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November 6, 1998

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

HAND DELIVERED

**RE: JURISDICTIONAL APPEAL FROM PLANNING COMMISSION
APPLICATION NO. 97-0622
APN 43-105-07 (413 BEACH DRIVE)**

Members of the Board of Supervisors:

This is an appeal from an October 28th Planning Commission decision to approve a floor area ratio variance for the above-referenced application. It is submitted on behalf of Jim and Judi Craik, who own a home at 415 Beach Drive, next to the subject property.

In general, the Planning Commission's approval of a floor area ratio variance is objected to for the same basic reasons the appellants' objected to the prior approvals for this application. The objections to the prior approvals were presented to your Board for a hearing on August 25th, and these objections are incorporated herein. Similar objections were also raised in the attached letter to the Planning Commission; dated October 27, 1998, and marked as Attachment A; and, the objections noted in this letter are also incorporated herein.

To summarize the appellants' position, they have two basic objections which, briefly, include the following: 1) inadequate variance findings, principally due to the inability to make the required findings since the subject property is similar to the other properties in the vicinity; and, 2) General Plan inconsistency, principally due to the two-story limitation set forth in County General Plan Policy 8.6.3. These objections are based on state and local requirements for permit approval and, as such, the appellants contend that the failure to comply with these requirements at least constitute "error" in the determinations made to date, which authorizes your Board to take jurisdiction pursuant to County Code Section 18.10.340(c).

As previously pointed out throughout the permit review process, if the County wants to grant permit approval, then your Board needs to first adopt legislative changes to resolve both the variance and General Plan issues. Both of these issues could be solved by simply changing the site regulations for all the properties along Beach Drive. Acceptable site regulation changes have been considered by neighboring homeowners on Beach Drive, and the specific changes that a majority of these homeowners have asked you to consider were addressed in the petitions submitted to your Board on August 25th. However, without first adopting legislative changes to the site regulations for the Beach Drive neighborhood - which, of course, would include an opportunity for neighborhood input - it is expected that the County will comply with the present rules which, with all due respect, require permit denial.

In an even more fundamental sense, the appellants' variance and General Plan objections are really just "fairness" objections.

Looking first at the variances, why should the applicants' dwelling be bigger than what is normally allowed in order to enjoy the privileges enjoyed by others when the evidence shows that adjacent homes are substantially smaller, and that the homes in the vicinity of the proposal are also smaller? As shown in the attached chart, marked as Attachment B, the average amount of habitable space in the six houses on each side of the subject property (for a total of 12 houses) is only about 15 10 square feet, compared to the applicants' 2190 square feet of habitable space, as shown on the applicants' plans. And, why should the applicants' dwelling be taller than what is normally allowed at the expense of the neighboring homeowners' privacy and solar access? Why does it need to be 32 feet tall when a **civil** engineer has submitted a letter stating that even a three-story dwelling can be built within the County's 28-foot height requirement? And, why should its living area and decks be allowed to be closer to the street than other neighboring homes, blocking the side views of the beach and Monterey Bay from neighboring homes in favor of providing better side views from the applicants' dwelling? Since all the properties along Beach Drive are similarly constrained, why should the applicants' proposal be allowed to exceed what exists on neighboring properties, particularly given its detrimental effect on these properties?

As to the General Plan Policy restricting residential structures to two stories, why should the applicants be allowed to build a three-story dwelling when no other three-story dwelling has been approved on Beach Drive since the adoption of the 1994 General Plan? Surely, a two-story dwelling would be suitable for property zoned for a single family use, with parking on the first floor and the living area on the second floor. This is a common design of homes in our community. And, why should their proposed three-story dwelling be approved when all other three-story proposals since 1994 have been denied on Beach Drive?

All of the above questions point to the need to show why the subject property is unique and more constrained than the neighboring properties. But, all the evidence shows that it is not unique. Even the applicants admit that "**all** property along Beach **Drive** face the *same geological risks*," as stated in their attached letter to the Planning Commission, dated June 12, 1998, and marked as Attachment C (see pg. 2, 3rd paragraph).

In addition, the Planning Commission's review and approval of a floor area ratio variance raises the following specific objections, which also constitute "error" and a basis for your Board to take jurisdiction.

First, there was no finding or determination by the Planning Commission of General Plan compliance for the floor area ratio variance, although General Plan compliance is required for each and every project approval according to County Code Sections 13.01.130(a) and 18.10.140 and, in particular, consistency with General Plan Policy 8.6.3 is required by the express terms of the County's 1994 General Plan. On the other hand, substantial evidence was submitted to show inconsistency with the General Plan. This evidence was identified and discussed in my attached letter to the Planning Commission, dated October 27, 1998, marked as Attachment A. Additional evidence of General Plan inconsistency was submitted at the Planning Commission hearing.

Second, there was no further design review for the (new) floor area ratio variance pursuant to Chapter 13.11 of the County Code, nor did the Commission adopt or even consider new Coastal Zone findings or new development permit **findings**, although all of this is required by the Code. A new variance is surely a project change, and Code Section 13.11.050 requires design review for a project subject to 13.11 prior to a public hearing. Where, as here, the subject property is within the **viewshed** of a scenic corridor and, therefore, meets the definition of a "sensitive **site**" per County Code Section 13.11.030(u), design review is required per County Code Section 13.11.040(a). As ~~to~~ coastal permit requirements, here too, a new variance would appear to be a project **change** requiring new findings pursuant to County Code Sections 13.20.050 and 13.20.110; and, Code Section 13.20.110 requires development permit findings as well. Also, County Code Section 13.10.230(c) specifically requires development permit findings for any variance.

