
PLANNING DEPARTMENT

GOVERNMENTAL CENTER



C O U N T Y O F S A N T A C R U Z

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November 18, 1998

AGENDA: December 8, 1998

**BOARD OF SUPERVISORS
 County of Santa Cruz
 701 Ocean Street
 Santa Cruz, CA 95060**

SUBJECT: JURISDICTIONAL HEARING TO CONSIDER THE PLANNING COMMISSION'S DECISION TO GRANT A VARIANCE TO FLOOR-AREA-RATIO REGULATIONS IN ASSOCIATION WITH COASTAL ZONE PERMIT #97-0622, PROPOSAL TO DEMOLISH AN EXISTING GARAGE AND TO CONSTRUCT A TWO-STORY SINGLE FAMILY DWELLING WITH A GARAGE BELOW CONSTITUTING A THREE-STORY DWELLING ON PROPERTY LOCATED AT 413 BEACH DRIVE, APTOS.

Members of the Board:

On August 25, 1998 your Board held a jurisdictional hearing to consider an appeal of the June 24, 1998 Planning Commission denial of an appeal of the May 1, 1998 approval by the Deputy Zoning Administrator of Coastal Zone Permit #97-0622. At that time, your Board, by unanimous vote, approved the recommendation of the Planning Director not to take jurisdiction of that appeal, based on the fact that the appellant had not established sufficient grounds for the Board to take jurisdiction for further review. However, your Board referred to the Planning Commission the issue pertaining to Floor Area Ratio which was raised and became a question at your hearing.

On October 28, 1998 the Planning Commission, by unanimous vote, approved the Variance to Floor Area Ratio as a part of the original Zoning Administrator approval of Application #97-0622, based on a revised exhibit and Findings.

On November 6, 1998 an appeal of the Planning Commission approval was filed by Douglas Marshall, attorney for Jim and Judy Craik of 415 Beach Drive. The matter is now before your Board to consider whether or not to take jurisdiction of the appeal pursuant to Section 18.10.340 of the County Code.

Consideration of Floor Area Ratio Variance

The floor area ratio is determined by dividing the gross floor area of all buildings on a lot by the area of the lot. The habitable portions of the proposed dwelling measure 2,190 square feet on a 5,794 square foot lot. However, the non-habitable area beneath the first and second level living areas, and areas under uncovered decks and cantilevered areas, are required to be counted towards the total floor area so that the total square footage counted towards floor area ratio increases to 2,928 square feet. Credit is given for garage space, the first three feet closest to the walls for overhangs, and continuous stairways are only counted once (see Exhibit H of the Planning Commission staff report, Attachment 2). The final floor area ratio is 50.53 percent, exceeding the allowable square footage by 0.53 percent or 31 square feet. The project was reduced in size by approximately 62 square feet to increase the clearance for the southwest side yard stairway.

Analysis and Discussion of Appeal Issues

The letter of appeal sets forth specific reasons that the appellants believe constitute grounds for your Board taking jurisdiction of this matter. In general, the appellants contend that there was an error or abuse of discretion and an absence of supporting evidence at both the Zoning Administrator and Planning Commission levels (see Attachment 1). Five major areas of concern are presented by the appellant:

1. Floor Area Ratio variance findings at the Planning Commission. The appellant cites County Code Sections 13.01.130(a) and 18.10.140 which require consistency of permit approvals with the provisions of the adopted County General Plan. General Plan policy 8.6.3 specifically addresses a two story limitation for residential structures in urban areas except where explicitly stated in the Residential Site and Development Standards ordinance. County Code Section 13.10.323(b), Site and Structural Dimensions, states that standards for residential zone districts shall apply within all residential zone districts, and uses inconsistent therewith shall be prohibited absent a variance approval. The variance findings have been revised and approved by the Planning Commission to grant the property the right to exceed the 50 percent floor area ratio by 0.53 percent.

2. Design Review for the Floor Area Ratio variance. The appellant cites County Code Section 13.11, Site, Architectural and Landscape Design Review, for the floor area ratio variance. The project has been reviewed for compliance with both the Design Review ordinance and Coastal Design Criteria of County Code Section 13.20.130, finding that the project is visually compatible and integrated with the surrounding neighborhood. The structure is designed to fit the topography of the site with minimal cutting, grading, or filling for construction. Natural materials and colors are utilized, which harmonize with the existing development in the neighborhood and minimize visual intrusion.

