



# COUNTY OF SANTA CRUZ

## PLANNING DEPARTMENT

701 OCEAN STREET, 4<sup>TH</sup> FLOOR, SANTA CRUZ, CA 95060  
 (831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123  
**KATHLEEN MOLLOY PREVISICH, PLANNING DIRECTOR**

November 3, 2010

**AGENDA DATE: November 16, 2010**

Board of Supervisors  
 County of Santa Cruz  
 701 Ocean Street  
 Santa Cruz, CA 95060

**Subject: Public Hearing to Consider Ordinance Amendments Regarding Minor Exceptions to Certain Zoning Standards**

Members of the Board:

In June of this year, Planning Staff reported to your Board on the status of efforts to provide greater flexibility in the planning process. Key among these is a process to allow minor exceptions to certain development standards, subject to a discretionary permit and noticing of adjacent neighbors. As directed by your Board, Planning Staff prepared a draft ordinance amendment implementing the minor exception process. On October 13, 2010, the Planning Commission reviewed the proposed amendments and recommended your Board approve the ordinance with a few minor changes. This ordinance is now before your Board for review.

**Need for a Minor Exception Process**

During our daily interactions with the public and in processing applications, planning staff periodically encounter situations where the strict application of minimum setbacks, maximum lot coverage, and maximum floor area ratio pose practical difficulties for property owners while not creating any benefit for the neighborhood or the greater community. For some properties, there are special circumstances which should be considered in the design and evaluation of the project. There may be a design solution to meet the needs of the applicant that would require slight modification of site standards (such as a reduced setback or minor increase in lot coverage), but which would not impact neighboring properties or the environment. In some cases, a modification of site standards may even allow better protection of an environmentally sensitive resource, such as a riparian corridor or significant trees, than would be possible without the modification.

Under existing County regulations, the only remedy available to grant even minor exceptions from site standards like those discussed above is a variance. The variance process, with a mandatory public hearing to address community concerns, is appropriate for projects with extensive deviations from development standards. However, for those projects involving only minor exceptions from zoning site standards and without the potential to negatively impact neighboring properties or the environment, the process is expensive and time-consuming for the applicant without providing any benefit to the community. Additionally, some County residents may perceive the variance process to be inflexible and unreasonable, and chose instead to work outside the permit process.

Consistent with State law provisions authorizing local jurisdictions to define a subset of variances that can be approved administratively without a public hearing, staff has drafted an ordinance amendment to allow minor exceptions from site standards for setbacks, distance between structures, lot coverage, and height to be approved through administrative discretionary review with approval required by the Planning Director (who is also designated the Zoning Administrator under County Code) (Exhibit A to Attachment 1). Additionally, the findings required for approving a minor exception would define the nature of special circumstances which can allow for consideration of design issues, practical hardships or protection of environmentally sensitive resources on the site.

By limiting the exception to allow only minor deviations from certain site standards (see details section in this letter), providing criteria under which a minor exception would be considered and approved, and requiring discretionary review with noticing to adjacent property owners, the minor exception process would provide regulatory relief for many County residents while at the same time protecting neighboring properties and the environment. A similar process is available in many other communities such as Morgan Hill. Furthermore, by encouraging improvements to existing residences and other buildings, the minor exception process would facilitate the sustainable reuse of existing building resources and help preserve and improve our existing housing stock.

### **Purposes of Minor Exceptions**

#### Creating reasonable flexibility

Following are examples of the types of situations appropriate for minor exceptions.

#### *Extension of an existing, legal, nonconforming setback*

An owner of a legal nonconforming residence, with one side of the house encroaching one foot into the required side yard, wishes to construct an addition on that side of the residence. Strict compliance with existing setback requirements would result in an awkward addition that jogs back from the rest of the residence. A minor exception allowing, for example, a nine-inch encroachment into a required 5-foot side yard, would allow for an addition that extends the existing wall of the residence, resulting in a superior design that is compatible with residences in the neighborhood.

#### *Accommodating existing site improvements and design needs*

Due to the configuration of a residence and its proximity to property lines, the owners of the residence are unable to design a bedroom meeting the minimum size required under the Building Code that also complies with required setbacks, unless they undertake an extensive remodel or partial demolition of their residence. An exception allowing a minor reduction in the rear setback could allow the construction of an additional bedroom without requiring an expensive remodel and without impacting neighboring properties. As an example, a property owner could request a 15% exception to a 20-foot rear setback to allow an addition with a 17-foot rear setback.

#### *Minor exception to side yard setback supports mixed use development*

Mixed use is becoming a more important type of development. Remodeling of a neighborhood market was proposed to include one residential unit upstairs for the owner. The owner in residence makes the market a feasible use in that location. However, the exterior stairs to access the upstairs unit intruded approximately four feet into the required side yard setback, which is 30 feet when commercial property is next to residential property. The ability to seek an exception in these cases, where the encroachment does not negatively impact the side yard neighbor, would support mixed use and in this case, a neighborhood food store.

#### *Lot coverage minor exception - Flexibility to create accessible residences – “Universal Access”*

For single story residences in the County that are at maximum ground floor lot coverage, the Floor Area Ratio provisions allow additional square footage on a second story. For elderly county residents or for those with a physical disability, adding a second story to gain additional square footage may not be

feasible. For a lot with a 4,500 net site area, an exception for lot coverage would allow an increase of up to 15% of the 40% allowable lot coverage (or 15% of 1,800 square feet) resulting in an additional 270 square feet allowed on the ground floor. A minor exception could provide more options in home design for those needing an accessible residence.

*Height exception to accommodate green features in a commercial building*

The owners of an industrial parcel applied to construct an energy efficient medical office. The design for the green building included a special ventilation system to reduce the need for heating and cooling and to improve indoor air quality. The ventilation system increased the overall building height, requiring a building at the maximum 35' height limit, with the HVAC system extending an additional three feet. Although the height exceptions in the County Code allow HVAC equipment to exceed the height limit, these exceptions do not allow the required screening of the HVAC to do so. Because the strict findings in the County Code did not allow for design issues to be considered, the applicant could not obtain a variance from the height requirement for the required screening and had to redesign their project without the energy efficient ventilation system. The proposed minor exception process, with a broader set of findings than is allowed for standard variance approvals, would allow for consideration of such special design features.

Improved consistency with County Regulations

An additional goal of the minor exception process is to facilitate greater consistency with other provisions in the County Code, particularly regulations protecting the environment. There are circumstances where additional flexibility will allow development to be sited further away from an environmental resource than is possible without an exception. For example, a project may be moved a few feet into a setback in order to provide greater distance between a foundation and significant trees. A few additional feet can be very beneficial in avoiding a root zone and preserving trees. Similarly, a riparian area or other resource can often benefit from additional room. The minor exception process could achieve this consistency without the increase in time and cost required by the variance process, thereby encouraging greater protection of environmental resources.

**Details of Minor Exception Process**

Applicability

The proposed minor exception process would be applicable Countywide, applying to site standards in all primary zone districts, including agricultural, residential, commercial, and industrial. Because site standards in Specific Plans and Combining Zone Districts are developed to address land use or design issues specific to these areas, the minor exception would not apply to special standards for height, setbacks, and lot coverage or floor area ratio in these areas unless specifically noted.

Limitations

Minor exceptions would be limited to a maximum 15% reduction in the required front, side or rear setbacks, a maximum 15% reduction in the required 10-foot separation between accessory structures on the same property, a maximum 10% increase in the allowed height, and a maximum 15% increase of the total percentage allowed for ground floor lot coverage. Each application would also be subject to making certain findings before the project could be approved (Exhibit A to Attachment 1).

The following table shows the maximum additional lot coverage that would be allowed with a minor exception:

Allowable Lot Coverage	Maximum Additional Lot Coverage Allowed with a 15% Minor Exception
40%	6%
20%	3%
10%	1.5%

Exceptions for floor area ratio (FAR) would be limited to a 7.5% increase in the total FAR allowed for lots 4,000 square feet or less, and a 5% increase for lots from 4,000 square feet up to 8,000 square feet. As shown in the following table, the exception for FAR would allow only small increases in overall square footage, and only on properties no larger than 8,000 square feet, to provide a reasonable amount of flexibility while limiting impacts to adjoining properties:

Maximum Residential FAR allowed with a Minor Exception			
Lot Size	50% FAR (FAR site standard)	Lots 4,000 sq ft or less:  Maximum FAR with a 7.5% exception (57.5% FAR):	Lots greater than 4,000 sq ft, up to 8,000 sq ft: Maximum FAR with a 5% exception (55% FAR):
3,000 sq ft	1,500 sq ft	1,725 sq ft (+225 sq ft)	N/A
4,000 sq ft	2,000 sq ft	2,300 sq ft (+300 sq ft)	N/A
5,000 sq ft	2,500 sq ft	N/A	2,750 sq ft (+250 sq ft)
6,000 sq ft	3,000 sq ft	N/A	3,300 sq ft (+300 sq ft)
8,000 sq ft	4,000 sq ft	N/A	4,400 sq ft (+400 sq ft)

#### Review Process

The review process for minor exceptions is intended to fully address all planning issues, and the concerns of adjacent neighbors, while providing a faster and less expensive process than is required for variance approvals. Minor exceptions would be processed as Level IV discretionary permits, requiring administrative review and approval by the Planning Director. Like other Level IV projects, the permit would be processed at cost. The attached resolution (Attachment 2) authorizes the addition of the minor exception to the Planning Department Fee Schedule. In addition to the standard development permit findings requiring protection of health, safety and welfare, and consistency with all applicable County policies and regulations, additional findings would be required for residential minor exceptions to ensure protection of light, air and privacy of residential properties, and, for projects with increases in lot coverage, to control any additional stormwater runoff. As is the case for all discretionary applications, minor exceptions could be conditioned appropriately to further protect neighboring properties and the environment from any impacts.

Since the minor exceptions would likely concern only immediate neighbors, notices would be sent only to adjacent parcels and to those parcels across a right of way that overlap any part of the frontage of the subject parcel. No public hearing would be required, although at the discretion of the Planning Director a hearing before the Zoning Administrator could be held if needed to fully address neighbor's concerns. The determination on the minor exception could be appealed by anyone, with the appeal heard by the Planning Director, or, if the Planning Director determines the public would be better served, by the Zoning Administrator or the Planning Commission.

#### **Planning Commission Review**

At the hearing on October 13<sup>th</sup>, 2010, the Planning Commission recommended approval of the draft ordinance, with additional direction to clarify the appeal process, to add an additional exemption to allow separation between structures to be reduced by 15%, and to report back in two years on the status of the minor exception process, noting the number of applications received, the percentage of applications approved or denied, and any issues with the noticing process. Additionally, several Commissioners raised concerns regarding the proposed height exception, questioning whether the proposed 15% exception was excessive, and could lead to issues with adjacent residential neighbors. In response, staff is recommending reducing the proposed height exception from 15% to 10%, and has also incorporated the other recommendations of the Commission into the attached ordinance (Exhibit A to Attachment 1).