Moreover, further attention to design requirements and further attention to coastal and development finding requirements would seem to be particularly appropriate for the applicants' (new) floor area ratio variance. This is so because the purpose of a floor area ratio variance is to be able to build a bigger home than what is normally allowed, and compliance with the requirements for such a home is a major issue raised by neighboring homeowners. To just gloss over these requirements is to ignore the neighbors' legitimate concerns.

Third, one commissioner at least appears to have the mistaken view that the proposed floor area ratio variance is needed to build any dwelling on Beach Drive. But, there are no facts to support this view. To begin with, if the third floor was eliminated, the reduction in floor area would mean that a floor area ratio variance would no longer be needed, and the second floor would still provide suitable habitable area for a single family use. Also, staff has cited no examples of floor area variances being needed to build any of the existing dwellings on Beach Drive; nor have any other variances been cited for existing dwellings on Beach Drive that are similar in degree to any of the variances included in this proposal.

Fourth, based on the staff report for the October 28th Planning Commission hearing and what was **actually** stated at the hearing, it appears that the Planning Commission relied on FEMA rules to justify variance approval. But, FEMA rules, or any other rules, are not what makes a given property unique for purposes of making a **special** circumstance finding. Variance **finding** requirements speak only about the subject property's physical characteristics in comparison with other property in the vicinity. In any event, FEMA rules can not be the basis for a special circumstance finding in this case because FEMA rules are applicable to any other property in the vicinity to the same degree they are applicable to the subject property. This is so because, in the applicants' own words, "... **all** property **along** Beach Drive *face the same geological risks.*" The applicants' opinion in this regard is also shared by Jerry Weber, a Ph.D. Engineering Geologist, as indicated in his letters on **file** herein.

Fifth, as to the General Plan issue, FEMA rules are also not a basis for an exception to the two-story requirement in General Plan Policy 8.6.3. This General Plan Policy refers only to explicit exceptions in the County's residential site regulations, and here the only exceptions provided are those mentioned in the definition of what constitutes a "story" as this term is defined in County Code Section 13.10.700. This definition makes no mention

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of how FEMA rules could provide an exception to this definition, although it does provide other exceptions to what constitutes a story. Since FEMA rules were in effect when the County adopted the exceptions to the definition of a story, and since FEMA rules were not included in these exceptions, there was never any intent that FEMA rules could constitute an exception. The definition of a "story" in the Code appears to be applicable to an interpretation of General Plan Policy 8.6.3 because, by its terms, it is to be used for both "planning" and "zoning" purposes.

It is understood that the applicants, and the applicants' representative, have argued that FEMA rules should provide an exception to the General Plan's two-story requirement: and, further, it was expressly stated at the last Board hearing that the applicants were led to believe "in no *uncertain terms*" that they could obtain approval of a three-story dwelling when they began the permit review process. Their argument, at least implies that it would now be unfair to deny their proposal because it is three stories. However, their expectation of approval for a three-story dwelling is not at all consistent with the facts. Contrary to what the applicants have claimed, they were told in a letter from Jackie Young (a staff Planner) to Norma Odenweller, dated July 2, 1996, that "*with regards to a variance to construct a 3-story residence, we do not allow 3-story residences within the Urban Services Line per 13.10.322 Residential Uses Section.*" A copy of this letter is included with my attached letter to the Planning Commission. This letter shows that the applicants have known from the beginning that a three-story dwelling is not permitted on the subject property.

Conclusion

In order to comply with the applicable rules, it is requested that your Board take jurisdiction and deny the applicants' proposal. If the County wants to approve the current proposal, this will first require legislative action by your Board.

Respectfully Submitted,



Douglas E. Marshall, Esq.
Attorney for Mr. & Mrs. Craik

Enclosures
DM: kf

cc: Mr. & Mrs. Craik
Joan Van der Hoeven (staff Planner)

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October 27, 1998

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

HAND DELIVERED

RE: **APPLICATION NO. 97-0622**
APN 43-105-07 (413 BEACH DRIVE)
OCTOBER 28TH PC HEARING

Dear Commissioners:

This letter is submitted on behalf of Jim and Judi Craik, who own a home next to the applicants' above-referenced property.

The Craiks, like a majority of the other homeowners on Beach Drive, are opposed to the approval of the above-referenced application. The reasons for their opposition have been provided in oral testimony, letters and numerous petitions. A list of those in opposition that was submitted to the Board of Supervisors on August 25th is also attached to this letter and marked as Attachment 1. The concern, therefore, is not just the immediate impacts of the proposal on the Craiks and other adjacent homeowners, but the impacts on the entire neighborhood if similar proposals are approved elsewhere on Beach Drive.

Basically, those in opposition contend that the applicants' proposed dwelling is too big. It is taller than other neighboring two-story homes, adversely effecting the privacy of these homes. Its living area is closer to the street than other neighboring homes, blocking the side views of the beach and Monterey Bay from neighboring homes in favor of providing better side views from the applicants' dwelling. And, now that the floor area has been re-examined by staff, we find that the proposal's floor size exceeds the County's floor area ratio rules. It is simply over compensation for the same constraints everyone faces on Beach Drive and, as such, it is not compatible with the other homes in the neighborhood.

Possibly, the impacts of its size could be mitigated by design features, such as the staggered front yard setbacks we see on other properties in the area, but all that has occurred in this regard is some "rounding off" on the ends of the second and third floor decks. In essence, the proposal is still a big "box" that has as its only other outstanding architectural feature a twelve-foot high wall along the side property lines of its rear yard. It, obviously, will shade a substantial part of the living area and open space located on the parcel to the southeast of the applicants' parcel. Given its design, it is materially detrimental to the privacy, views and solar access of neighboring homes. In no respect does the proposed three-story dwelling complement, or even harmonize with the surrounding two-story homes. It is understood that it is located in a somewhat densely developed area, but isn't it in these circumstances that we should all work harder to ensure design compatibility? If compliance with design rules has any real importance for those living next to a given proposal it would seem to be in situations like this, where homes are located close to each other.

