017: the MBAR's preliminary approval of the Project, and Planning and Development staff's approval of a land use permit. This letter accompanies and is made a part of Mr. MacElhenny's two appeals to the Montecito Planning Commission (the "MPC" or "Commission") pursuant to MLUDC section 35.492.040(A)(1)(a) and (A)(2)(d). At this time, Mr. MacElhenny is stating the grounds for his appeals and the reasons why each of the two decisions is inconsistent with the provisions and purposes of the Montecito Land Use and Development Code ("MLUDC") and other applicable law. We reserve Mr. MacElhenny's right to supplement his support for his appeals prior to hearing.

The Project includes the voluntary merger of two existing parcels (APN 007-110-001 at 1948 Tollis Avenue and APN 007-110-002 at 1952 Tollis Avenue) to create a single 2.26 acre parcel, the demolition of the two single-story residences currently on these lots, and the construction of a new two-story single family residence generally on the site of the most northerly (5,022 sf) residence, with a first floor measuring 5,916 square feet, a second story of 1,231 square feet, a basement of approximately 4,947 square feet, an attached garage of 577 square feet, a detached garage of approximately 5,970 square feet, a detached guesthouse of 754 sf, and a pool cabana of approximately 782 square feet.¹

Mr. MacElhenny owns the parcel immediately north of the Project site at 796 Buena Vista Avenue (APN 007-060-048) and he appeared personally, or through his representatives, at each of the MBAR hearings on the Project. His concerns have been expressed repeatedly in written communications, which are a matter of record as to both MBAR and P&D approvals. He is therefore an aggrieved person within the meaning of the MLUDC and applicable California law.

Mr. MacElhenny's grounds for appeal are the following:

1. The MBAR's decision to grant preliminary approval to the project is inconsistent with the Montecito Architectural Guidelines and Development Standards.

The Montecito Architectural Guidelines and Development Standards (the "Guidelines") require that every project in the Montecito planning area must be consistent with the Guidelines, which include both permissive and mandatory provisions. The Guidelines are provided to assist the MBAR in making its required findings under the MLUDC. Under the MLUDC, a finding of consistency with the Guidelines is required.

The Project design, at all stages of review and as preliminarily approved by the MBAR, is wholly inconsistent with the following Guidelines:

- The siting of new structures in relationship to existing structures should take into account the impact upon views from neighboring sites.
- The height and roof pitch of structures should take into account their impact upon views from neighboring sites.

¹ These are the measurements that were shown on the applicant's plans presented to the MBAR on June 22, 2017. The height and square footage of the residence changed each time the project was reviewed, and we note that in the approved project description (Attachment A: Conditions of Approval of the Land Use Permit) the County now describes a "new two-story 7,037 square foot (net) single family residence with underground basement," without reference to the basement square footage at all.

- Variations in roof mass and pitch should be considered to avoid unreasonably impairing views from neighboring sites.
- Structures should be located and designed to avoid obstructing views from living areas of adjacent properties.

The proposed Lighthouse Trust project – particularly the master suite -- plainly contradicts each of these Guidelines, and the record will show that the MBAR acknowledged these inconsistencies and then decided to ignore them. The MBAR abused its discretion by failing to apply the Guidelines and thereby approved a project that is inconsistent with applicable regulations.

2. The MBAR acted arbitrarily and capriciously, abused its discretion, and acted contrary to applicable law in making design review findings for preliminary approval.

Pursuant to MLUDC section 35.472.070, the MBAR may not preliminarily approve a project unless it can make all of the following required findings:

- a. Overall structure shapes, as well as parts of any structure (buildings, fences, screens, signs, towers, or walls) are in proportion to and in scale with other existing or permitted structures on the same site and in the area surrounding the property.*
- b. Electrical and mechanical equipment will be well integrated into the total design concept.*
- c. There will be harmony of color, composition, and material on all sides of a structure.*
- d. There will be a limited number of materials on the exterior face of the structure.*
- e. There will be a harmonious relationship with existing and proposed adjoining developments, avoiding excessive variety and monotonous repetition, but allowing similarity of style, if warranted.*
- f. Site layout, orientation and location of structures and signs will be in an appropriate and well designed relationship to one another, and to the environmental qualities, open spaces, and topography of the site with consideration for public views of the hillsides and the ocean and the semi-rural character of the community as viewed from*

scenic view corridors as shown on Figure 37, Visual Resources Map in the Montecito Community Plan EIR.

g. Adequate landscaping will be provided in proportion to the project and the site with due regard to preservation of specimen and landmark trees, existing vegetation, selection of plantings that are appropriate to the project and that adequate provisions have been made for the maintenance of all landscaping.

h. Grading and development is designed to avoid visible scarring and will be in an appropriate and well designed relationship to the natural topography with regard to maintaining the natural appearance of ridgelines and hillsides.

i. Signs including associated lighting are well designed and will be appropriate in size and location.

j. The proposed development will be consistent with any additional design standards expressly adopted by the Board for a specific local community, area or district
.....”