## **CEQA Exemption**

The proposed ordinance is statutorily exempt under CEQA Guidelines Section 15265, which states that CEQA does not apply to activities of a local government necessary for the amendment of a local coastal program. Additionally, the project is categorically exempt under CEQA Guidelines Section 15305, minor alterations in land use limitations. The proposed process allows for only minor exceptions from current site standards for setbacks, distance between structures, lot coverage, height and floor area ratio, and requires discretionary approval. Environmental site standards that protect sensitive resources, including riparian setbacks, agricultural buffer setbacks, setbacks from Coastal bluffs, and setbacks from other geologic hazards, remain in effect and could not be altered through the minor exception process.

To eliminate the potential for any additional stormwater runoff that could result from projects with minor increases in lot coverage that include an increase in impervious surface, the ordinance requires a determination that no additional stormwater runoff will occur, and requires that projects be conditioned as needed to ensure no additional stormwater runoff from the project site (Exhibit A to Attachment 1).

As is the case for most discretionary projects, applications would be routed as needed to all appropriate departments and agencies for review. If potential environmental impacts were identified for any project, full review under CEQA could be performed at that time.

## **Local Coastal Program Consistency**

The proposed amendment will not result in loss of agricultural land, loss of coastal access, or negative impacts to public viewsheds within the Coastal Zone. The minor exception would allow for only minor deviations from standards for FAR, lot coverage, setbacks, and height. For example, on a 6,000 square foot lot, an exception for lot coverage would allow a maximum of only 360 additional square feet of ground floor coverage. Exceptions for lot coverage require an additional finding to ensure no increase in stormwater runoff. The proposed height exception would also allow only minor increases; for residential structures allowing up to 2.8 additional feet in height for a total height of up to 30.8 feet. The proposed height exception is similar to other existing height exceptions in the Santa Cruz County Code that were previously certified by the Coastal Commission as consistent with LCP policies. For example, Section 13.10.323(e) 5 allows an increase in building height if all required yards are increased 5 feet for each foot increase over the permitted 28 foot height limit, subject to a Level III or IV discretionary review.

To further ensure protection of coastal resources, any application for a minor exception would be discretionary, requiring approval by the Planning Director and noticing to all adjacent neighbors, and would require written findings of compliance with LCP policies protecting scenic corridors and public viewsheds pursuant to Chapter 13.20 of the County Code. Applications for minor exceptions would be conditioned as needed to address any potential impacts to coastal resources, or denied if the project could not be conditioned appropriately. Those projects whose location or use currently triggers coastal permits would continue to do so.

## **Summary and Recommendations**

The proposed minor exception process will provide a new tool to allow for greater flexibility in the planning process. The administrative discretionary review process will allow for consideration of minor exceptions from certain zoning standards, recognize special circumstances to alleviate practical hardships or allow for superior designs, while at the same time protecting neighboring properties and the environment.

It is therefore RECOMMENDED that your Board take the following actions:

1. Conduct a public hearing on the proposed ordinance amendment to Chapter 13.10 of the County Code (Exhibit A to Attachment 1); and
2. Adopt the resolution (Attachment 1) making findings, certifying the Environmental Notice of Exemption, and approving the proposed ordinance amendment (Attachment 3); and
3. Adopt the resolution approving the addition of the minor exception to the Planning Department Fee Schedule (Attachment 2); and
4. Direct Staff to report back in two years on the status of the minor exception process, including the number of applications received, approved and denied, and the adequacy of the noticing process.

Sincerely,



Kathy M. Previsich  
Planning Director

  
SUSAN A. MAURIELLO  
County Administrative Officer

Attachments:

- 1: Resolution approving the proposed ordinance amendments  
Exhibit A to Attachment 1- Clean copy of the proposed Ordinance
- 2: Resolution approving the proposed addition to the Fee Schedule
- 3: CEQA Notice of Exemption
- 4: Planning Commission Resolution
- 5: Planning Commission Staff Report
- 6: Planning Commission Minutes

cc: County Counsel  
Coastal Commission  
Department of Public Works

BEFORE THE BOARD OF SUPERVISORS  
OF THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA

RESOLUTION NO. \_\_\_\_\_

On the motion of Supervisor  
duly seconded by Supervisor  
the following is adopted:

BOARD OF SUPERVISORS RESOLUTION MAKING FINDINGS AND APPROVING  
AMENDMENTS TO CHAPTER 13.10 OF THE SANTA CRUZ COUNTY CODE  
ESTABLISHING A DISCRETIONARY REVIEW PROCESS TO ALLOW CONSIDERATION  
OF MINOR EXCEPTIONS FROM CERTAIN ZONING SITE STANDARDS

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WHEREAS, Santa Cruz County has in recent years enacted reforms to streamline aspects of the planning process while continuing to protect the community and environmental resources; and

WHEREAS, the County of Santa Cruz has also recently enacted programs and incentives encouraging the reuse of existing resources including preservation of the existing housing stock; and

WHEREAS, consistent with these goals, in June of 2010 the Board of Supervisors directed planning staff to develop a process whereby minor exceptions from zoning site standards could be approved, subject to administrative discretionary review to ensure that such exceptions are substantially consistent with the General Plan and the Zoning Ordinance, and do not negatively impact neighboring properties or the environment; and

WHEREAS, California Government Code Section 65901 provides that the legislative body of a county may, by ordinance, specify the kinds of variances and extent of variation which may be administratively granted by a zoning administrator or board of adjustment without the requirement for a public hearing; and

WHEREAS, California Government Code Section 65901 also provides that the ordinance adopted by the legislative body authorizing administrative approvals of variations within the limits established by the legislative body must also establish criteria for such approvals for the class of variations that will be able to be administratively approved, and the legislative body must find that the specified class of allowable variations and the specified criteria and findings that will be applicable to projects under the administrative procedures will be consistent with the intent and requirements of Government Code Section 65906 pertaining to the granting of such variations from the terms of the applicable zoning ordinances for the specified class of variations; and

WHEREAS, on October 13, 2010, the Planning Commission conducted a public hearing to consider the minor amendments to the Santa Cruz County Code establishing such a site

exception process as is consistent with state law and recommended the proposed ordinance amendments for approval by the Board of Supervisors (Attachment 1 to Exhibit A).

NOW THEREFORE, BE IT RESOLVED AND ORDERED, that the Board of Supervisors hereby makes the following findings related to adoption of the Minor Exceptions ordinance:

(1) Administrative approvals of minor exceptions or variations from the standard terms of applicable zoning ordinances, for the specified types and within the specified limits of the subject Minor Exceptions ordinance, shall be based on special circumstances and practical difficulties related to the property and/or its surroundings. Approvals shall be based upon findings in the ordinance requiring specification of the circumstances and difficulties faced by the proposed project, and on findings that the resultant project will be in substantial conformance with the intent of the General Plan and applicable zoning ordinances, while achieving development allowed by the zoning district with a superior siting or design than would be achieved through the strict application of the standard requirements, in a manner that recognizes the circumstances of the property and balances achieving the project objectives with the special circumstances and practical difficulties related to the site. Special circumstances for this class of minor exceptions or variations is found to include but not be limited to the size, shape, topography, location, existing development or improvements, environmental constraints or surroundings applicable to the property and/or adjacent properties, which present practical difficulties or which would result in inferior siting or design than would be possible if the exception were approved.

(2) Future administrative approvals of projects within the class of minor exceptions or variations from the standard terms of applicable zoning ordinances, under the subject Minor Exceptions ordinance which defines such class by the types and extent of allowable variations, is found to be consistent with the intent, goals and policies of the General Plan, in that variations will not be granted which would authorize a use or activity which is not otherwise expressly authorized by the zoning regulations governing the subject property or parcel. Also, variations will not be granted that would confer a special privilege, in that the Minor Exceptions ordinance will apply to all zoning districts and all properties for the types and extents of variations addressed by the ordinance, and similarly situated projects will be able to be approved based on findings related to their relevant circumstances or practical difficulties, and based on finding that those projects have special circumstances that would affect the project and that approval of the minor exception or variation would result in more desirable configurations or more superior designs, along with the other findings required by the minor exceptions provisions.

(3) The ordinance amendments have been found to be statutorily exempt from further review under the California Environmental Quality Act under CEQA Guidelines Section 15265, and categorically exempt under CEQA Guidelines Section 15305.

(4) The proposed Local Coastal Program amendments and proposed amendments



## Attachment 1

to the Santa Cruz County Code will be consistent with the policies of the General Plan and Local Coastal Program and other provisions of the County Code, are in compliance with the California Coastal Act, and are consistent with State law.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED, that the Board of Supervisors hereby adopts the amendments to Chapter 13.10 of the Santa Cruz County Code (Exhibit A to Attachment 1) and certifies the Negative Declaration under CEQA as set forth in Attachment 3, and incorporated herein by reference; and

BE IT FURTHER RESOLVED AND ORDERED that the Board of Supervisors hereby directs these amendments shall be in effect outside the Coastal Zone 31 days after adoption; and

BE IT FURTHER RESOLVED AND ORDERED that the Board of Supervisors hereby directs these amendments be submitted to the State of California Coastal Commission as part of the next 2010 "rounds" package.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz, State of California, this \_\_\_\_\_ day of \_\_\_\_\_, 2010 by the following vote:

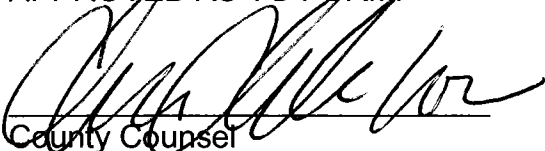
AYES: SUPERVISORS  
NOES: SUPERVISORS  
ABSENT: SUPERVISORS  
ABSTAIN: SUPERVISORS

\_\_\_\_\_  
Chairperson of the Board of Supervisors

ATTEST:

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM:

  
\_\_\_\_\_  
County Counsel

DISTRIBUTION: County Counsel  
Planning Department

**ORDINANCE ADDING SECTION 13.10.235 TO CHAPTER 13.10 OF THE  
SANTA CRUZ COUNTY CODE ESTABLISHING A DISCRETIONARY REVIEW  
PROCESS TO ALLOW CONSIDERATION OF MINOR EXCEPTIONS FROM  
CERTAIN ZONING SITE STANDARDS**

The Board of Supervisors of the County of Santa Cruz ordains as follows:

**SECTION I**

Section 13.10.235 is hereby added to Chapter 13.10 of the Santa Cruz County Code to read as follows:

**13.10.235 Minor Exceptions**

a) Purpose. To provide for minor exceptions from the zoning district site standards established for height, setbacks, separation between accessory structures on the same property, lot coverage and floor area ratio, in order to address practical hardships that would result from the strict application of site standards or to accommodate a superior design that is also compatible with the neighborhood.

b) Applicability. Minor exceptions apply to the zoning site standards contained in the site and structural dimensions charts for Agricultural districts (13.10.313(a)); Residential districts (13.10.323(b) and 13.10.323(e)6(c)); Commercial districts (13.10.333(a)); Industrial districts (13.10.343(a)); Parks, Recreation and Open Space Parks districts (13.10.353(a)); Public and Community Facilities districts (13.10.363(a)); Timber Production districts (13.10.373(a)); and Special Use districts (13.10.383(a)). Minor exceptions do not apply to special site standards contained in combining zone districts, specific plans or PUD's, unless specifically indicated. Minor exceptions may be approved for new construction, additions, and to recognize structures built without permits.