Objections to Variance Findings

In addition, objections to the approval of a floor area ratio variance include the following.

First, looking at the proposed variance findings provided in the staff report for this hearing, it is stated that these findings are for ". . . height, number of stories, parking . . . a reduced front setback and an increased floor area ratio." However, we still are not told where the findings for any one of these variances end and the others begin. This prevents scrutiny of the findings for compliance with regulatory requirements; and, specifically, this prevents scrutiny of the findings for a floor area ratio variance, which the Board of Supervisors stated on August 25th was the "only" issue for further review by the Planning Commission. As the only issue for further review, I would think that this, too, would be a reason to provide separate findings for a floor area ratio variance.

Second, staffs special circumstance finding fails to explain why the subject property is unique. The findings mention the shape, size of useable area, lack of developable area, topography, location of the parcel, and the size and configuration of other houses; but, nowhere are these characteristics shown to be any more of a constraint on the subject property than they are on the other properties in the vicinity. So, why should the subject property be given variances from County requirements in order to be closer to the street, taller, and generally bigger than the other homes in the vicinity?

Looking at the Assessor Parcel Map for this property, the parcel width and size are very similar, if not the same, as other properties in the vicinity. A copy of the Assessor Parcel Map is attached and marked as Attachment 2. As to topography and location here, too, the photographs on file and other evidence show that the subject property has a steep slope behind it and the Monterey Bay in front of it, subjecting it to the same geologic constraints as other properties in the vicinity. The developable area of the subject property appears to be the same as other properties in the vicinity; and, no explanation or evidence is offered to show how this characteristic, or the location and configuration of other houses, is any different on the subject property from what we see on other properties in the vicinity. All the properties on Beach Drive are similarly constrained by their dimensions, geologic considerations and the existing pattern of development. Therefore, none of these characteristics support any of the proposed variances on the subject property.

Third, staffs special circumstance findings for a floor area ratio variance is especially inadequate because there is no showing that any homes in the vicinity enjoy this same "privilege." Neighboring homes are about 1350 to 1500 square feet and, as indicated above, they are on parcels similar to the applicants'. So, why should the applicants be given a floor area ratio variance in order to build a dwelling that staff now believes is somewhere between 2928 and 3050 square feet? The applicants' proposed dwelling far exceeds the dwelling size enjoyed by others in the vicinity and, as such, a floor area ratio variance is objected to as a grant of special privilege.

Furthermore, this same general objection also applies to other variances: namely, the front setback variances, height variances and three-story variance all provide privileges in excess of what are enjoyed on neighboring properties. While it is true that there are three-story homes on Beach Drive, the closest one is seven parcels to the northeast of the applicants' property, and more than a majority of the homes on Beach Drive are two stories

with staggered front yard setbacks. I mention these other variances because their cumulative effect on the size and design of the proposal are important in assessing whether any one of them should be approved.

Fourth, staff's special circumstance finding is flawed and inadequate in citing FEMA and Zoning Code rules as a basis for approval. This is so because under both state and local regulations the special circumstance finding speaks only to physical circumstances applicable to the "property." Land use rules, therefore, have nothing to do with what makes a particular property unique for purposes of a special circumstance finding.

Fifth, since the proposed floor area ratio variance will result in a bigger dwelling, taller and closer to the street than adjacent homes, neighbors object to the finding that this proposal will not be materially injurious to their property. This point was explained in some detail in the beginning of this letter. In this regard, it is also noted that staff advised the applicants prior to submitting any development applications that a three-story dwelling could not be allowed based on County zoning rules. This is indicated in the attached letter from Jackie Young to Norma Odenweller, dated July 2, 1996, marked as Attachment 3 (see last paragraph on page 1). Therefore, a floor area ratio variance for the proposed three-story dwelling is also objected to because it is not possible to make the required finding that it will be "... in harmony with the general intent and purpose of zoning objectives."

Sixth, the proposed floor area ratio variance may not be approved without further design review pursuant to Chapter 13.11 of the Code, as well as new Coastal Zone findings and new development permit findings. A new variance is surely a project change, and Code Section 13.11.050 requires design review for a project subject to 13.11 prior to a public hearing. Where, as here, the subject property is within the viewshed of a scenic corridor and, therefore, meets the definition of a "sensitive site" per County Code Section 13.11.030(u), design review is required per County Code Section 13.11.040(a). As to coastal permit requirements, here too, a new variance would appear to be a project change requiring new findings pursuant to County Code Sections 13.20.050 and 13.20.110; and, these Code Sections require development permit findings as well. Also, County Code Section 13.10.230(c) specifically requires development permit findings for any variance.

Moreover, further attention to design requirements and further attention to coastal and development finding requirements would seem to be particularly appropriate for the applicants' (new) floor area ratio variance. This is so because the purpose of a floor area ratio variance is to be able to build a bigger home than what is normally allowed, and compliance with the requirements for such a home is a major issue raised by neighboring homeowners. To just gloss over these requirements is to ignore the neighbors' legitimate concerns.

Objections to Variance Based on General Plan Policy 8.6.3

Next, while your review of this proposal at the above-referenced hearing is limited to the floor area ratio issue, variance approval requires compliance with the County's General Plan. This is so because County Code Section 13.10.130(a) states that "*no discretionary land use project, public or private, shall be approved by the County unless it is found to be consistent with the adopted General Plan.*" And, County Code Section 13.10.230, which regulates variance approvals, expressly states in subsection "a" of this Code Section that variances are "discretionary." More specifically, consistency with General Plan Policy 8.6.3

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is required because in the Authority and Purpose section of Chapter 8 of the County General Plan it states that "*all projects shall be consistent with the policies of this Chapter,*" which include Policy 8.6.3. This is important because the County's General Plan states that it is "*... the constitution of County land use planning*" (County General Plan, pg. 1 - 18).