3. The appellant states that there is a mistaken view that a Floor Area Ratio variance is needed for any dwelling on Beach Drive. With the average lot size of less than 6,000 square feet, any new dwellings would be re-

quired to have less than 3,000 square feet of habitable space. This project has 2,190 square feet of habitable space, yet exceeds the FAR by 0.53 percent or 31 square feet due to the requirement that underfloor areas, which bring the total to 2,928 square feet, are included in the calculation. This specific area is more likely to require variances for development due to the unique nature of the location adjacent to the coastal high hazard wave run up zone and beneath an eroding coastal bluff which requires elevation of new structures to avoid these hazards. Many of the existing structures were built prior to the county zoning ordinance and federal flood management regulations. Should widespread flooding and damage occur, rebuilding to current development standards may be problematic for existing homeowners.

4. The appellant states that Federal Emergency Management Administration (FEMA) regulations (which require elevation of new structures above flood level) should not be the basis for special circumstance findings as all property along Beach Drive face the same geological risk. Special circumstances applicable to the lot include: the shape of the parcel, the size of useable area on the parcel, the lack of developable area on the parcel, the topography of the parcel, the location of the parcel, and the size and configuration of other houses in the vicinity. Any new coastal development is held to higher standards than housing built in the 1930's, and so the FEMA elevation requirement indeed constitutes a unique requirement for new development on the subject property.

5. The appellant states that FEMA rules are not a basis for an exception to the two-story limitation in urban areas as required by General Plan Policy 8.6.3. However, a variance approval is appropriate as a means of alleviating unnecessary hardship by allowing a reasonable use of property where due to special circumstances that use is denied by the terms of the zoning ordinance.

The letter of appeal includes a reference to Planning Application #96-0330, a Pre-Development Site Review completed for the property, which advised the property owner of the two story height limitation within the urban areas of the County. The pre-development site review found that geotechnical and geologic reports would need to be prepared and did not evaluate specific building design other than a 25' x 50' rectangle which represented the proposed residence. This review is intended as a preliminary means to identify zoning and environmental regulations prior to preparation of construction drawings and permit application.

Jurisdictional Criteria

County Code Section 18.10.340(c) specifies that the Board may take jurisdiction of an appeal if it finds that any of the following criteria are met:

1. There was an error or abuse of discretion on the part of the Planning Commission, Zoning Administrator, or other officer; or
2. That there was a lack of a fair and impartial hearing; or

3. That the decision appealed from is not supported by the facts presented and considered at the time the decision appealed from was made; or
4. There is new evidence relevant to the decision which could not have been presented at the time the decision appealed from was made; or
5. That there is either error, abuse of discretion, or some other factor which renders the act done or determination made unjustified or inappropriate to the extent that a further hearing before the Board is necessary.

The jurisdictional process places the burden of proof on the appellant to convince your Board to take jurisdiction by demonstrating that one or more of the jurisdictional criteria have been met. As your Board is aware, the criteria are narrow in scope. Our report and analysis is necessarily limited to the appellant's letter. Your Board should consider this material, plus any testimony given by the appellants at the jurisdictional hearing in reaching your decision.

Conclusion and Recommendation

Both the Planning Commission and Zoning Administrator considered all relevant comments and ordinances and based the recommendation for project approval of this coastal zone permit on findings and conditions of the staff report. The decision to approve the project is justified and supported by the facts presented for consideration and found in the administrative record.

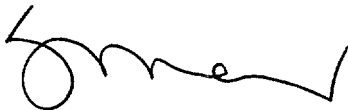
It is therefore **RECOMMENDED** that your Board deny jurisdiction of this appeal of Coastal Development Permit #97-0622, based on the fact that the appellant has not established sufficient grounds for the Board to take jurisdiction for further review.

Sincerely,



ALVIN D. JAMES
Planning Director

RECOMMENDED:



SUSAN A. MAURIELLO
County Administrative Officer

Attachments:

2. **Letter of Appeal of 11/6/98**
3. **Planning Commission Staff Report of 10/28/98
Planning Commission Minutes of 10/28/98**
4. **Location Map**
5. **Project Plans**

**cc: Norma Odenweller & Bob Fleck
Tracy Robert Johnson
Jim and Judy Craik
Douglas Marshall
Richard Beale
Rahn Garcia
Lloyd Williams
California Coastal Commission**

**ADJ/SAM/JVDH
BS97-622**