Minor exceptions shall be limited to the following exceptions from site standards:

Height: Up to a 10% increase in the allowed height

Setbacks: Up to a 15% reduction in the required front, side or rear setback

Separation between structures: Up to a 15% exception from the 10-foot separation requirement between accessory structures on the same property

Floor Area Ratio: Up to a 7.5% increase in the total allowable 50% FAR for lots 4,000 square feet or less, and up to a 5% increase in the total allowable 50% FAR for lots greater than 4,000 square feet up to 8,000 square feet

Lot Coverage: Up to a 15% increase of the total allowable lot coverage, resulting in the following maximum allowable increases:

Allowable Lot Coverage	Maximum Additional Lot Coverage Allowed with a 15% Minor Exception
40%	6%
20%	3%
10%	1.5%

Minor exceptions apply only to the zoning site standards noted above, and do not apply to or supercede limits or building setbacks required in other sections or chapters of the County Code, such as for riparian corridors, geologic hazards, sensitive habitats, or agricultural buffers.

(c) Procedures.

Regulations and procedures such as application, review, project conditions, approval, and appeal for a minor exception shall be in accordance with the provisions of Chapters 18.10 for a Level IV Approval, except that public notice requirements shall be limited to the following: Within 10 days of the receipt of an application for a minor exception, adjacent property owners and owners of property across a right of way that overlap any part of the frontage of the subject parcel shall be mailed a "Notice of Application Submittal". The contents of the notice shall be consistent with those required in Section 18.10.222(b). Not less than 10 days prior to the issuance of the permit, a "Notice of pending action" shall be sent to the same property owners, notifying the property owners of the pending decision on the project and the appeal process. The content of the notice shall be consistent with those required in Section 18.10.222(d). A published notice shall not be required.

(d) Required findings.

(1) That because of special circumstances applicable to the property, including but not limited to size, shape, topography, existing development or improvements, and environmental constraints; and/ or because of the surroundings related to the property; the strict application of the zoning ordinance would either (a) present practical difficulties for the applicant that could be relieved through the granting of a minor exception, or (b) would result in a project design or siting that is inferior to what could be achieved with a minor exception.

(2) That the granting of such an exception shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and under identical zoning classification.

(3) That the proposed location of the project and the conditions under which it would be operated or maintained will not be detrimental to the health, safety, or welfare of persons residing or working in the neighborhood or the general public, and will not be materially injurious to properties or improvements in the vicinity.

(4) That the proposed location of the project and the conditions under which it would be operated or maintained will be consistent with pertinent

County ordinances and the purpose of the zone district in which the site is located.

(5) That the proposed project is consistent with the County General Plan and with any Specific Plan which has been adopted for the area.

(6) On properties in the Coastal Zone, that the proposed project complies with all LCP policies, including policies protecting scenic corridors and public viewsheds.

(7) That the proposed project will complement and harmonize with the existing and proposed land uses in the vicinity and will be compatible with the physical design aspects, neighborhood character, land use intensities, and dwelling unit densities of the neighborhood.

(8) On properties adjacent to residential zone districts or residential dwellings, that the proposed project shall not unreasonably infringe on adequate light, air, or privacy of adjacent residences.

(9) That there is no increase in stormwater leaving the property as a result of additional impermeable area allowed by a minor exception to increase lot coverage. Projects shall be conditioned to direct runoff to the landscape, use permeable paving material, reduce existing impermeable area, or incorporate other low impact drainage design practices to control stormwater runoff.

(e) Other regulations. In addition to the minor exception provided in this Section, other possible exceptions addressed by the Santa Cruz County Code are contained in the following sections of Chapter 13.10:

Residential exceptions for structural encroachments, solar access, height, and for accessory structures:	13.10.323(e)
Residential front yard averaging:	13.10.323(e)(7)
General height exceptions:	13.10.510(d)(2)

## **SECTION II**

This Ordinance shall take effect on the 31<sup>st</sup> day after the date of final passage outside the Coastal Zone and on the 31<sup>st</sup> day after the date of final passage or upon certification by the California Coastal Commission, whichever date is later, inside the Coastal Zone.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz, State of California, this \_\_\_\_\_ day of \_\_\_\_\_, 2010 by the following vote:

**EXHIBIT A**

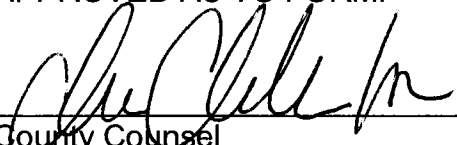
AYES: SUPERVISORS  
NOES: SUPERVISORS  
ABSENT: SUPERVISORS  
ABSTAIN: SUPERVISORS

\_\_\_\_\_  
Chair of the Board of Supervisors

ATTEST:

\_\_\_\_\_  
Clerk of the Board

APPROVED AS TO FORM:

  
\_\_\_\_\_  
County Counsel

Copies to: County Counsel  
Planning Department

Attachment 2

BEFORE THE BOARD OF SUPERVISORS  
OF THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA

RESOLUTION NO. \_\_\_\_\_

On the motion of Supervisor  
duly seconded by Supervisor  
the following is adopted:

BOARD OF SUPERVISORS RESOLUTION AMENDING THE PLANNING  
DEPARTMENT UNIFIED FEE SCHEDULE

WHEREAS, the Board of Supervisors has previously enacted Resolution No. 375-82 which previously amended certain sections of the Santa Cruz County Code to provide that fees previously specified therein shall henceforth be established by Resolution of the Board; and

WHEREAS, the Board has determined that it is necessary to adjust and consolidate the amount of certain fees previously established by either ordinance and/or resolution.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED, that the fees and charges of the Unified Fee Schedule for the Planning Department are hereby amended to include a fee for minor exceptions as presented in the attached Exhibit A, and that this amendment to the fee schedule shall be effective upon the date that the ordinance implementing the minor exception takes effect, or 60 days after the Board of Supervisors adopts the amendment to the fee schedule (Exhibit A), whichever date is later.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz, State of California, this \_\_\_\_\_ day of \_\_\_\_\_, 2010 by the following vote:

AYES:	SUPERVISORS
NOES:	SUPERVISORS
ABSENT:	SUPERVISORS
ABSTAIN:	SUPERVISORS

\_\_\_\_\_  
Chairperson of the Board of Supervisors

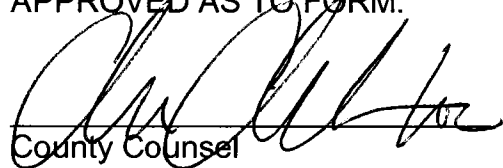
Attachment 2

ATTEST:

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Clerk

APPROVED AS TO FORM:



County Counsel

DISTRIBUTION: County Counsel  
Planning Department

**Santa Cruz County Unified Fee Schedule**  
**Planning**  
**Budget Unit - 542200**

0298

**EXHIBIT A**  
*to Attachment 2*

Items	Current Fee	Proposed Fee	Unit
ENVIRONMENTAL RESOURCE REVIEWS & PERMITS Continue....			
Fences greater than 6 ft. in height	AT COST		
Level: 5			
Variance - Existing Structure	AT COST		
Level: 5			
Variance - Major Project/New Construction	AT COST		
Level: 5			
ZONING MISCELLANEOUS REVIEWS			
Zoning Services			
Application Intake A	\$152.00		
Application Intake B	\$204.00		
Amendments & Time Extensions	AT COST		
Level: 1-7			
Development Review Group - DRG	AT COST		
Level: None			
Design Review Waiver - Level 5	AT COST		
Level: 5			
Design Review Waiver - Level 6	AT COST		
Level: 6			
Design Review Waiver - Level 7	AT COST		
Level: 7			
<u>Minor Exception</u>	-	<u>AT COST</u>	-
Energy Retrofit Certification	\$100.00		N/A
Level: None			
Historic Res. Approval/Demo W/O Reconstruction	AT COST		
Level: 7			
Historic Preservation Plan Review	NO COST		
Level: 3			



## CALIFORNIA ENVIRONMENTAL QUALITY ACT NOTICE OF EXEMPTION

The Santa Cruz County Planning Department has reviewed the project described below and has determined that it is exempt from the provisions of CEQA as specified in Sections 15061 - 15332 of the CEQA Guidelines for the reason(s) which have been specified in this document.

**Application Number:** N/A

**Assessor Parcel Numbers:** Various parcels throughout County

**Project Location:** Countywide

**Project Description:** Ordinance amendment providing a discretionary approval process to allow minor exceptions from zoning site standards established for height, setbacks, lot coverage and floor area ratio.

**Person or Agency Proposing Project:** County of Santa Cruz

**Contact Phone Number:** Annie Murphy (831) 454-3111

- A. ☐ The proposed activity is not a project under CEQA Guidelines Section 15378.
- B. ☐ The proposed activity is not subject to CEQA as specified under CEQA Guidelines Section 15060 (c).
- C. ☐ **Ministerial Project** involving only the use of fixed standards or objective measurements without personal judgment.
- D. ☒ **Statutory Exemption** other than a Ministerial Project (CEQA Guidelines Section 15260 to 15285).
- E. ☒ **Categorical Exemption** under CEQA Guidelines section 15305.

**Reasons why the project is exempt:**

The project is statutorily exempt under CEQA Guidelines Section 15265, which states that CEQA does not apply to activities of a local government necessary for the amendment of a local coastal program.

Additionally, the project is categorically exempt under CEQA Guidelines Section 15305, minor alterations in land use limitations. The proposed amendment allows for only minor alterations from current site standards for setbacks, lot coverage, height and floor area ratio. Environmental site standards that protect sensitive resources, including riparian setbacks, agricultural buffer setbacks, setbacks from Coastal bluffs, and setbacks from other geologic hazards, would remain in effect and could not be altered through the minor exception process.

To ensure that no additional stormwater runoff would result from projects with minor increases in lot coverage that include an increase in impervious surface, the ordinance requires a finding that no additional stormwater runoff will occur, and requires that projects be conditioned as needed to prevent additional stormwater runoff from the project site.

Furthermore, any exceptions from site standards applied for under the proposed amendment would require discretionary approval. If potential environmental impacts were identified for any project, full review under CEQA could be performed at that time. Therefore, the proposed amendment does not have the potential to cause significant environmental effects.