General Plan Policy 8.6.3 states the following:

"Story Limitation

Residential structures shall be limited to two stories in urban areas and on parcels smaller than one acre in the rural areas except where explicitly stated in the Residential Site and Development Standards ordinance." (emphasis added)

The terms of this policy make it applicable here because the subject property is within an "urban area" (since it is within the Urban Services Line) and, even if it was not in an urban area, this policy is applicable because the subject property is "*smaller than one acre.*" There is, therefore, no doubt that this General Plan Policy is applicable to the proposed floor area ratio variance for the subject property.

The problem, of course, is that the applicants' proposal is for a three-story dwelling, in direct conflict with this General Plan Policy. The only issue, therefore, is whether there is an exception to this policy that is applicable to the proposal before you. In this regard, there has been some debate with staff throughout the permit review process. However, looking at the staff report for the hearing on October 28" it appears that staff is now calling the first floor (where the garage is located) an "under floor:" and, if it is indeed an "under floor" it is understood that this is not considered a "story" based on the County's definition of a story in County Code Section 13.10.700. Staff also seems to be implying that the first floor should not count as a story because of FEMA regulations and that it is not intended to be used for habitable purposes.

However, the Craiks contend that the first floor (where the garage is located) is not an "under floor," and that FEMA regulations and other arguments by staff do not provide a reason for excluding the first floor as a "story" for purposes of General Plan Policy 8.6.3. The reasons for the Craiks' position are as follows.

First, the first floor is not an under floor because in the County's definition of an under floor it specifically states that to qualify as an under floor there-must be no stairway access. as there is here.

Second, it should be noted that the lower floor includes a garage, and because garages are not exempt from the definition of what constitutes a story, the lower floor is a "story." Therefore, even if there was no interior stairway access to the lower floor, it would still be a "story" because it includes a garage.

Third, the first floor is a "story" because it is a portion of a building between the "upper surface" of a floor and the "lower surface" of the "floor or ceiling above." In this regard, it is also noted that it constitutes an area that is eight feet in height in order to comply with FEMA requirements, and since this area exceeds the Uniform Building Code's minimum ceiling height of 7' 6" for habitable space, it has the visual appearance of any other floor. Since it has the visual appearance of any other floor, it should be subject to General Plan Policy 8.6.3 since the intent of this policy is to regulate visual impacts of a dwelling's height and mass.

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Fourth, the fact that the first floor is needed for FEMA elevation and is not intended for habitable purposes is immaterial for purposes of complying with General Plan Policy 8.6.3. FEMA elevation and the absence of habitable features are not reasons listed in the Code for not considering the first floor to be a story. Also, these factors have nothing to do with the visual impact of the first floor, which is the reason for the General Plan restriction on the number of stories for dwellings in the urban area as indicated in General Plan Policy Objective 8.6.

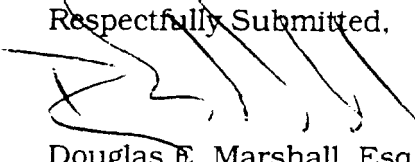
Fifth, since FEMA elevation rules were in effect when the County adopted its definition of a "story" in 1992, and since the County did not list FEMA elevation rules as a reason to exclude a floor from the definition of a story indicates that these rules were never intended to be used as a reason to exclude a floor from the definition of a story. The adoption of FEMA base elevation maps and other requirements are addressed in Chapter **16.10** of the County Code. Code Sections 16.10.040(u) and (v) indicate that the effective date for FEMA rules was April 15, 1986. County Code Section 13.10.700-S indicates that the effective date of the County's definition of a story, and exclusions therefrom, was 1992.

Sixth, contrary to any argument that a garage or other non-habitable space does not constitute a story, I have found two examples of recent approvals for two-story structures which have only a garage as the first story. One example is an application by Michael Liles and Catherine Bowman (Application No. 98-0013, APN 28-041-45) for an accessory dwelling unit above a garage where the only access to the second story is a staircase outside the garage. The staff report indicates it was heard on May 1, 1998. A copy of this staff report will be submitted at the hearing on October 28th and will be marked as Exhibit E. Another example is an application for Lisa Ford (Application No. 98-O 137, APN 63-06 1-35). This is notable because an entirely non-habitable structure, consisting of a workshop area above a garage, is described as being two stories. The staff report indicates it was heard on July 2-I. 1998. A copy of this staff report will also be submitted at the hearing on October 28th and will be marked Exhibit F. These examples show that the number of stories has nothing to do with whether the space is non-habitable, and that a garage alone is enough to characterize a floor as a "story."

Conclusion

The proposed floor area ratio variance findings can not be made: and, furthermore, the proposed dwelling can not be approved because it is inconsistent with the County's General Plan. Also, the proposed three-story dwelling is incompatible with the surrounding two-story homes and it is, therefore, inconsistent with the Local Coastal Plan. It is therefore requested that you deny this proposal. In order to grant an approval will first require legislative action by our Board of Supervisors.