The records of the MBAR proceedings on August 24, 2017 will show that the MBAR rushed through the required findings almost as an afterthought, after the motion to preliminarily approve the Project was made without any reference to the findings and only when P&D staff reminded the MBAR that since their decision was likely to be appealed perhaps they might want to review the required findings. There was no serious consideration of “harmonious relationship with existing and proposed adjoining developments,” which reflects the “neighborhood compatibility” requirements of the Guidelines, nor was there any specific consideration of the Guidelines at all, despite Mr. MacElhenny’s specific references to Guidelines standards for design that does not intrude unreasonably onto the viewsheds and privacy of neighboring properties. The MBAR merely noted that since the house located on the parcel adjacent to the Project site is of similar shape, they could make this finding.

As Mr. MacElhenny will show on appeal, the residence next door is anomalous in the surrounding neighborhood. Had the MBAR acted responsibly in its consideration of this and other required findings, it could not have made the findings and therefore should not have granted preliminary approval.

3. The MBAR 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.

Despite the fact that the design of the project changed several times between MBAR hearings, Mr. MacElhenny carefully reviewed the changes and, each time, made his concerns known during the public hearing process. He repeatedly objected to the height, design, and location of the proposed residence on the Project site, and he consistently raised concerns about the impacts on views from the primary living spaces on his property. Even though the MBAR had required story poles for the structure as originally proposed, when the master bedroom suite was added later, the MBAR did not require story poles or take a site visit and failed to give this objectionable and deleterious part of the design the same attention it had given other aspects of the Project.

During the August 24, 2017 hearing, Mr. MacElhenny summarized his concerns very clearly and asked for two adjustments to the plans, stating that he would be willing to support the project if the height of the master bedroom suite were lowered by three feet and if the MBAR and/or P&D would require a restriction on landscape height to protect the views from his property and other properties to the north. The MBAR failed to consider either proposition seriously, taking inaccurate direction from the applicant's attorney that they could not consider a condition of approval that would require landscape maintenance at a particular height, enforceable as a zoning violation, because it would be a "covenant." Mr. MacElhenny will show on appeal that the County certainly has imposed such conditions through BAR and LUP approvals. While one member looked at the plans and commented that simply modifying the pitch of the roof could accomplish the requested height adjustment, he also commented that since the neighbors seemed unable to avoid an appeal he would not pursue the plan change. The other members simply ignored Mr. MacElhenny's requests.

The MBAR had the authority to consider and require plan changes that would have addressed Mr. MacElhenny's reasonable concerns but, in a blatant abuse of discretion, simply refused to do so.

4. Planning and Development acted in excess of its authority and abused its discretion in approving the Land Use Permit in reliance on the flawed MBAR Approval.

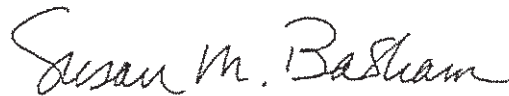
In approving a Land Use Permit, the Director of Planning and Development, acting through the P&D staff, must exercise discretion and find that the project is consistent with state law and the MLUDC as well as other applicable regulations. Here P&D staff had prepared the LUP even before the MBAR had completed its deliberations, approving it within minutes after

Chair Susan Keller and MPC Members
September 5, 2017
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the MBAR voted. P&D took no time and made no effort to consider whether project-specific conditions of approval could have been imposed to address neighborhood concerns. The LUP was issued as a "rubber stamp" for the Project approved by the MBAR, with no apparent effort to consider land use-specific issues.

In summary, these are Mr. MacElhenny's legal grounds for appeal, and the factual support for his appeal will be presented in greater detail prior to and during your hearing on these two appeals. We respectfully request that the Montecito Planning Commission sustain these appeals, and we look forward to your hearing.

Very truly yours,

A handwritten signature in cursive script that reads "Susan M. Basham".

Susan M. Basham
for PRICE, POSTEL & PARMA LLP

cc: Michael MacElhenny