Annie Murphy  
Annie Murphy: Project Planner

11/3/10  
Date

BEFORE THE PLANNING COMMISSION  
OF THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA

RESOLUTION NO. 03-10

On the motion of Commissioner Gonzalez  
duly seconded by Commissioner Shepherd  
the following is adopted:

PLANNING COMMISSION RESOLUTION RECOMMENDING AMENDMENTS TO  
CHAPTER 13.10 OF THE SANTA CRUZ COUNTY CODE TO ALLOW MINOR  
EXCEPTIONS TO ZONING SITE STANDARDS ESTABLISHED FOR HEIGHT,  
SETBACKS, LOT COVERAGE, AND FLOOR AREA RATIO

---

WHEREAS, Santa Cruz County has in recent years enacted a regulatory reform program to streamline aspects of the planning process while continuing to protect the community and environmental resources; and

WHEREAS, the County of Santa Cruz has also recently enacted programs and incentives encouraging the reuse of existing resources including preservation of the existing housing stock; and

WHEREAS, consistent with these goals, in June of 2010 the Board of Supervisors directed planning staff to develop a site exception process whereby minor exceptions from site standards for height, setbacks, lot coverage, and floor area ratio could be approved, subject to administrative discretionary review to ensure that such exceptions do not negatively impact neighboring properties or the environment; and

WHEREAS, amendments to the County Code establishing such a site exception process have been drafted and submitted to the Planning Commission for review (Attachment 1 to Exhibit A); and

WHEREAS, on October 13, 2010, the Planning Commission conducted a public hearing to consider the minor amendments to the Santa Cruz County Code; and

WHEREAS, the Planning Commission finds that the proposed amendments will be consistent with the policies of the General Plan and other provisions of the County Code, and will be consistent with State law; and

WHEREAS, the ordinance amendments have been found to be categorically exempt from further review under the California Environmental Quality Act; and

WHEREAS, Chapter 13.10 is an implementing ordinance of the Local Coastal Program (LCP) and the proposed amendments to these chapters constitute

Exhibit A

amendments to the LCP; and

WHEREAS, the proposed amendment to Chapter 13.10 has been determined to be consistent with the Coastal Act.


NOW, THEREFORE, BE IT RESOLVED AND ORDERED, that the Planning Commission recommends that the amendments to Chapter 13.10 of the Santa Cruz County Code, and the Notice of Exemption, incorporated by reference, be approved by the Board of Supervisors.

PASSED AND ADOPTED by the Planning Commission of the County of Santa Cruz, State of California, this 13th day of October, 2010 by the following vote:

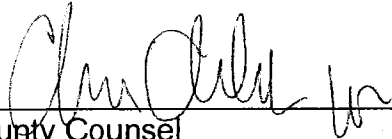
AYES:	COMMISSIONERS	Perlin, Aramburu, Dann, Gonzalez, and Shepherd
NOES:	COMMISSIONERS	
ABSENT:	COMMISSIONERS	
ABSTAIN:	COMMISSIONERS	

  
Chairperson of the Planning Commission

ATTEST:

  
Secretary

APPROVED AS TO FORM:

  
County Counsel

DISTRIBUTION: County Counsel  
Planning Department

Exhibit A



# COUNTY OF SANTA CRUZ

## PLANNING DEPARTMENT

701 OCEAN STREET, 4<sup>TH</sup> FLOOR, SANTA CRUZ, CA 95060  
 (831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123  
 KATHLEEN MOLLOY PREVISICH, PLANNING DIRECTOR

September 29, 2010

**AGENDA DATE: October 13, 2010**

**ITEM #: 10**

**TIME: After 9 AM**

Planning Commission  
 County of Santa Cruz  
 701 Ocean Street  
 Santa Cruz, CA 95060

### **Subject: Public Hearing to Consider Ordinance Amendments Regarding Minor Exceptions to Certain Zoning Standards**

#### **Members of the Commission:**

In 2007, Planning staff initiated a program for reforming land use regulations in the County, focusing on streamlining aspects of the planning process while continuing to protect important community resources. The initial regulatory reform process consisted of three phases: 1) Small scale residential reforms, completed in 2008 and now in effect; 2) legal nonconforming structures and uses; and 3) commercial regulations. In a report on the status of regulatory reform presented to the Board of Supervisors in June of this year, Planning Staff recommended a number of additional reform measures to provide greater flexibility in the planning process. Key among these additional reforms is an exception process to allow minor exceptions to certain development standards, subject to a discretionary permit and notice to adjacent neighbors. As directed by the Board of Supervisors, Planning Staff has prepared a draft ordinance amendment implementing the minor exception process. This draft amendment is now before your Commission for review and recommendation.

#### **Need for a Minor Exception Process**

During our daily interactions with the public and in processing applications, planning staff periodically encounter situations where the strict application of minimum setbacks, maximum lot coverage, and maximum floor area ratio pose practical difficulties for property owners while not creating any benefit for the neighborhood or the greater community. For example, an owner of a legal nonconforming residence may find it difficult to comply with the current, more restrictive site standards when considering additions or remodels. In many cases, Planning staff or the applicant identifies a design solution to meet the needs of the applicant that would require slight modification of site standards (such as a reduced setback or minor increase in lot coverage), but which would not impact neighboring properties or the environment. In some cases, a modification of site standards may even allow better protection of an environmentally sensitive resource, such as a riparian corridor or significant trees, than would be possible without the modification.

Under existing County regulations, the only remedy available to grant even minor exceptions from site standards is a variance. Although a variance can be a useful tool, the state mandated variance findings, especially the requirement that special circumstances apply to the property, greatly limit its applicability. For example, development constraints created by the location and configuration of legal structures and site improvements on the property are not a sufficient reason to recommend variance approval. This high bar for variances has prevented the prudent use of minor deviations from site standards to address land use situations, and has contributed to public frustration with the planning process. The limited circumstances under which the Planning Department can currently consider minor deviations from regular standards may in some cases encourage the property owner to work outside the permit process. Additionally, variances always require public hearings, resulting in an expensive and time-consuming planning process. For a minor deviation that is unlikely to impact neighboring properties, the variance approval process is frequently difficult for the applicant without providing benefit to the community.

To provide relief from this type of hardship, staff has drafted an ordinance amendment to allow minor exceptions from site standards for setbacks, lot coverage, and height (Attachment 1 to Exhibit A). The exception would allow a maximum 15% increase in the allowable height, and a maximum 15% reduction in required setbacks. For lot coverage, an exception would allow a maximum 15% increase in the allowable percentage of lot coverage (for example, 15% of the allowable 40% lot coverage) resulting in a 15% increase in the total allowable square footage of ground coverage. For floor area ratio, the exception would be limited to a 7.5% increase in the floor area ratio for lots 4,000 square feet or less, and a 5% increase for lots greater than 4,000 square feet up to 8,000 square feet. By limiting the exception to allow only minor deviations from specified site standards, providing criteria under which a minor exception would be considered, and requiring discretionary review, notice to adjacent property owners, and specific findings, the minor exception process would provide regulatory relief for many County residents while at the same time protecting neighboring properties and the environment. Such an exception process, similar to that available in many other communities, furthers the regulatory reform goal of providing a more reasonable planning process in our community. Furthermore, by encouraging improvements to existing residences and other buildings, the minor exception process would facilitate the sustainable reuse of existing building resources and help preserve and improve our existing housing stock.

## **Purposes of Minor Exceptions**

### Creating reasonable flexibility

Recognizing that a minor exception would be appropriate in a wide range of circumstances, the ordinance provides flexibility: a minor exception could be considered to address a practical difficulty that would result from the strict application of site standards, or to accommodate specific design needs. Following is a discussion of several of several common situations encountered by planning staff where the granting of a minor exception could appropriately address land use issues while not negatively impacting neighboring properties.

### *Extension of an existing, legal, nonconforming setback*

Frequently, legal nonconforming structures in our community have only minor deviations from current site standards, and do not differ noticeably from or impact neighboring residences. For example, a legal residence may have an existing side setback that is 7 feet instead of the

currently required 8 feet. Under our existing regulations, a homeowner planning an addition extending the nonconforming wall of the house would be required to comply with current setback requirements, resulting in an awkward addition with a wall that jogs back from the rest of the residence. The proposed minor exception ordinance would allow consideration of a 15% reduction in setback requirements for such additions, (in this case, a reduction of up to 1' 2" from the required 8-foot setback), subject to discretionary review with noticing to adjacent property owners. For many legal nonconforming residences, such an exception would allow for a more architecturally appropriate addition extending an existing wall of the residence.

#### *Accommodating existing site improvements and design needs*

Frequently, due to the location of existing legal structures or site improvements such as septic systems, the strict application of existing site standards limits the ability of the property owner to construct needed additions. A variance is not a good option since it does not allow consideration of other structures on the subject property as a "special circumstance" to justify variance approval. As an example of a situation occasionally encountered in the Planning Department, a family may wish to add a bedroom to their residence. Due to the configuration of the residence and the proximity of the residence to property lines, the homeowners are unable to design a bedroom meeting the minimum size required under the Building Code that also complies with required setbacks, unless they undertake an extensive remodel or partial demolition of their residence. An exception allowing a minor reduction in the rear setback could allow the construction of an additional bedroom without requiring an expensive remodel and without impacting neighboring properties. As an example, a property owner could request a 15% exception to a 20-foot rear setback to allow an addition with a 17-foot rear setback.

#### *Legalization of an "as built" structure*

Under limited circumstances, it may be appropriate to grant a minor exception to allow for the legalization of an existing structure built without benefit of a permit. Such an exception would be granted only in conjunction with other required code compliance activities by the owner, such as ensuring that the structure was safely constructed, and upon finding that the structure would not impact neighboring properties. For example, the County is currently processing an application to legalize a home built without permits, but the structure is 9 inches too close to the side property line. Approval of a minor exception would allow for legalization of the home, inspections to ensure that it meets building code requirements, and would prevent demolition of the existing improvements.

#### *Additions on small lots*

Occasionally, the buildable area of a small residential lot may be further limited due to a right of way on the parcel. For example, a 3,000 square foot residential lot with a 500 square foot right of way on the parcel would have a net site area of 2,500 square feet. Under the 50% FAR limit, the residence would be limited to a total of 1,250 square feet. Currently, the owner of a 1,250 square foot 2-bedroom residence on such a lot desiring to add a bedroom would be required to apply for a variance, a costly and time-consuming process. Under the proposed exception, the owner could apply for an increase in FAR of up to 7.5%, allowing for an additional 187.5 square feet, sufficient to construct an additional bedroom and resulting in a 1,437 square foot house. The minor exception would provide a more reasonable, faster and less expensive planning process to allow consideration of minor increases in FAR, while at the same time fully addressing all land use issues through discretionary review by the Planning Director and notification of adjacent neighbors to address any neighborhood impacts.

### *Flexibility to create accessible residences – “Universal Access”*

For single story residences in the County that are at maximum lot coverage, the FAR provisions allow additional square footage on a second story. For example, a 4,500 square foot lot with a 4,500 net site area would be limited to 1,800 square feet on the ground floor due to the 40% lot coverage limit. However, the 50% floor area ratio limit would allow an additional 700 square feet if constructed as a second story. For elderly county residents or for those with a physical disability, adding a second story to gain additional square footage may not be feasible due to accessibility issues. For a lot with a 4,500 net site area, an exception for lot coverage would allow an increase of up to 15% of the 40% allowable lot coverage (or 15% of 1,800 square feet) resulting in an additional 270 square feet allowed on the ground floor. A minor exception for lot coverage could provide more options in home design for those needing an accessible residence.

### Improved consistency with County Regulations

An additional goal of the minor exception process is to allow consideration of an exception from site standards in order to facilitate greater consistency with other provisions in the County Code, particularly regulations protecting the environment. As an example, an applicant may wish to construct a new structure on a small commercial parcel that is adjacent to a residential property. The commercial site standards require a 30- foot setback from residential property. However, a stand of significant trees exists on the other side and in the rear of the property, valuable as wildlife habitat and also as scenic resource. By granting a minor exception to allow the structure to encroach 4 feet into the required 30-foot setback from the residential parcel, the owner could construct the new building, while at the same time preserving the significant trees on the property and providing a 26-foot setback to the residential property line.