Respectfully Submitted,


Douglas E. Marshall, Esq.
Attorney for Mr. & Mrs. Craik

Enclosures

DM:kf

cc: Mr. & Mrs. Craik

Joan Van der Hoeven (Staff Planner)

Board of Supervisors
August 25, 1998

Page 1 of 5 - List of Homeowners along Beach Drive that signed petition/petitions and or sent letters in opposition to the proposed project for APN #43-105-07:

1. APN #043-082-70 - 303 Beach Drive - Teresa Jane Krueger - Signature on petition #2 dated 8-17-98.
2. APN #043-082-04 - 309 Beach Drive - Josephine Borelli - Signature on petition #2 dated 7-28-98.
3. APN #043-082-08 - 317 Beach Drive - Pauline M. LoMonaco - Signature on petition #2 dated 8-16-98.
4. APN #043-082-08 - 317 Beach Drive - Bud LoMonaco - Signature on petition #2 dated 8-18-98.
5. APN #043-082-09 - 319 Beach Drive - Thomas N. Holm - Signature on petition #2 dated 8-13-98.
6. APN #043-082-09 - 319 Beach Drive - Virginia G. Holm - Signature on petition #2 dated 8-13-98.
7. APN #043-082-10 - 321 Beach Drive - Harrett W. Mannina - Signature on petition #2 dated 8-6-98.
8. APN #043-082-10 - 321 Beach Drive - Barbara L. Mannina - Signature on petition #2 dated 8-6-98.
9. APN #043-082-12 - 325 Beach Drive - Michael Dobrin - Signature on petition #2 dated 8-1-98.
10. APN #043-095-38 - 329 Beach Drive - Mrs. Frank Maurer - Signature on petition #2 dated 7-28-98.
11. APN #043-095-37 - **331** Beach Drive - Allen D. Brown - Signature on petition #2 dated 7-29-98.
12. APN #043-082-75 - 343 Beach Drive - William J. Connolly - Signature on petition #2 dated 7-23-98.

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Page 2 of 5 - List of Homeowners along Beach Drive that signed petition/petitions and or sent letters in opposition to the proposed project for APN #43-105-07:

13. APN #043-082-75 – 343 Beach Drive – Pamela Connolly – Signature on petition #2 dated 7-23-98.
14. APN #043-095-26 – 353 Beach Drive – Rex A. Brunner – Signature on petition #2 dated 7-24-98.
15. APN #043-095-25 – 355 Beach Drive -John Brock – Signature on petition #2 dated 7-28-98.
16. APN #043-095-23 – 359 Beach Drive – A.B. Canelo – Letter addressing “set back provisions from the roadway”.
17. APN #043-095-21 – 365 Beach Drive – Mary C. Henderson – Letter addressing “The privacy and unobstructed view”.
18. APN #043-095-21 – 365 Beach Drive - Arnold R. Henderson – Letter addressing “The privacy and unobstructed view”.
19. APN #043-095-15 – 377 Beach Drive – William Stonhaus – Signature on petition #2 dated 7-25-98.
20. APN #043-095-15 – 377 Beach Drive – Karen Stonhaus – Signature on petition #2 dated 7-25-98.
21. APN #043-095-13 – 381 Beach Drive – Pat Stowell – Signature on petition #2 dated 8-22-98.
22. APN #043-095-12 – 383 Beach Drive – Pat Stowell – Signature on petition #2 dated 8-22-98.
23. APN #043-095-11 – 385 Beach Drive -Joan S. Lane – Signature on petition #2 dated 7-27-98.
24. APN #043-095-10 – 386 Beach Drive -Joan S. Lane – Signature on petition #2 dated 7-27-98.

Attachment A
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Attachment 1
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Page 3 of 5 - List of Homeowners along Beach Drive that signed petition/petitions and or sent letters in opposition to the proposed project for APN #43-105-07:

25. APN #043-095-11 – 385 Beach Drive – Ralph Lane Jr. – Signature on petition #2 dated 7-27-98.
26. APN #043-095-10 – 386 Beach Drive – Ralph Lane Jr. – Signature on petition #2 dated 7-27-98.
27. APN #043-095-09 – 387 Beach Drive – Gerald Popplewell – Signature on petition #2 dated 8-24-98.
28. APN #043-095-08 – 389 Beach Drive – Dudley Andersen for Wailele Associates – Signature on petition #2 dated 7-29-98.
29. APN #043-095-07 – 393 Beach Drive – Diana Alman – Signature on petition #1 submitted on 6-23-98 – Signature on petition #2 dated 7-31-98.
30. APN #043-095-07 – 393 Beach Drive – Douglas Alman – Signature on petition #2 dated 7-31-98.
31. APN #043-105-38 – 395 Beach Drive – Victor Monia – Signature on petition #2 dated 7-25-98.
32. APN #043-105-38 – 395 Beach Drive – Karen N. Monia – Signature on petition #2 dated 7-25-98.
33. APN #043-105-39 – 401 Beach Drive – Mary Clarke – Letter submitted on 6-23-98 addressing # stories/set backs/architecture. Signature on petition #2 dated 7-31-98.
34. APN #043-105-39 – 401 Beach Drive – Richard Clarke – Letter submitted on 6-23-98 addressing # stories/set backs/architecture. Signature on petition #2 dated 7-31-98.
35. APN #043-105-05 – 409 Beach Drive – William E. Wilson – Signature on petition #2 dated 7-30-98.