### **Details of Minor Exception Process**

#### Applicability

The proposed minor exception process would be applicable Countywide, applying to site standards in all primary zone districts, including agricultural, residential, commercial, and industrial. Because site standards in specific plans and combining zone districts are developed to address land use or design issues specific to these areas, the minor exception would not apply to special standards for height, setbacks, and lot coverage or floor area ratio in these areas unless specifically noted.

#### Limitations

Minor exceptions would be limited to projects where applicable findings can be made. The exceptions are intended to provide appropriate regulatory relief, while avoiding impacts to neighboring properties. Exceptions would be limited to a maximum 15% reduction in the required front, side or rear setbacks, a maximum 15% increase in the allowed height, and a maximum 15% increase of the total percentage allowed for lot coverage. The following table shows the maximum additional lot coverage that would be allowed with a minor exception:

Allowable Lot Coverage	Maximum Additional Lot Coverage Allowed with a 15% Minor Exception
40%	6%
20%	3%
10%	1.5%



Exceptions for floor area ratio (FAR) would be limited to a 7.5% increase in the total FAR allowed for lots 4,000 square feet or less, and a 5% increase for lots greater than 4,000 square feet up to 8,000 square feet. As shown in the following table, the exception for FAR would allow only small increases in overall square footage, and only on properties no larger than 8,000 square feet, to provide a reasonable amount of flexibility while limiting impacts to adjoining properties:

**Maximum Residential FAR allowed with a Minor Exception**

Lot Size	50% FAR (FAR site standard)	Lots 4,000 sq ft or less:  Maximum FAR with a 7.5% exception (57.5% FAR):	Lots greater than 4,000 sq ft, up to 8,000 sq ft: Maximum FAR with a 5% exception (55% FAR):
3,000 sq ft	1,500 sq ft	1,725 sq ft (+225 sq ft)	N/A
4,000 sq ft	2,000 sq ft	2,300 sq ft (+300 sq ft)	N/A
5,000 sq ft	2,500 sq ft	N/A	2,750 sq ft (+250 sq ft)
6,000 sq ft	3,000 sq ft	N/A	3,300 sq ft (+300 sq ft)
8,000 sq ft	4,000 sq ft	N/A	4,400 sq ft (+400 sq ft)

**Neighborhood protection**

To further protect neighboring properties from any potential impacts of a minor exception, the ordinance requires noticing of adjacent property owners, the application of specific findings, and approval by the Planning Director. In addition to the development permit findings in Section 18.10.230, special findings are required for residential minor exceptions to ensure protection of light, air and privacy of residential properties. As is the case for all discretionary applications, minor exceptions can be conditioned appropriately to further protect neighboring properties and the environment from any impacts. Finally, for those projects that do generate neighborhood concerns, a public hearing can be required at the discretion of the Planning Director to ensure that planning issues are fully addressed.

**CEQA Exemption**

The project is statutorily exempt under CEQA Guidelines Section 15265, which states that CEQA does not apply to activities of a local government necessary for the amendment of a local coastal program. Additionally, the project is categorically exempt under CEQA Guidelines Section 15305, minor alterations in land use limitations. The proposed process allows for only minor exceptions from current site standards for setbacks, lot coverage, height and floor area ratio, and requires discretionary approval. As is the case for all discretionary projects, applications would be routed to all appropriate departments and agencies for review. If potential environmental impacts were identified for any project, full review under CEQA could be performed at that time.

**Local Coastal Program Consistency**

The proposed amendment will not result in loss of agricultural land, loss of coastal access, or negative impacts to public viewsheds within the Coastal Zone. The minor exception would allow for only minor deviations from standards for FAR, lot coverage, setbacks, and height. For

example, on a 6,000 square foot lot, an exception for lot coverage would allow a maximum of only 360 additional square feet of ground floor coverage. The proposed height exception would also allow only minor increases, for residential structures allowing up to 4.2 additional feet in height for a total height of up to 32.2 feet. The proposed height exception is similar to other existing height exceptions in the Santa Cruz County Code that were previously certified by the Coastal Commission as consistent with LCP policies. For example, Section 13.10.323(e) 5 allows an increase in building height if all required yards are increased 5 feet for each foot increase over the permitted 28 foot height limit, subject to a Level III or IV discretionary review. To further ensure protection of coastal resources, any application for a minor exception would be discretionary, requiring approval by the Planning Director and noticing to all adjacent neighbors, and would require written findings of compliance with LCP policies protecting scenic corridors and public viewsheds. Applications for minor exceptions would be conditioned as needed to address any potential impacts to coastal resources, or denied if the project could not be conditioned appropriately. Those projects whose location or use currently triggers coastal permits would continue to do so.


## Summary and Recommendations

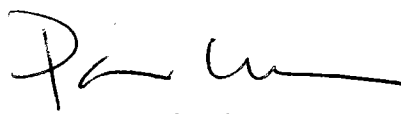
As directed by the Board of Supervisors, Planning Staff have developed an ordinance amendment to allow a minor exception from certain site standards, subject to a discretionary permit and notice to adjacent property owners. This exception process will provide relief from unnecessary hardship, and in some cases allow for improved consistency with other provisions of the County Code, while at the same time protecting neighboring properties and the environment.

It is therefore RECOMMENDED that your Commission take the following actions:

1. Conduct a public hearing on the proposed ordinance amendment to Chapter 13.10 of the County Code (Attachment 1 to Exhibit A); and
2. Adopt the resolution (Exhibit A) recommending that the Board of Supervisors approve the proposed ordinance amendment and certify the Environmental Notice of Exemption (Exhibit B).

Sincerely,

  
 Annie Murphy  
 Planner II

  
 Paia Levine  
 Principal Planner

## Exhibits:

Exhibit A: Resolution approving the proposed ordinance amendments

Attachment 1 to Exhibit A - Clean copy of proposed ordinance amendments

Exhibit B: CEQA Notice of Exemption

cc: County Counsel  
 Coastal Commission

## ORDINANCE No. \_\_\_\_\_

**ORDINANCE ADDING SECTION 13.10.235 TO CHAPTER 13.10 OF THE  
SANTA CRUZ COUNTY CODE PROVIDING A DISCRETIONARY APPROVAL  
PROCESS TO ALLOW MINOR EXCEPTIONS FROM ZONING SITE  
STANDARDS ESTABLISHED FOR HEIGHT, SETBACKS, FLOOR AREA  
RATIO AND LOT COVERAGE.**

The Board of Supervisors of the County of Santa Cruz ordains as follows:

**SECTION I**

Section 13.10.235 is hereby added to Chapter 13.10 of the Santa Cruz County Code to read as follows:

**13.10.235 Minor Exceptions**

a) Purpose. To provide for minor exceptions from the zoning district site standards established for height, setbacks, lot coverage and floor area ratio, in order to address practical hardships that would result from the strict application of site standards or to accommodate design considerations.

b) Applicability. Minor exceptions apply to the zoning site standards contained in the site and structural dimensions charts for Agricultural districts (13.10.313(a)); Residential districts (13.10.323(b)); Commercial districts (13.10.333(a)); Industrial districts (13.10.343(a)); Parks, Recreation and Open Space Parks districts (13.10.353(a)); Public and Community Facilities districts (13.10.363(a)); Timber Production districts (13.10.373(a)); and Special Use districts (13.10.383(a)). Minor exceptions do not apply to special site standards contained in combining zone districts, specific plans or PUD's, unless specifically indicated. Minor exceptions may be approved for new construction, additions, and to recognize structures built without permits.

Minor exceptions shall be limited to the following exceptions from site standards:

Height: Up to a 15% increase in the allowed height

Setbacks: Up to a 15% reduction in the required front, side or rear setback

Floor Area Ratio: Up to a 7.5% increase in the total allowable 50% FAR for lots 4,000 square feet or less, and up to a 5% increase in the total allowable 50% FAR for lots greater than 4,000 square feet up to 8,000 square feet

Lot Coverage: Up to a 15% increase of the total allowable lot coverage, resulting in the following maximum allowable increases:

Allowable Lot Coverage	Maximum Additional Lot Coverage Allowed with a 15% Minor Exception
40%	6%
20%	3%
10%	1.5%

Minor exceptions apply only to the zoning site standards noted above, and do not apply to or supercede limits or building setbacks required in other sections or chapters of the County Code, such as for riparian corridors, geologic hazards, sensitive habitats, or agricultural buffers.

(c) Procedures.

Regulations and procedures such as application, review, project conditions, approval, and appeal for a minor exception shall be in accordance with the provisions of Chapters 18.10 for a Level IV Approval, except that public notice requirements shall be limited to the following: Within 10 days of the receipt of an application for a minor exception, adjacent property owners and property owners directly across a right of way from the subject property shall be mailed a "Notice of Application Submittal". The contents of the notice shall be consistent with those required in Section 18.10.222(b). Not less than 10 days prior to the issuance of the permit, a "Notice of pending action" shall be sent to the same property owners, notifying the property owners of the pending decision on the project and the appeal process. The content of the notice shall be consistent with those required in Section 18.10.222(d). A published notice shall not be required.

(d) Required findings.

- (1) Either (a) that a minor exception is necessary to resolve a practical difficulty that would result from the strict application of site standards; or (b) that a minor exception is necessary to accommodate specific design needs.
- (2) That the proposed location of the project and the conditions under which it would be operated or maintained will not be detrimental to the health, safety, or welfare of persons residing or working in the neighborhood or the general public, and will not be materially injurious to properties or improvements in the vicinity.
- (3) That the proposed location of the project and the conditions under which it would be operated or maintained will be consistent with pertinent County ordinances and the purpose of the zone district in which the site is located.
- (4) That the proposed use is consistent with the County General Plan and with any Specific Plan which has been adopted for the area.

(5) That the proposed project will complement and harmonize with the existing and proposed land uses in the vicinity and will be compatible with the physical design aspects, neighborhood character, land use intensities, and dwelling unit densities of the neighborhood.

(6) On properties adjacent to residential zone districts or residential dwellings, that the proposed project shall not unreasonably infringe on adequate light, air, or privacy of adjacent residences.

(e) Other regulations. In addition to the minor exception provided in this Section, other possible exceptions addressed by the Santa Cruz County Code are contained in the following sections of Chapter 13.10:

Residential exceptions for structural encroachments, solar access, height, and for accessory structures:	13.10.323(e)
Residential front yard averaging:	13.10.323(e)(7)
General height exceptions:	13.10.510(d)(2)

## **SECTION II**

This Ordinance shall take effect on the 31<sup>st</sup> day after the date of final passage outside the Coastal Zone and on the 31<sup>st</sup> day after the date of final passage or upon certification by the California Coastal Commission, whichever date is later, inside the Coastal Zone.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz, State of California, this \_\_\_\_\_ day of \_\_\_\_\_, 2010 by the following vote:


AYES:	SUPERVISORS
NOES:	SUPERVISORS
ABSENT:	SUPERVISORS
ABSTAIN:	SUPERVISORS

\_\_\_\_\_  
Chair of the Board of Supervisors

ATTEST:

\_\_\_\_\_  
Clerk of the Board

APPROVED AS TO FORM:

  
\_\_\_\_\_  
County Counsel

Copies to:           County Counsel  
                          Planning Department

## CALIFORNIA ENVIRONMENTAL QUALITY ACT NOTICE OF EXEMPTION

The Santa Cruz County Planning Department has reviewed the project described below and has determined that it is exempt from the provisions of CEQA as specified in Sections 15061 - 15332 of the CEQA Guidelines for the reason(s) which have been specified in this document.