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August 25, 1998

Page 4 **of** 5 - List of Homeowners along Beach Drive that signed petition/petitions and or sent letters in opposition to the proposed project for APN #43-105-07:

36. APN #043-105-05 – 409 Beach Drive – Muriam E. John – Signature on petition #2 dated 7-30-98.
- 37.** APN #043-105-06 – 411 Beach Drive – Keith D. Ignatz – Letter submitted on 6-23-98 addressing “architectural integrity”, “proposed height variance”, “second story front setback”, “sunlight”, “major privacy problem” – Signature on petition #2 dated 7-23-98.
38. APN #043-105-08 – 415 Beach Drive – Judi Craik – Appellant.
39. APN #043-105-08 – 415 Beach Drive -Jim Craik – Appellant.
40. APN #043-105-09 – 417 Beach Drive – Lynn F. Hammersmith – Letter submitted on 6-23-98 addressing “the height variance and set back variance” – Signature on petition #1 submitted in April – Signature on petition #2 dated 7-24-98.
- 41.** APN #043-105-10 – 419 Beach Drive – Dora B. Holdom – Signature on petition #1 submitted in April – Signature on petition #2 dated 8-4-98.
42. APN #043-105-10 – 419 Beach Drive – Betty Watson – Signature on petition #1 submitted in April – Signature on petition #2 dated 8-4-98.
43. APN #043-105-11 – 421 Beach Drive – Millicent Lalanne – Signature on petition #1 submitted in April – Letter submitted on 6-23-98 addressing all issues – Signature on petition #2 dated 8-4-98.
- 44.** APN #043-105-11 – 421 Beach Drive – Robert Lalanne – Signature on petition #1 submitted in April – Letter submitted on 6-23-98 addressing all issues – Signature on petition #2 dated 8-4-98.

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|------------------------------|
| Attachment A Page 9 of 13 |
|------------------------------|

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|-----------------------------|
| Attachment 1 Page 4 of 5 |
|-----------------------------|

Board of Supervisors
August 25, 1998

Page 5 of 5 - List of Homeowners along Beach Drive that signed petition/petitions and or sent letters in opposition to the proposed project for APN #43-105-07:

45. APN #043-105-12 – 423 Beach Drive – Signature on petition #1 submitted in April – Signature on petition #2 dated 8-8-98. *The Krag Family has owned this property since 1935. Title to the property is in a trust for the Krag Family. Scott, and his wife Diane are full time residents on Beach Drive.
46. APN #043-105-13 – 427 Beach Drive – Marianne Morici - Signature on petition #2 dated 8-3-98. *The Morici Family has owned this property since the 1940's. Title to the property is in a trust for the Morici Family.
47. APN #043-105-14 – 427 Beach Drive – Tony Morici – Signature on petition #2 dated 8-3-98. *The Morici Family has owned this property since the 1940's. Title to the property is in a trust for the Morici Family.
48. APN #043-105-15 – 429 Beach Drive – Robert Bernal – Signature on petition #2 dated 8-19-98.
49. APN #043-105-15 – 429 Beach Drive – Nancy Bernal – Signature on petition #2 dated 8-19-98.
50. APN #043-105-16 – 429 Beach Drive – Robert Bernal – Signature on petition #2 dated 8-19-98.
- 51.** APN #043-105-16 – 429 Beach Drive – Nancy Bernal – Signature on petition #2 dated 8-19-98.
52. APN #043-105-17 – 431 Beach Drive – Melvin Larussa – Signature on petition #1 submitted on 6-23-98 – Signature on petition #2 dated 7-25-98.
53. APN #043-105-18 – 433 Beach Drive – Vivian D. Morse – Signature on petition #1 submitted 6-23-98 – Signature on petition #2 dated 7-25-98.
54. APN #043-105-19 – 435 Beach Drive – Kathryn Zaninovich – Signature on petition #2 dated 8-10-98.

FOR TAX PURPOSES
ONLY

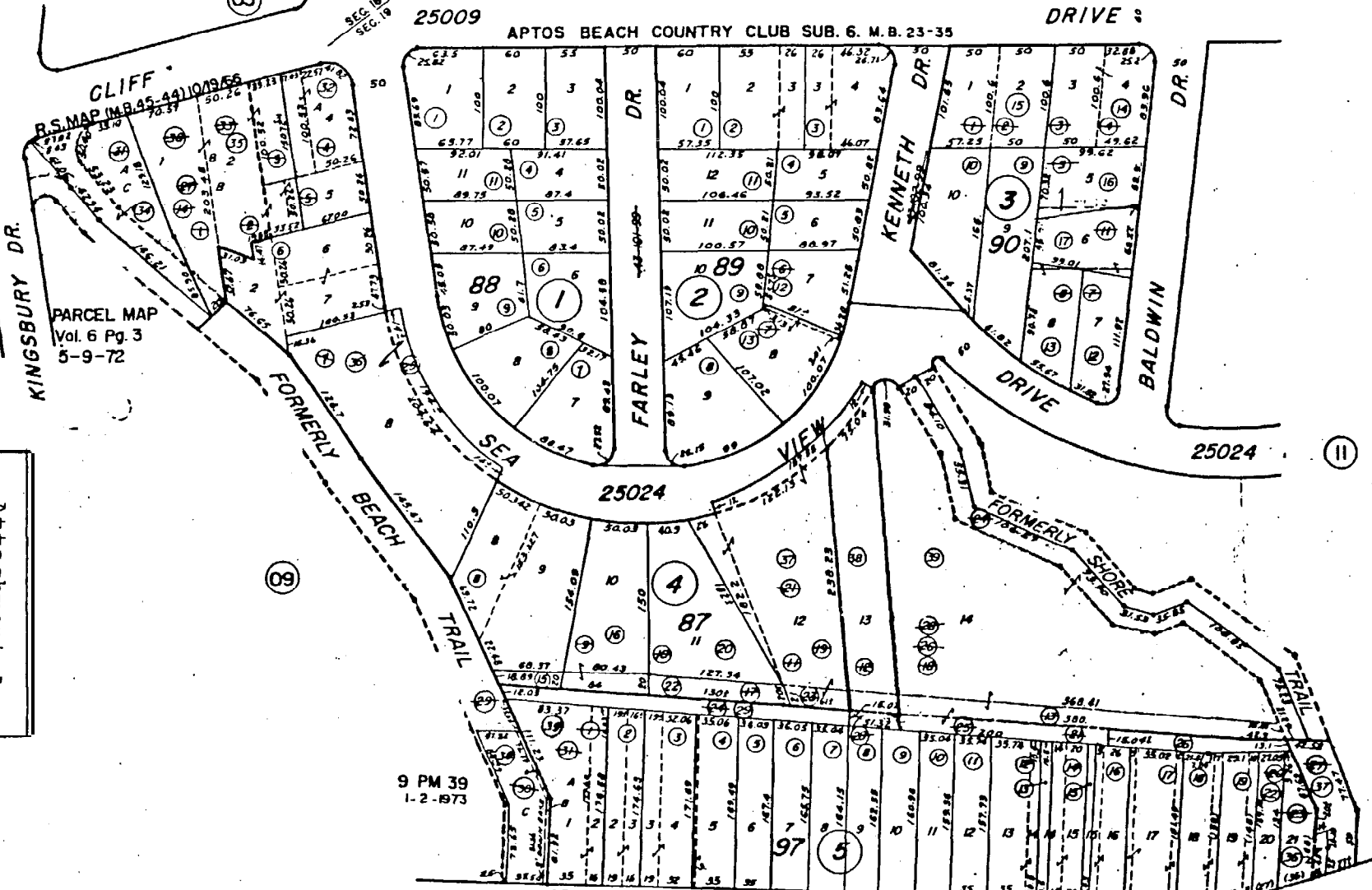
P O R . APTOS RANCHO -
S.E. 1/4 SEC. 18, & N.E. 1/4 SEC. 19, T. 11 S., R. 1 E. M.D.B. & M. PROJECTED.