**Application Number:** N/A

**Assessor Parcel Numbers:** Various parcels throughout County

**Project Location:** Countywide

**Project Description:** Ordinance amendment providing a discretionary approval process to allow minor exceptions from zoning site standards established for height, setbacks, lot coverage and floor area ratio.

**Person or Agency Proposing Project:** County of Santa Cruz

**Contact Phone Number:** Annie Murphy (831) 454-3111

- A. ☐ The proposed activity is not a project under CEQA Guidelines Section 15378.
- B. ☐ The proposed activity is not subject to CEQA as specified under CEQA Guidelines Section 15060 (c).
- C. ☐ **Ministerial Project** involving only the use of fixed standards or objective measurements without personal judgment.
- D. ☒ **Statutory Exemption** other than a Ministerial Project (CEQA Guidelines Section 15260 to 15285).
- E. ☒ **Categorical Exemption** under CEQA Guidelines section 15305.

**Reasons why the project is exempt:**

The project is statutorily exempt under CEQA Guidelines Section 15265, which states that CEQA does not apply to activities of a local government necessary for the amendment of a local coastal program.

Additionally, the project is categorically exempt under CEQA Guidelines Section 15305, minor alterations in land use limitations. The proposed amendment allows for only minor alterations from current site standards for setbacks, lot coverage, height and floor area ratio. The proposed amendment will not affect any regulations protecting the environment, such as required setbacks from environmentally sensitive habitats or agricultural land. Furthermore, any exceptions from site standards applied for under the proposed amendment would require discretionary approval. If potential environmental impacts were identified for any project, full review under CEQA could be performed at that time. Therefore, the proposed amendment does not have the potential to cause significant environmental effects.

*Annie Murphy*  
Annie Murphy: Project Planner

*10/1/10*  
Date



County of Santa Cruz

Planning Commission Minutes

Planning Department, 701 Ocean Street, Suite 400, Santa Cruz, CA 95060

0314

ATTACHMENT 6

**Meeting Date :** Wednesday, October 13, 2010 9:00 AM

**Location :** Board of Supervisors Chambers, Room 525  
County Government Center  
701 Ocean Street  
Santa Cruz, CA 95060

**VOTING KEY**

**Commissioners:** Chair: Aramburu, ViceChair: Dann, Shepherd, Gonzalez, Kennedy  
**Alternate Commissioners:** Britton, Danna, Holbert, Perlin

---

**REGULAR AGENDA ITEMS**

1. **Roll Call**

Commissioners present were Perlin, Aramburu, Chair Dann, Gonzalez, and Vice Chair Shepherd.

2. **Planning Director's Report**

No action taken

3. **County Counsel Report**

No action taken

4. **Additions and Corrections to Agenda**

No action taken

5. **Report on Upcoming Meeting Dates and Agendas**

No action taken

6. **Oral Communications**

No action taken

7. **Declaration of Ex Parte Communications**

No action taken

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**CONSENT ITEMS**

8. **Approval of minutes**

To approve the minutes of the September 8, 2010 Planning Commission meeting as submitted by the Planning Department.

Approved Minutes

Motion/Second: Aramburu/Gonzalez

AYES: Perlin, Aramburu, Chair Dann, Gonzalez, and Shepherd

NOES: None

ABSTAIN: None

ABSENT: None



**SCHEDULED ITEMS**

9.  **Public Hearing to consider proposed ordinance amendments to the Accessory Dwelling Unit (Second Unit) regulations to exempt public agencies providing housing for special populations from the on site residence requirements.**

Applicant: County of Santa Cruz  
Supervisory District: Countywide  
Project Planner: Erik Schapiro, (831) 454-5166  
Email: erik.schapiro@co.santa-cruz.ca.us

Approved staff recommendation and adopt resolution.  
Motion/Second: Perlin/Aramburu  
AYES: Perlin, Aramburu, Chair Dann, Gonzalez, and Shepherd  
NOES: None  
ABSTAIN: None  
ABSENT: None

10.  **Public hearing to consider proposed amendments to allow minor exceptions from site standards**

Public hearing to consider a proposed amendment to add Section 13.10.235, entitled "Minor Exceptions" to Chapter 13.10 of the Santa Cruz County Code, to allow in all zone districts a minor exception from site standards established for setback, lot coverage, floor area ratio, and height requirements, subject to a Level IV Use Approval and to required findings. Chapter 13.10 is a Coastal Implementing Ordinance.

Applicant: County of Santa Cruz  
Supervisory District: County-wide  
Project Planner: Annie Murphy, 454-3111  
Email: pln400@co.santa-cruz.ca.us

Approved staff recommendation and adopt resolution. Include an additional exception to allow separation between structures to be reduced by 15%. Added direction to return to Commission in two years with report on implementation and noticing.

Motion/Second: Shepherd/Gonzalez  
AYES: Perlin, Aramburu, Chair Dann, Gonzalez, and Shepherd  
NOES: None  
ABSTAIN: None  
ABSENT: None

11.  **10-0056                      Situs: 7272 Empire Grade Road, Santa Cruz                      APN(s): 080-251-31**

Appeal of the Zoning Administrator's approval of Application 10-0056, a proposal to construct an 1120 square foot garage at an existing fire station. Requires an Amendment to Commercial Development Permit 97-0874. Property located on the south east side of the intersection of Empire Grade Road, Felton Empire Road, and Ice Cream Grade.

Owner: County of Santa Cruz  
Applicant: William Fisher, Architect  
Supervisory District: 3  
Project Planner: Larry Kasparowitz, 454-2255  
Email: pln795@co.santa-cruz.ca.us

Continued item until the December 12, 2010 Planning Commission Meeting.

Motion/Second: Gonzalez/Shepherd  
AYES: Perlin, Aramburu, Chair Dann, Gonzalez, and Shepherd  
NOES: None  
ABSTAIN: None  
ABSENT: None

**APPEAL INFORMATION**

Denial or approval of any permit by the Planning Commission is appealable to the Board of Supervisors. The appeal must be filed with the required appeal fee within 14 calendar days of action by the Planning Commission. To file an appeal you must write a letter to the Board of Supervisors and include the appeal fee. For more information on appeals, please see the "Planning Appeals" brochure located in the Planning Department lobby, or contact the project planner.

**APPEALS OF COASTAL PROJECTS**

(\*) This project requires a Coastal Zone Permit which is not appealable to the California Coastal Commission. It may be appealed to the Board of Supervisors; the appeal must be filed within 14 calendar days of action by the Planning Commission.

(\*\*) This project requires a Coastal Zone Permit, the approval of which is appealable to the California Coastal Commission. (Grounds for appeal are listed in the County Code Section 13.20.110) The appeal must be filed with the Coastal Commission within 10 business days of receipt by the Coastal Commission of notice of local action. Denial or approval of the Coastal Zone Permit is appealable to the Board of Supervisors; the appeal must be filed within 14 calendar days of action by the Planning Commission.

**Note regarding Public hearing items:** If any person challenges an action taken on the foregoing matter(s) in court, they may be limited to raising only those issues raised at the public hearing described in this notice or in written correspondence delivered to the Planning Commission at or prior to the public hearing.

Agenda documents may be reviewed at the Planning Department, Room 420, County Government Center, 701 Ocean Street, Santa Cruz.

The County of Santa Cruz does not discriminate on the basis of disability, and no person shall, by reason of a disability, be denied the benefits of its services, programs, or activities. The Board of Supervisors chambers is located in an accessible facility. As a courtesy to those persons affected, please attend the meeting smoke and scent free. If you wish to attend this meeting and you will require special assistance in order to participate, please contact the ADA Coordinator at 454-3137 (TTD number is 454-2123 or 763-8123 from Watsonville area phones) at least 72 hours in advance of the meeting to make arrangements. As a courtesy to those persons affected, please attend the meeting smoke and scent free.



## SANTA CRUZ COUNTY GROUP

Of The Ventana Chapter

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November 11, 2010

Santa Cruz County Board of Supervisors  
701 Ocean St. 5th Floor  
Santa Cruz, CA 95018

**Subject: Agenda Item 34, Zoning Code changes adding Section 13.10.235 to Chapter 13.10 "zoning site standards". Please Note: Your Agenda was not posted by Friday morning when this letter was finished; therefore this letter is based upon the staff letter to the Planning Commission of Oct. 13, 2010. The ordinance presented is essentially identical, other than a change to height limits.**

Greetings County Board of Supervisors,

From the staff letter to the Planning Commission Dated Oct. 13, 2010: "In 2007, Planning staff initiated a program for reforming land use regulations in the County, focusing on streamlining aspects of the planning process while continuing to protect important community resources. The initial regulatory reform process consisted of three phases: 1) Small scale residential reforms, completed in 2008 and now in effect: 2) legal nonconforming structures and uses and: 3) commercial regulations."

Your Board is now considering approval of the second of these three "phases". Together these changes to County code represent a significant cumulative relaxation or weakening of several Planning Code sections.

### **Letter Summary:**

- 1. This multi year project of changes to planning and zoning code is not exempt from CEQA. The law requires the County to assess the complex and long-term cumulative impacts of this program. This project is similar to a general plan amendment in its total and declared scope.**
- 2. This claim by Planning is misleading: "Minor exceptions apply only to the zoning site standards noted above, and do not apply to or supersede limits or building setbacks required in other sections or chapters of the County Code, such as for riparian corridors, geologic hazards, sensitive habitats, or agricultural buffers."**

**Especially in mountainous rural areas, the details of, septic requirements, geologic hazard,**

**34**

parking, emergency access, riparian setback and sensitive habitats are thoroughly intertwined with any consideration of "as built" or non-conforming, structures. This is *not* a simple matter of lot line setbacks as the Planning letter claims.

3. Regarding "Legalization of an as built structure". These code changes provide a dangerous incentive to speculate and build without permits on undeveloped sub-standard lots.

There exist many undeveloped, rural mountain, old subdivision lots that do not meet septic code or slope etc. requirements. These lots are very inexpensive because non-conforming old subdivision lots have been, to date, generally regarded as unbuildable. However, under the proposed changes, these lots become a code requirement loophole for speculators to build houses that, from their inception, will violate zoning and other codes. The flagrant violation posed by building an entire new house on undeveloped land, without any permits, should not be treated with such willing cooperation from the Planning Department.

Also this change is insulting to citizens who cooperate with Planning and actively seek permits from the beginning, instead of setting out to evade and manipulate County regulations as some builders do.

4. There are poorly defined and complex interactions between these code sections such as Floor Area Ratio and lot coverage. They cannot be properly understood in their proposed form. Considerably more review and analysis are necessary before your Board can be confident that it comprehends the impact of this proposal. Certainly the general public will be impacted in numerous ways that have not yet been considered.

## **CEQA**

From the beginning in 2007 your Board has asserted that this process is categorically exempt from CEQA (sections 15265 and 15305). This claim is false. Their combined scale exceeds the exemptions allowed in the law. CEQA case law contains a definition of "segmentation" which means that if the entire project is not considered as a whole then the intent to assess cumulative environmental impact is violated. We assert that this three phase, multi-year regulatory reform program, conducted without any environmental assessment is a perfect example of the problem of segmentation under CEQA and it is illegal.

Planning has cited this code section in its claim of CEQA exemption.

### **15305. Minor Alterations in Land Use Limitations**

Class 5 consists of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density, including but not limited to:

(a) Minor lot line adjustments, side yard, and set back variances not resulting in the creation of any new parcel;

(b) Issuance of minor encroachment permits;

(c) Reversion to acreage in accordance with the Subdivision Map Act.

**Note:** Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

Nothing in this code section addresses the issue of increasing dwelling lot coverage and building height and volume systematically in all residential zone districts. The cumulative effect of this change will go well beyond the exemption claimed. The CEQA exemption is legally invalid.

Planning Staffs claims: "As is the case for all discretionary applications, minor exceptions can be conditioned appropriately to further protect neighboring properties and the environment from any impacts."

This statement is very misleading. It ignores the frequent interconnection between environmental impacts and what Planning claims are routine lot coverage and housing density questions. These issues are intertwined and cannot be separated in practice.

The issue of FAR "Floor Area Ratio" is of major importance in the Live Oak area and elsewhere, as very large houses are squeezed into lots originally occupied by cottages. These proposed changes advance this conflict.

### **Poor Planning Examples**

Examples of bad planning cases were provided by the Sierra Club to your Board in 2008. These examples were objected to and dismissed by then Planning Director Tom Burns, but I continue to assert their factual validity and I can explain them again to your Board at any time.

The "on the ground" implementation of Planning Code is what actually determines the future physical nature of this County, not facile statements of "no impact" by Planning staff.

This implementation is most complex in lands outside of the urban services line. The environmental conditions in the rural areas of the County, that make effective and accurate Planning Code implementation so important, **can be summed up by reminding your Board that this area is a mountain range and is the water source for virtually all County residents.**

The matters of primary concern to the Sierra Club are geologic hazard and hill slope stability, water quality, wildlife and wild-lands conservation. Other issues of traffic congestion, noise and so on also come into play when any long-term view of growth rates is considered.

When the Planning Department permits expansion of "legal nonconforming structures" these decisions have a direct impact upon environmental conditions that the code itself was written to prevent.

1) A simple example is the re-construction of old cabins and houses that were built too close to waterways on sub-standard parcels. Many houses in the San Lorenzo River Basin, Soquel Creek and elsewhere were originally constructed inside the code-defined Riparian-Setback. Every time Planning issues another "Riparian Exception" for the re-construction and expansion of these original non-conforming structures, Planning is increasing the environmental harm that the Riparian Protection Ordinance was written to address.

Additions of square footage are designated in these building permits as "unconditioned space" and recorded with Declarations of Restriction" "to maintain these additions of space as non-habitable". **However there is no enforcement of these "Declarations" therefore they are moot and irrelevant and constitute a tacit approval of substantial square footage additions on severely constrained sites.**

Major remodeling and re-construction of houses always brings up the issue of square footage. Most homeowners would like a larger house than the one they live in. This normal desire, in itself, does not however justify expanding living space on severely constrained sites. When a member of the public purchases a home they are tacitly accepting the limitations of that home site. Nonetheless Planning is regularly allowing square footage expansions on constrained sites couched in agreements that supposedly prevent their future use but instead constitute direct expansions of living space.

At present such a project is nearing completion at the intersection of Zayante and Lompico Roads. This structure is entirely within the 60 foot Riparian Setback. The new foundation is actually placed upon the inner gorge wall of Lompico Creek. Part of this foundation is on slopes nearing 80% or about 38° above horizontal. Average homeowners are not knowledgeable enough to understand the hazards to health and safety and to water pollution from such building efforts, but the Planning staff certainly should be.

There are obvious limits necessary for building upon sub-standard parcels such as those without the space, slope and soils necessary for properly functioning septic systems. The number of sub-standard and failing septic systems in the County is an open scandal beyond the scope of this letter.

2) We can provide your Board with the example of a house built with permits in a "debris slide" described in its geology report. A long abandoned shack with no parking or septic system and resting upon a very steep and unusable parcel of little value was, after considerable wrangling, turned into a new house at the top end of that same unusable parcel. There was nowhere to place a septic leach field upon this 0.8 acre parcel, so after lengthy arguing with neighbors, the leach field was apparently moved to an adjoining parcel. The house hangs over a slope that is

extremely steep with slope segments of 100%. I saw the house when it was being offered for a bank sale after 3 prior owners had walked away. At the back of this house, drain-pipes exiting the foundation had sheared off, as the hill slope had subsided after construction, thus breaking these pipes. This building is probably a serious landslide hazard. It is also apparently an example of what Planning seems to be calling "creating reasonable flexibility". The winter of 1982, which shocked many people in Santa Cruz County with its deadly landslides has now receded into history. The additional caution concerning geologic conditions that followed from those events 28 years ago has been forgotten by many people.

### **The Interests of Neighbors**

Planning's letter to the Planning Commission states that: "In many cases, Planning staff or the applicant identifies a design solution to meet the needs of the applicant that would require slight modification of site standards (such as a reduced setback or minor increase in lot coverage), but which would not impact neighboring properties or the environment. In some cases, a modification of site standards may even allow better protection of an environmentally sensitive resource, such as a riparian corridor or significant trees, than would be possible without the modification." Needless to say we find this statement to be unconvincing.

**How exactly are neighbors' interests protected by systematically permitting increased lot coverage, reduced setbacks and taller building height and changing the Floor Area Ratio?**

### **"As Built Structures"**

The issue of the legalization of "as built structures" being proposed is explained in Planning's letter to the Commission as follows:

#### *" Legalization of an "as built" structure*

Under limited circumstances, it may be appropriate to grant a minor exception to allow for the legalization of an existing structure built without benefit of a permit. Such an exception would be granted only in conjunction with other required code compliance activities by the owner, such as ensuring that the structure was safely constructed, and upon example, the County is currently processing an application to legalize a home built without permits, but the structure is 9 inches too close to the side property line. Approval of a minor exception would allow for legalization of the home, inspections to ensure that it meets building code requirements, and would prevent demolition of the existing improvements."

This language is remarkably vague for such a crucial issue. **It creates a reverse incentive to construct buildings "without benefit of a permit".**

What specifically does *this* mean for instance? "Such an exception would be granted only in

conjunction with other required code compliance activities by the owner, such as ensuring that the structure was safely constructed, and upon example....". Does "a code compliance activity" mean that the house is *sort of* built to code?

**If this code change is approved, a property owner, knowing in advance the constraints of an inexpensive lot they purchased, could then build a house without permits, with the specific intent to avoid certain standards, like for instance a set-back, parking or emergency access problem, a building that does not meet energy efficiency standards or that encroaches upon another property. These are just a few of many possible examples.**

**County should not be creating further incentives to construct entire houses without permits. To make intentionally un-permitted, "as built" structures, subject to certain virtually automatic variances is an astonishing suggestion.**

### **Conclusion**

The Sierra Club is very conscious of the difficult and contentious job of the Planning Department. We know that there are dedicated people in this department who every day confront complex demands from property owners who do not understand or accept the reasons why the Planning and Zoning Code are so complex.

We also understand that there are illogical choke points in the code that should be corrected. However, systematically dialing back fundamental code limits is not the way to solve these problems.

We also understand that there are situations where homeowners should have more flexibility. It is the details of how this "flexibility" is defined and administered that we are challenging. The proposal before you is far too open-ended, broad and ill defined. There has been no attempt whatsoever to understand the long- term environmental impacts of these changes.

Santa Cruz County still retains parts of its rural and village-like character. We are advocating for the sustaining of this character and for the conservation of the splendid elements of nature that still exist in this county. Zoning and environmental codes are the foundation of any effort to maintain and sustain these values which many people take for granted. Without good code, and compliance with this code, this County will simply become another victim of uncontrolled development.

Regards,



Kevin Collins  
Vice Chair, Sierra Club, Santa Cruz County Group



Jonathan Wittwer  
William P. Parkin  
Ryan D. Moroney

**WITTWER & PARKIN, LLP**  
147 SOUTH RIVER STREET, SUITE 221  
SANTA CRUZ, CALIFORNIA 95060  
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FACSIMILE: (831) 429-4067  
E-MAIL: office@wittwerparkin.com

OF COUNSEL  
Gary A. Patton

November 15, 2010

**HAND DELIVERED**

Board of Supervisors  
701 Ocean Street  
Santa Cruz, CA 95060

Re: Board Agenda for November 16, 2010  
Ordinance Amendments Regarding Minor Exceptions to Certain Zoning  
Standards

Dear Members of the Board:

This office submits the following letter in opposition to the proposed changes to the County Code regarding Minor Exceptions for Certain Zoning Standards. The Santa Cruz Group of the Sierra Club has already sent a letter on this same issue, and raises some of the same concerns.

**The Proposal Violates CEQA**

First and foremost, the proposed changes to the County Code must undergo environmental review. The Staff Report claims that the proposed changes are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline § 15265 because the amendments are "necessary for the amendment of a local coastal program." However, the change will apply throughout the County, not just in the Coastal Zone. Therefore, the exemption does not apply, and under the law, CEQA exemptions must be construed narrowly.

The Staff Report also claims that review is exempt pursuant to CEQA Guideline § 15305, which applies to minor alterations in land use limitations. However, this exemption is clearly for individual projects, not a wholesale revision to standards that apply throughout the County. It applies to project specific approvals such as minor lot line adjustments, side yard, and set back variances not resulting in the creation of any new parcel, and issuance of minor encroachment permits. The Guideline does not exempt the drafting of regulations regarding these types of uses. Moreover, the changes are anything but minor. The proposal changes longstanding regulations

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regarding land use in the County and the changes can be cumulatively significant as applied over time. Section 15305 has also an added proviso that “minor alterations in land use limitations in areas with an average slope of less than 20%.” However, these changes to the County Code will apply throughout the County and are not limited to areas of the County with slopes of less than 20%. Furthermore, assuming for the sake of argument that the exemption applied, the exceptions to the exemptions under CEQA Guideline 15300.2 apply because properties in sensitive habitats will be able to employ these new exceptions since it is Countywide and the Staff Report cites location of development in sensitive habitats as being able to take advantage of the exceptions, and there will be cumulative impacts associated with implementation of the exception.

Finally, the proposed changes violate CEQA because the County is “piecemealing” or “segmenting” environmental review concerning multiple regulatory “reforms” that the County is processing concurrently. For instance, the County Board of Supervisors will also be considering amendments to the County Code to allow garages and carports within side and rear yard setbacks on December 7, 2010. These particular changes in the County Code have the same effect on the environment with respect to exceptions to the standards such as height and setbacks. Indeed, they all deal with similar subject matters that affect aesthetics and neighborhood harmony. The impact of these regulations must be examined in one environmental document. . CEQA Guidelines Section 15378(a) states that CEQA requires an entity to analyze the “whole of an action.” 14 CCR § 15378(a). Legal precedent has long established that the environmental impacts of a project cannot be submerged by chopping a larger project into smaller pieces. See *Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592.