Tax Area Code
69-101

43-10

SCANNED

7-PM-66
8-24-72



PARCEL MAP
Vol. 6 Pg. 3
5-9-72

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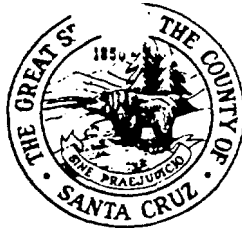
Attachment 2
Page 1 of 1

APTOS BEACH COUNTRY CLUB SUB. 8. M.B. 24-26.
25005 DR.

Note - Assessor's Parcel Block &
Lot Numbers Shown in Circles

Assessor's Map No. 43-10
County of Santa Cruz, Calif.
Apr 1951

ATTACHMENT 1



July 2, 1996

Norma Odenweller
101 First Street, Suite 461
Los Altos, CA 94022

re: Application 96-0330
APN 043-105-07
413 Beach Drive, Aptos

Dear Norma,

I am writing, per your request, to answer your development questions from last week related to the above referenced property.

In answer to your inquiry concerning the possibility of applying for variances to reduce the required 20' front setback to 15' and increase the 2-story height limit to 3-stories, the following findings must be able to be made to recommend approval of a variance (13.10.230.e):

1. That because of special circumstances applicable to the property, including size, shape, topography, location, and surrounding existing structures, the strict application of the Zoning Ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.
2. That the granting of such variance will be in harmony with the general intent and purpose of zoning objectives and will not be materially detrimental to public health, safety or welfare or injurious to property or improvements in the vicinity.
3. That the granting of such variance shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such is situated.

I spoke with Development Review Planner Darcy Houghton regarding these specific variances as she has processed many coastal and variance applications in this area. Ms. Houghton has had several variance to setbacks applications approved with a finding of topography for the special circumstance. If Parcel 043-105-07 was found to be similarly restricted by topography, the granting of a variance is possible. With regards to a variance to construct a 3-story residence, we do not allow 3-story residences within the Urban Service Line per 13.10.322 Residential Uses section. Some residences have been built on Beach Drive recently which have a lower garage level with two stories of living space above. These lower level garages, however, meet the definition of a "basement". If the lower

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Attachment 3
Page 1 of 2

level qualifies as a basement, it is not considered a story. In order for a story to qualify as a basement, it must meet the following definition:

To qualify as a basement more than 50% of the basement exterior perimeter wall area must be below grade and no more than 20% of the perimeter wall area may exceed 5 feet 6 inches above the exterior grade. (13.10.700-B)

(Please note that the parcels which had "basement" parking levels were extremely limited by topography. Per our conversation, it seems as if parcel 043-105-07 has significantly more flat developable area than the parcels which developed with basement parking stories, i.e. the parcels had much less flat area and development went into the hillside.)

Secondly, to clarify the parking issue related to parcel 043-105-08, I confirmed with Supervising Planner Glenda Hill that a variance to parking requirements for parcel 043-105-08 would not be necessary as parcel 043-105-07 was found to be a legal separate parcel per 89-0395 (Unconditional Certificate of Compliance). Furthermore, I checked with Lynn Meyer at the Coastal Commission at (408) 427-4863 and verified that no coastal permit requirements are on file which indicate that they have required parcel 043-105-07 be maintained as parking for parcel 043-105-08. The one implication that developing parcel 043-105-07 will have is on any future development requests for parcel 043-105-08. If parcel 043-105-08 wished to add additional bedrooms in the future for example, the owners of parcel 043-105-08 would be required to meet current parking requirement.

If you have any further questions, please feel free to call me at (408) 454-3181.

Sincerely,



Jackie Young, AICP
Development Review Planner III

c/c: Robert & Sally Reid

file: 96-0330

CHART OF DWELLING SIZES
IN THE VICINITY OF APN 043-105-07
BASED ON SANTA CRUZ COUNTY ASSESSOR RECORDS*

| <u>APN</u> | <u>ADDRESS</u> | <u>SQUARE FEET OF DWELLING</u> <i>(not including decks/garages)</i> |
|--|-----------------------|---|
| 1) 043- 105-39 | 401 Beach Drive | 1147 |
| 2) 043- 105-02 | 403 Beach Drive | 840 |
| 3) 043- 105-03 | 405 Beach Drive | 2337 |
| 4) 043- 105-04 | 407 Beach Drive | 1283 |
| 5) 043- 105-05 | 409 Beach Drive | 1658 |
| 6) 043- 105-06 | 411 Beach Drive | 1283 |
| 7) 043- 105-08 | 415 Beach Drive | 1629 |
| 8) 043- 105-09 | 417 Beach Drive | 1179 |
| 9) 043-105- 10 | 4 19 Beach Drive | 1370 |
| 10) 043-105- 11 | 421 Beach Drive | 1535 |
| 11) 043-105-12 | 423 Beach Drive | 1789 |
| 12) 043-105- 14 | 427 Beach Drive | 2067 |
| Average Size of the Above (12) Homes: | | 1510 |

** The Assessor records used to prepare this chart were obtained from the Assessor's Office on 11/5/98.*

To: Santa Cruz Planning Commissioners
 Fr: Owners of 413 Beach Drive - Fleck/Odenweller
 Project: New home to be built on lot
 Reason for this letter: Neighbor has appealed our approval to build
 which was granted by the ZA on May 1, 1998
 Date: June 12, 1998

Response to Appeal of Zoning Administrator Decision
Application No. 974622
APN 43-105-05 (413 Beach Drive Rio Del Mar)

On June 24th our project will be on the agenda for your meeting. We wanted to take this opportunity to give you some background. Below is a summation of the issues raised in this appeal and the rationale used by the owners of 413 Beach Drive and the planning staff in supporting the approval of this project. The neighborhood is defined as Beach Drive from the Esplanade to the gated community. It is not just the few select houses near the Craik's. New FEMA laws continue to create constraints for all new construction. The majority of homes along Beach Drive today do not meet the new requirements. If the owners were to rebuild, they too would have to meet the new laws.

The appeal filed on 5/11/98 by Craik takes issue with the following:

| <u>Issue</u> | <u>Where addressed in appeal</u> |
|--------------------------------------|---|
| 1. Interference with Craik's privacy | Opening paragraph, Fourth paragraph. |
| 2. Front yard variance of new home | Opening paragraph, Fifth paragraph. Sixth paragraph |
| 3. Geological concerns | Opening paragraph, First paragraph. Second paragraph |
| 4. Height variance of new home | Opening paragraph, Third paragraph, Fifth paragraph, Sixth paragraph |

Responses to the above issues:

Issue #1 - Privacy: 84% of the houses along Beach Drive have zero lot line setback on one or more sides. In fact the Craik's house has zero lot line on the right side. They have a piece of canvas separating their second story deck from their neighbor. (They aren't complaining about this lack of privacy issue!) The second story deck of the new home at 413 Beach Drive is 11'6" from the Craik's enclosed second floor sun room. Most people on Beach Drive can look across their decks and see their neighbors.

Beach Drive is a quaint old street with very narrow lots (average width approximately 35' wide). The size of the lots does not provide for a great deal of privacy for any of the owners. The close proximity to the neighbors is part of the local charm.

Issue #2 - Front yard variance of new home: 93% of the homes along Beach Drive enjoy 3 setback of 8 feet or less. Some in fact are located at the street property line. The house to the left of the new home has a bay window at the 8' setback line. The Craik's house bay-window area is 8'6" from the front property line. The proposed home will have approximately the same setback (8') from the street as the houses on either side of it.

The new home cannot use the back yard (per the geologist's letter) for decks or patios due to the potential danger of a slides. There is about an 8 foot distance between the retaining wall and the rear wall of the house. This is all unusable space. Both houses on either side of 413 Beach have living quarters which abut the bluff.

ATTACHMENT 1

319

We have only been granted the same variance that more than 93% of our neighbors enjoy and this is to help compensate for the lack of use of the back yard.

Issue #3 - Geological concerns:

We agree with Geologist Weber's letter dated 5/8/98. Yes, all property along Beach Drive face the same geological risks. However, because of past problems new laws have been instituted that place very stringent requirements on new owners who wish to build. We have worked for 2 years with geologists, geotechnical engineers and the county to meet these requirements and be able to build our dream home.

Issue #4 - Height

variance of new home: Current FEMA laws prohibit living on the ground floor due to the possibility/probability of flooding. All new dwellings must comply with these code and restrictions. Of the 63 houses along Beach Dr. the 20 newly constructed ones have 2 living floors above the garage.

Summary:

If the Craik's house were built today they could not have the following which they presently enjoy:

1. 0 property line setback on one side - (Current set back is 5 feet.)
2. Living space on the ground floor - (Not allowed by FEMA)
3. Living space built up against the steep bluff -
4. Inadequate parking for their 4 bedroom house -
(They have parking for 1 car not 3 cars as required for a 4 bedroom house.)
5. Electric wires going over their living area
6. No pier/grade foundation

We have tried to compromise with the Craiks and listen to their concerns. We have met with them on several occasions and made modifications to our initial design only to be told by them that they "didn't care". We believe that they do not want any house to be built on the lot. We find this quite disturbing as we had purchased this lot approximately 6 months prior to the Craiks buying their house. They had full knowledge of our intent to build.

We have worked diligently with the county and our team of experts, for the past 2 years, to design a home that meets all the current codes. As for variances, we were only granted those that have already been granted to our neighbors and we believe that we and the county have shown satisfactory reason as to why these variances were granted to us also.

If you have questions, please call us at 650-424-8424.

Sincerely, Norma Odenweller and Bob Fleck