### **The Proposal Violates Fundamental Rules Concerning Variances**

The Staff Report states that the proposal is a subset of variances that can be approved administratively without a public hearing. It is true that Government Code § 65901 allows the County to specify certain kinds of variances that can be granted administratively without a public hearing. However, the proposal before the Board makes substantive changes to the zoning code that go beyond what is permitted in the Government Code. See Government Code § 65906. For instance, the code amendment allows the minor exceptions to be granted when the proposal “would result in a project design or siting that is inferior to what could be achieved with a minor exception.” This is not a proper subject for a variance.

Government Code § 65906 provides:

Variances from the terms of the zoning ordinances shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.

Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized **shall not constitute a grant of special privileges** inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.

A variance shall not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property... .

[Emphasis added]. A property owner's desire to expand development does not justify a determination that there is a hardship.

No doubt continued use of the variance lot for these purposes would be of great benefit to the defendants, but the fact remains that the lot was purchased with full knowledge of its restrictions, and furthermore, the expansion program undertaken by the defendants was promulgated in the face of those same restrictions. ...

Thus, while there is no doubt that some hardship exists, such hardship is the result, not of external circumstances, but of defendants' own expansion program. This is not enough to entitle defendants to relief. As this court recently pointed out, "Self-induced hardship is not within the purview of the ordinance. Only that type of hardship which inheres in the particular property is recognized, -- such as inability to use it for purposes of its existing zoning caused by the prevailing uses of surrounding property. . . . One who purchases property in anticipation of procuring a variance to enable him to use it for a purpose forbidden at the time of sale cannot complain of hardship ensuing from a denial of the desired variance. (Citation).

*San Marino v. Roman Catholic Archbishop* (1960) 180 Cal. App. 2d 657, 672-673; *see also, Atherton v. Templeton* (1961) 198 Cal. App. 2d 146, 154. Moreover, special circumstance only exists "if *this* property cannot enjoy privileges enjoyed by *other property* in the vicinity." *Orinda Assn., supra* 182 Cal. App. 3d at 1167. (emphasis in original).

The Supreme Court requires that public agencies follow strict requirements for processing applications for variances. Starting in 1967, in *Broadway, Laguna, Vallejo Association v. Board of Permit Appeals of City and County of San Francisco* (1967) 66 Cal.2d 767, the Supreme Court applied stringent standards to the issuance of a variance and overturned the issuance of a variance because, *inter alia*, it did not comply with the required "exceptional or extraordinary circumstances or conditions." "Discretionary power to disregard a basic planning code regulation whenever the board believes that the objectives of that regulation have been fulfilled in a particular building would probably prove impossible to control and might well undermine the entire zoning plan . . . ." *Id.* at 779-780, fn 12. A few years later, the Supreme Court decided the landmark land-use case *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506. There the Court noted that a zoning scheme is similar to a contract in that each party foregoes rights to use its land as it wishes in return for the assurance that the use of neighboring properties will be similarly restricted. The underlying rational for this arrangement is that such mutual restriction can enhance

the total community welfare.

The *Topanga* Court also directed that lower courts must “meaningfully” review an agency’s grant of a variance in order to protect the interests of those who hold rights in property nearby the parcel for which a variance is sought. If the interests of these parties in preventing unjustified variance grants for neighboring properties are not protected, the consequence will be the subversion of the “critical reciprocity” upon which zoning regulation exists. *Id.* at 517. Similarly, in *Orinda Assn. v. Board of Supervisors of Contra Costa County* (1986) 182 Cal. App. 3d 1145, 1161 - 1162, the court held:

A zoning scheme, after all, is similar in some respects to a contract; each party forgoes rights to use its land as it wishes in return for the assurance that the use of neighboring property will be similarly restricted, the rationale being that such mutual restriction can enhance total community welfare. [Citations.] If the interest of these parties in preventing unjustified variance awards for neighboring land is not sufficiently protected, the consequence will be subversion of the critical reciprocity upon which zoning regulation rests.

Moreover, a more contemporary appellate decision held:

Whereas the adoption of zoning regulations is a legislative function (Gov. Code, § 65850), the granting of variances is a quasi-judicial, administrative one. [Citations.] If the judiciary were to review grants of variances superficially, **administrative boards could subvert this intended decision-making structure. [Citation.] They could “[amend] ... the zoning code in the guise of a variance” [citation], and render meaningless, applicable state and local legislation prescribing variance requirements.** Moreover, courts must meaningfully review grants of variances in order to protect the interests of those who hold rights in property nearby the parcel for which a variance is sought. A zoning scheme, after all, is similar in some respects to a contract; each party forgoes rights to use its land as it wishes in return for the assurance that the use of neighboring property will be similarly restricted, the rationale being that such mutual restriction can enhance total community welfare. [Citations.] If the interest of these parties in preventing unjustified variance awards for neighboring land is not sufficiently protected, the consequence will be subversion of the critical reciprocity upon which zoning regulation rests. Abdication by the judiciary of its responsibility to examine variance board decision-making when called upon to do so could very well lead to such subversion... .

*Stolman v. City of Los Angeles* (2003) 114 Cal. App. 4th 916, 923-924 [emphasis added].

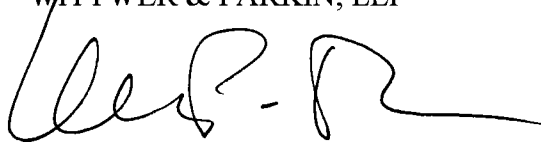
We believe that the proposal before the Board is not legal in that it attempts to alter standards through a discretionary “exception” process, which is a variance. Because it is a variance, and the Staff Report admits it is a variance, it must comport with the requirements of Government Code § 65906. The fact that one of the rationales for allowing these exceptions is to

Board of Supervisors  
Re: Approval of Code Amendments for Minor Exceptions  
November 15, 2010  
Page 5

recognize structures built without permits proves the point that this is not at all proper. Indeed, landowners building without permits should not be rewarded for their misdeeds.

Thank you for your consideration of these comments.

Very Truly Yours,  
WITTWER & PARKIN, LLP

A handwritten signature in black ink, appearing to read 'W.P. Parkin', with a long horizontal flourish extending to the right.

William P. Parkin

## CBD BOSMAIL

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**From:** cdbbosmail@co.santa-cruz.ca.us  
**Sent:** Tuesday, November 16, 2010 12:03 AM  
**To:** CBD BOSMAIL  
**Subject:** Agenda Comments

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**Meeting Date :** 11/16/2010

**Item Number :** 34

**Name :** Michael A. Guth

**Email :** mguth@guthpatents.com

**Address :** 2-2905 East Cliff Drive  
Santa Cruz, CA

**Phone :** 831 462-8270

### **Comments :**

Re: Item 34, Minor Exceptions

Members of the Board,

I am surprised to see a proposal that takes so much authority from your Board and delegates it to the Planning Director without the opportunity of appeal, in some way, back up to your Board. The newly proposed Minor Exceptions are, per 18.10.320 County Code, to use the appeals route for Level IV actions, which is an appeal to the Planning Director (who made the call on the issue in the first instance). There is no route on Level IV appeals to the Planning Commission or to the Board of Supervisors. Thus, your Board has no vehicle with which to police the granting of these Minor Exceptions.

Appeals are not seen often in the planning process, but when appeals are heard it gives the appellate body, which in many cases is your Board, to provide guidance back to the Planning Department about how your Board views interpretation of a regulation. This guidance is invaluable both in the case being heard and for future cases - it sets a standard by which the Planning Department can act on later applications. There is no possibility of Board review via appeal with these Level IV actions.

I strongly recommend against vesting such authority in the Planning Department as a matter of policy. Further, I believe that you cannot vest this authority in the Planning Department as a matter of law. Please do not accept the staff recommendation on this item.

Thank you,

Michael A. Guth

## **CBD BOSMAIL**

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**From:** cdbbosmail@co.santa-cruz.ca.us  
**Sent:** Monday, November 15, 2010 11:27 PM  
**To:** CBD BOSMAIL  
**Subject:** Agenda Comments

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**Meeting Date :** 11/16/2010

**Item Number :** 34

**Name :** Joanne Brown

**Email :** joannevbrown@gmail.com

**Address :** Felton, CA

**Phone :** Not Supplied

**Comments :**

I am opposed to the proposed change in this code for the following reasons:  
Allowing a variance to this code could potentially encourage individuals to "build first & ask questions later."  
In other words, build on substandard lots and then ask for variance approval. I live in Lompico and there are already so many homes with obvious code violations that have never been cited. In addition, there are homes that are red tagged with residents still living on the property. The situation is already out of control and enforcement is minimal. CEQA exists to protect both the physical environment as well as the people who live in it. Rather than making matters even worse, strict enforcement under CEQA would make a lot more sense.

## CBD BOSMAIL

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**From:** cdbbosmail@co.santa-cruz.ca.us  
**Sent:** Tuesday, November 16, 2010 8:13 AM  
**To:** CBD BOSMAIL  
**Subject:** Agenda Comments

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**Meeting Date :** 11/16/2010

**Item Number :** 34

**Name :** Rural Bonny Doon Association

**Email :** Not Supplied

**Address :** Not Supplied

**Phone :** Not Supplied

### **Comments :**

The Executive Board of the Rural Bonny Doon Association recognizes that this change in the Variance process is designed to make it easier and less expensive for applicants, and we support that. However, we have two concerns:

1. It will make public input on these types of Variance applications prohibitively expensive. We believe it is wrong and not in the public interest to make it more difficult and onerous for neighbors and other members of the community, who have first-hand knowledge of a situation, from sharing their thoughts with the Planning Department.

2. The ordinance, by shielding the issuance of these Variances from public scrutiny, fosters a situation that could result in the applicants' or their representative's personal relationships with Planning Department staff influencing the decision to grant or not grant the Variance, or on the conditions placed on it.



## CBD BOSMAIL

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**From:** cdbbosmail@co.santa-cruz.ca.us  
**Sent:** Tuesday, November 16, 2010 8:07 AM  
**To:** CBD BOSMAIL  
**Subject:** Agenda Comments

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**Meeting Date :** 11/16/2010

**Item Number :** 34

**Name :** Rose Marie McNair

**Email :** Not Supplied

**Address :** Not Supplied

**Phone :** Not Supplied

### **Comments :**

11/16/10

Honorable Supervisors:

Thank you for consideration to assist in the anomalies that cause obstruction during the remodel/build process.

There are many people who have gone through many difficulties in the permit process when attempting to remodel or build a home. One such example is the Floor Area Ratio. The lengths to which the applicant has had to comply in the past were simply onerous.

As I am not an architect, engineer or a contractor, I only ask that you heed their advice and suggestions because they are "in the field" and have practical knowledge in these technical issues. The more logical, practical implementation applicants have, the better the system can become.

Thanks for giving it a "go".

Rose Marie McNair  
831 476 2102